

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|--|---|----------------|
| Pennsylvania Public Utility Commission | : | R-2021-3026682 |
| Office of Consumer Advocate | : | C-2021-3029095 |
| Office of Small Business Advocate | : | C-2021-3029188 |
| Frank D. Kitzmiller | : | C-2021-3029426 |
| Andre and Patricia Renna | : | C-2021-3029450 |
| Joel and Karen Wenrich | : | C-2021-3029469 |
| William Waters | : | C-2021-3029470 |
| Tony T. Koenig | : | C-2021-3029549 |
| Robert T. Arters | : | C-2021-3030184 |
| | : | |
| v. | : | |
| | : | |
| City of Lancaster – Bureau of Water | : | |

RECOMMENDED DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This Recommended Decision recommends approval, with minor modifications, of the Joint Petition for Complete Settlement of Rate Investigation (“Joint Petition” or “Settlement”) between the City of Lancaster – Bureau of Water (“Bureau of Water” or “City” or “Lancaster”) and the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), Office of Consumer Advocate (“OCA”) and Office of Small Business Advocate (“OSBA”) (“collectively Joint Petitioners”). The Joint Petition was filed on March 14, 2022. The Joint Petition is supported by substantial evidence and is in the public interest.

On September 30, 2021, the City had filed Supplement No. 46 to Lancaster Water Tariff – PA P.U.C. No. 6, seeking to increase its annual revenue by \$4,024,593, or approximately 21%, for customers located in the Commission’s jurisdictional area, *i.e.*, those customers located outside of the City of Lancaster (“jurisdictional customers” or “outside customers”). Under the Joint Settlement, the City may establish rates for jurisdictional customers which will produce an overall increase in annual operating revenues of approximately \$2,500,000, or about 13.0%. Supplement No. 48 to Tariff Water – Pa. P.U.C. No. 6.

Appendix A to the Joint Petition is Supplement No. 48 to Tariff Water – Pa. P.U.C. No 6, which sets forth the Settlement rate increase by meter size classification. The Proof of Revenues is in Appendix B. Upon Commission approval of the Settlement, the proposed rates will be effective June 29, 2022. The Settlement also provides that the City will conduct additional system maintenance activities, provide additional reporting on its funds and system, and enhance its customer complaint records.

The City, OCA, OSBA, I&E and Complainant Frank D. Kitzmiller, Docket No. C-2021-3029426, filed statements in support of the Settlement, discussed herein. The last Commission Public Meeting before the end of the suspension period on June 29, 2022 is June 16, 2022.

HISTORY OF THE PROCEEDINGS

On September 30, 2021, the City filed Supplement No. 46 to Lancaster Water Tariff – PA P.U.C. No. 6, proposing to increase its annual operating revenues for water service by \$4,024,593, or 20.8%, for its jurisdictional customers.

On October 5, 2021, I&E filed a Notice of Appearance. On October 14, 2021, the OCA filed a Complaint, Public Statement, and Notice of Appearance. On October 20, 2021, the OSBA filed a Complaint, Public Statement and Notice of Appearance.

On October 27, 2021, Frank D. Kitzmiller filed a Formal Complaint, Docket No. C-2021-3029426, contending that the City overbilled customers by basing charges upon the size of the customer's service pipe rather than the size of the customer's meter. Also on October 27, 2021, Andre and Patricia Renna filed a Formal Complaint, Docket No. C-2021-3029450, wherein they alleged that the rate increase sought by the City was not justified or reasonable or without burden to the consumer.

On October 28, 2021, the Commission issued an Order suspending the City's proposed Supplement No. 46 to Tariff Water – Pa. P.U.C. No. 6 by operation of law until June 29, 2022. By the same Order, the Commission assigned the case to the Office of Administrative Law Judge. The proceeding was later assigned to me.

On November 4, 2021, the City filed conforming Supplement No. 47 to Tariff Water – Pa. P.U.C. No. 6.

A Telephonic Prehearing Conference was held on November 5, 2021, where a procedural schedule was established and modifications to the Commission's discovery regulations were adopted for this proceeding. The hearing dates established were February 9 – 10, 2022.

On November 6, 2021, Tony T. Koenig filed a Formal Complaint, Docket No. C-2021-3029549, opposing the proposed rate increase as too large and not warranted.

On November 8, 2021, Joel and Karen Wenrich filed a Formal Complaint, Docket No. C-2021-3029469, challenging the proposed rate increase as exorbitant. Also on November 8, 2021, William Waters filed a Formal Complaint, Docket No. C-2021-3029470, contending that the proposed rate increase was excessive and not allocated properly amongst the customer base.

On November 22, 2021, Joel and Karen Wenrich sent an email to the undersigned and other parties stating that they no longer wish to pursue the formal complaint that they filed in

this case. The parties were advised that the email would be treated as a petition to withdraw, and any opposition must be stated or filed within 3 business days. No objections were filed.¹

On December 1, 2021, the Secretary's Bureau served on the parties a list of issues that Commissioner Ralph V. Yanora wished the parties to examine during this proceeding and instructed the parties that responses should be entered into the record like other evidentiary material. The parties discussed a response method and the City proposed that it would file responses to the letter and issues presented no later than December 10, 2021 to allow time for the other parties to address the issues raised in non-City Direct Testimony to be submitted by December 23, 2021, as scheduled. This proposal was accepted. On December 9, 2021, the City submitted City of Lancaster Supplemental Testimony of Stephen Campbell containing responses to Commissioner Yanora's list of issues.

A Telephonic Public Input Hearing was held on December 16, 2021 at 6:00 p.m. at which one person, Complainant Mr. Kitzmiller, testified.

On December 17, 2021, Robert T. Arters filed a Formal Complaint, Docket No. C-2021-3030184, opposing the proposed rate increase as far beyond the current rate of inflation and a financial burden to those on a fixed income.

Joint Petitioners exchanged testimony, engaged in discovery and met to discuss settlement. On February 4, 2022, the parties advised that they were near settlement, and the hearing dates were cancelled. On February 10, 2022, the parties reported that they had a complete settlement.

By Order dated February 24, 2022, the parties were given until March 14, 2022 to file all settlement documents.

On March 14, 2022, the Joint Petitioners filed a Joint Petition for Complete Settlement of Rate Investigation and, along with Mr. Kitzmiller, a Motion for Admission of

¹ The Wenrichs' request to withdraw their Complaint is granted herein.

Exhibits and Testimony. The Joint Petition included statements in support from the City, OCA, I&E, and the OSBA.²

Also on March 14, 2022, OCA sent letters to the remaining parties who filed individual complaints (William Waters, Tony T. Koenig, Robert T. Arters, Andre and Patricia Renna, Frank D. Kitzmiller). The letter included a copy of the Joint Petition and explained options for comments or responding to the Joint Petition as follows:

- You may join in the proposed Settlement, which will have the effect of discontinuing your Formal Complaint. To join the Settlement, sign and return the enclosed Signature Page to Judge Heep by emailing it to her no later than March 24, 2022.
- You may object to the Settlement. You must submit objections to Judge Heep by email no later than March 24, 2022.
- You may disagree with but not actively oppose the Settlement. You must submit your disagreement to Judge Heep by email no later than March 24, 2022.
- You may choose to do nothing.

Complainants Andre and Patricia Renna sent an email to the Commission on March 15, 2022, stating that they disagree with but do not actively oppose the Settlement. Complainant Frank D. Kitzmiller submitted a Statement in Support of Settlement Petition on March 21, 2022, in which he stated that his Formal Complaint was settled.³

The record closed on March 14, 2022, the date the settlement documents were due.

² The Motion for Admission of Exhibits and Testimony was granted in a separate order on March 30, 2022.

³ The Kitzmiller Statement in Support of Settlement Petition was admitted into the record in the March 30, 2022 Order.

PUBLIC INPUT HEARING

A Telephonic Public Input Hearing was held on December 16, 2021. The OCA, the City, the OSBA and I&E participated. Seven members of the public signed up to speak at the hearing. However, only Complainant Kitzmiller offered testimony.

Mr. Kitzmiller's principal concern was the difference in usage and billing for 1-inch meter customers versus 3/4 -inch meter customers. He averred that, according to his research, some customers were required to have a 1-inch service line with 3/4 -inch meters because the City did not use 1-inch meters for residential customers, but residential customers were charged for 1-inch meters. Tr. 51, 56. Mr. Kitzmiller was also concerned with reports of unaccounted for water and accounting methods used by the City. Tr. 57-59, 62-62.

Mr. Kitzmiller presented the following exhibits:

Kitzmiller Exhibit 1 - Notice of Proposed Rate Changes 9/30/21

Kitzmiller Exhibit 2 - Calculation of Lancaster City Water Department
Overbilling

Kitzmiller Exhibit 3 - Unaccounted for Water Information

Kitzmiller Exhibit 4 - Comments on Water Utility being Cash Strapped/Rate
Increase

No party objected to Mr. Kitzmiller's exhibits, and I admitted his exhibits as marked.

Following the Public Input Hearing, Mr. Kitzmiller submitted a copy of a chart of the City Water and Sewer rates found online.⁴ No party objected to this exhibit and it was admitted as Kitzmiller Exhibits 5 in the March 30, 2022 Order admitting exhibits and testimony.

⁴

Water & Sewer Rates as of 1-1-2020.xlsx (cityoflanasterpa.com)

FINDINGS OF FACT

1. The City of Lancaster -Bureau of Water is a Commission-regulated water system serving approximately 30,858 customers outside of the City of Lancaster. Settlement at Appendix B, Page 4, Adj. Ref. R2, Column (3); City of Lancaster Statement 2 at 6.

2. Jurisdictional customers of the City reside in portions of the following Townships in Lancaster County, Pennsylvania: Lancaster Township, Manheim Township, Millersville Borough, West Lampeter Township, Pequea and portions of Manor, West Hempfield and East Hempfield Townships and East Lampeter. City of Lancaster Statement 2 at 6; City of Lancaster Statement in Support of Complete Settlement at 1. (“City St. in Support”).

3. The City of Lancaster has provided water service to customers since 1836, beginning with 22 customers. City of Lancaster Statement 2 at 4.

4. At the time of the filing, the City served approximately 14,924 residential accounts, 1,890 commercial accounts and 40 industrial accounts inside the City. Outside of the City, the City served 28,914 residential accounts, 1,870 commercial accounts, 69 industrial accounts and 5 municipal resale accounts. City of Lancaster Statement 2 at 6.

5. At time of the filing, the finished water distribution system included two high service pump stations, over 625 miles of distribution and transmission main, over 5,000 hydrants, 47,712 customer water meters and service lines, 13,458 valves, five booster pumping stations, a 15-million-gallon reservoir, four storage tank facilities, five pressure reducing valve stations, and a supervisory control and data acquisition (SCADA) system. City of Lancaster Statement 2 at 6.

6. On September 30, 2021, the City filed Supplement No. 46 to Tariff Water – Pa. P.U.C. No. 6 to become effective November 29, 2021.

7. I&E is the prosecutory bureau in the Commission for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge. *Implementation of Act 129 of 2008 Organization of Bureau and Offices*, Docket No. M-2008-2071852 (Final Procedural Order entered August 11, 2011).

8. Complainant OCA is authorized to represent the interests of consumers before the Commission. Act 161 of 1976, 71 P.S. § 309-2.

9. Complainant OSBA is authorized and directed to represent the interests of small business consumers of utility service in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50.

10. The proposed tariff contained changes in rates calculated to recover an estimated overall increase in base rate revenues of \$4,024,593 or approximately 21%.

11. The Settlement provides that the City may establish rates for customers that will produce an overall increase in annual operating revenues of approximately \$2,500,000 or about 13.0%.

12. The Settlement requires the City to engage in additional maintenance activities and reporting.

13. On November 8, 2021, Joel and Karen Wenrich filed a Formal Complaint, Docket No. C-2021-3029469, challenging the proposed rate increase.

14. On November 22, 2021, Joel and Karen Wenrich sent an email stating that they no longer wish to pursue the Formal Complaint.

DISCUSSION

The Joint Petitioners are requesting a recommendation that approves the Joint Petition for Complete Settlement, that the Commission approve and adopt this Petition for Settlement as set forth herein, that the Commission permit the City to file the tariff supplement attached to the Joint Petition as Appendix A effective for service rendered on and after June 29, 2022, and that the Commission terminate its investigation at Docket No. R-2021-3026682.

A. Legal Standards

1. Section 1301

Section 1301(a) of the Public Utility Code (Code) provides that “[e]very rate made, demanded, or received by any public utility...shall be just and reasonable, and in conformity with [the] regulations or orders of the [C]ommission.” 66 Pa.C.S. § 1301(a). Pursuant to the just and reasonable standard, a utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers, as well as a reasonable rate of return on its investment.” *City of Lancaster (Sewer Fund) v. Pa. Pub. Util. Comm’n*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002).

Section 1301(b) of the Code provides that “[i]n determining a just and reasonable rate furnished or rendered by a municipal corporation or by the operating agencies of a municipal corporation providing public utility water or wastewater service beyond its corporate limits, the [C]ommission shall employ an imputed capital structure of comparable public utilities providing water or wastewater service.” 66 Pa.C.S. § 1301(b).

2. Fair Rate of Return Criteria

In determining a fair rate of return, the Commission is guided by the criteria provided by the United States Supreme Court in the landmark cases of *Bluefield Water Works &*

Improvement Co. v. Pub. Serv. Comm'n of W. Va., 262 U.S. 679 (1923) (*Bluefield*) and *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944). In *Bluefield*, the Court stated:

[a] public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.^[5]

Public utilities are not guaranteed a specific rate of return. The regulatory-determined price for service allows the regulated entity a fair opportunity to recover all costs associated with providing the service, including a fair rate of return.

3. Burden of Proof

The burden of proof to establish the justness and reasonableness of the utility's rate increase rests upon the public utility. 66 Pa.C.S. § 315(a). The evidence adduced by a utility to meet this burden must be substantial. *Lower Frederick Twp. v. Pa. Pub. Util. Comm'n*, 409 A.2d 505 (Pa. Cmwlth. 1980). *See also, Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

In rate proceedings, the burden of proof does not shift to the parties challenging a rate increase. *Pa. Pub. Util. Comm'n v. Aqua Pa., Inc.*, 236 P.U.R.4th 218 (2004). Nonetheless, the Commission has stated that, where a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to

⁵ *Bluefield*, 262 U.S. at 692-93.

demonstrate the reasonableness of the adjustment. *See e.g., Pa. Pub. Util. Comm'n v. PECO*, Docket No. R-00891364 (Opinion and Order entered May 16, 1990); *Pa. Pub. Util. Comm'n v. Brezewood Tel. Co.*, Docket No. R-00901666 (Opinion and Order entered January 31, 1991).

Additionally, Section 315(a) of the Code cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose. 66 Pa.C.S. § 315(a). The mere rejection of evidence contrary to that adduced by the public utility is not an impermissible shifting of the evidentiary burden. *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. R-2020-3017206 (Opinion and Order entered November 19, 2020) (*PGW*).

Here, the City bears the burden of proof to establish the justness and reasonableness of every element of its requested rate increase. 66 Pa.C.S.A. § 315(a).

4. Settlements

It is the policy of the Commission to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. *PGW* at 14.

In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Cmty. Utils. of Pa., Inc.*, Docket No. R-2021-3025206 at 11 (Opinion and Order entered January 13, 2022); *Pa. Pub. Util. Comm'n v. C. S. Water & Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991) (*CS Water & Sewer*). The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote and serve the public interest. *Pa. Pub. Util. Comm'n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (citing *Warner v. GTE N., Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996)) and *CS Water & Sewer*.

The settlement here is a “black box” settlement. This means that the settling parties have not negotiated every individual revenue and expense item but, rather, have agreed upon a final revenue increase number based on their respective individual analyses of the various revenue and expense line items.

In discussing the concept of “black box” settlements, the Commission has stated:

[w]e have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company’s revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company’s cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases.

Pa. Pub. Util. Comm’n v. Peoples TWP LLC, Docket No. R-2013-2355886, p. 28 (Opinion and Order entered December 19, 2013) (internal citations omitted).

I&E noted that due to the black box nature of the settlement, the parties did not agree on a line-by-line basis on all individual issues and instead agreed to an overall rate increase that is less than that originally sought by the City. I&E asserted that this “balances the interest of the City and its jurisdictional customers in a fair and equitable manner.” I&E St. in Support at 7.

OCA stated that a black box settlement allows the parties to reach an agreement without having to agree on a variety of financial numbers or specify a dollar amount on each issue or adjustment raised as an issue in this case. OCA averred that attempting to reach such a detailed agreement would likely have prevented settlement. OCA St. in Support at 3.

JOINT PETITION FOR APPROVAL OF SETTLEMENT

On March 14, 2022, the City, I&E, OSBA and OCA filed with the Commission their Joint Petition whereby they agreed on an annual revenue increase for service to the City's jurisdictional customers. The Settlement also provides that the City will conduct additional system maintenance activities, provide additional reporting on its funds and system, and enhance its customer complaint records.

The specific terms of the settlement in the Joint Petition are set forth below *verbatim*. For ease of reference, the headings and paragraph numbering are the same below as they appear in the Joint Petition.

SETTLEMENT TERMS AND CONDITIONS

The terms of the Settlement are as follows:

9. The City will be permitted to establish rates for customers which will produce an overall increase in annual operating revenues of approximately \$2,500,000. These rates, as determined in accordance with the attached Proof of Revenues will be effective June 29, 2022 upon Commission approval. The Proof of Revenues attached hereto at Appendix B, reflect rates that are designed to recover approximately \$2,500,000 of additional revenues from outside customers (*i.e.*, customers in the Commission jurisdictional area). In sum, for outside customers, the increase in revenues by class from present rates as proposed in this Petition for Settlement are as follows:

Commission Jurisdictional Area Customer Revenues

| Customer Classification | Revenue Present Rates | Revenue Settlement Rates | Revenue Increase |
|--------------------------------|------------------------------|---------------------------------|-------------------------|
| Residential | \$9,531,172 | \$10,920,798 | \$1,389,622 |
| Commercial | \$6,374,169 | \$7,128,659 | \$754,490 |
| Industrial | \$1,316,678 | \$1,471,615 | \$154,937 |
| Large Industrial | \$787,199 | \$880,295 | \$93,096 |
| Other Water Utilities | \$543,457 | \$593,036 | \$49,579 |
| Private Fire | \$379,827 | \$437,631 | \$57,804 |
| Total | \$18,932,502 | \$21,432,034 | \$2,499,528 |

10. Joint Petitioners agree that adoption and approval of this Joint Petition for Settlement by ALJ Heep and the Commission is in the public interest. Under this Petition for Settlement, the quarterly bill of a typical residential 5/8-inch metered residential customer residing in the Commission jurisdictional area who utilizes 13,600 gallons of water per quarter will increase from \$77.70 to \$89.08, or by approximately 14.6%, rather than from \$77.70 to \$94.14 (or 21.2%) as originally requested.

11. The Petition for Settlement provides for a sound and reasonable revenue requirement and appropriately balances the interests and concerns of the City, I&E, the OCA and the OSBA. In addition, adoption and approval of the Petition for Settlement will avoid the need for continued litigation of this proceeding.

12. In addition to, and in consideration of, the agreed-upon overall increase in annual operating revenues for Commission jurisdictional area customers of approximately \$2,500,000, Joint Petitioners also agree to the various terms and conditions set forth herein.

13. *Stay-Out.* The City agrees that it will not file for another water base rate case before January 1, 2024.

14. *Tariff Changes.* The City will make the following changes to Supplement No. 46 to Tariff Water – Pa. P.U.C. No. 6:

- (a) *Consumption Charge Language.* The following preface describing the consumption charge which will be added to the schedule of rates: “In addition to the customer charge the following water consumption charges will apply.”
- (b) *Customer Classifications/Meter Charges.* Residential rates shall be established based on the new residential rate classifications as reflected in the Proof of Revenues at Appendix B. Specifically, there shall be new residential meter classifications for customers with 3/4-inch meters. The 3/4-inch meter charge shall be for customers having a 3/4-inch meter and a service line to the property that is 3/4-inch in diameter or less. The 3/4 x 1-inch meter charge shall be for customers having a 3/4-inch meter and a service line to the property that is 1-inch in diameter.
- (c) *Reconnection Fee.* The reconnection fee will remain at the current level of \$83.00.
- (d) *Miscellaneous Revisions.* Joint Petitioners agree that the revisions set forth in Supplement No. 46 to Tariff Water – Pa. P.U.C. No. 6 as proposed in Table 1 of the Direct Testimony of Stephen Campbell

(City Statement No. 2) to the following sections are approved: 4.12, 5A, 7.2, 7.4, 7.5, 9.1, 13.4, 13.5, 13.6, 14.2, 14.3, 14.4, 14.5, 14.6, 14.7, and 21.1.

15. *Rate Effective Date.* Joint Petitioners agree that it is in the public interest for Settlement Rates (as set forth in Tariff Supplement No. 48 to Water Tariff – PA P.U.C. No. 6 at Appendix A) to go into effect, following the entry of a Commission Order approving this Settlement, no earlier than June 29, 2022.

16. *Rate Structure/Rate Design.* Joint Petitioners agree to the distribution of revenue among customer classes in this Petition for Settlement as set forth in the attached Proof of Revenues at Appendix B. The design and structure of rates for residential customers of the City under this Joint Petition for Settlement are developed based upon the fixed and volumetric charges contained within the Rate Schedules set forth in Appendix B. Joint Petitioners agree that rates and charges set forth in Appendix B are just and reasonable and are in the public interest.

17. *Future Rate Case Information.* The City has agreed to do the following in connection with its next water base rate case:

- (a) The City will submit Section 500 LUFW calculations including deductions of non-revenue usage and allowance shown on PUC Section 500 Form.
- (b) The City will describe its leak detection program and if it has been successful.
- (c) The City will submit a pressure survey for each of its pressure zones or clearly indicate why it is in compliance with 52 Pa. Code § 65.6(a).
- (d) The City will submit a copy of its customer complaint log (as updated in accordance with Paragraph 19 below) in live Excel format.
- (e) If its requested increase is over \$1 million, the City will prepare a lead/lag study in support of its cash working capital claim, or request a waiver from the Commission from the requirement to do so in advance of filing its base rate case.
- (f) The City will report all COVID-19 related relief funding, including but not limited to American Rescue Plan Act of 2021 funding, that it received from the City of Lancaster. The report will include the following information: (1) source of funding; (2) amount of funding

awarded; (3) date funding awarded; (4) any allocation of award to inside and outside customers; (5) an explanation of how any allocations were determined; (6) breakdown of how the funds were utilized; and (7) whether any funds were applied to capital projects in the rate case.

- (g) The City will provide information concerning performance against the valve exercising plan (as described in Paragraph 21 below) to date.
- (h) The City will propose rates to allocate some of the Fire Protection costs for the Commission Jurisdictional area to the municipalities served therein.

18. *Hydrant Marking.* The City will mark the 34 outside-City hydrants that cannot provide minimum fire flow of 500 gallons per minute so they can only be used for flushing and blow-offs. The City further agrees to notify the affected municipalities, OCA, I&E, and OSBA upon completion of the marking of the hydrants.

19. *Customer Complaint Log.* The City will revise its customer complaint log, and maintain it in Excel format, to include the following categories: date; location; dirty water; rusty water; water taste, odor, or color; staining (of laundry or plumbing fixtures); request for water testing; customer property damage; incomplete surface restoration; health issues; and pressure issues. The log will include disposition of the complaint.

20. *Financial Reporting.* The City will provide Fully Projected Future Test Year (“FPFTY”) reporting to I&E, OCA, and OSBA updating the Original Cost of Utility Plant in Service as presented in Schedule 4 of Exhibit GRH-1 to the Direct Testimony of Gregory R. Herbert (Lancaster Statement No. 3) (including actual capital expenditures, plant additions, and retirements) on a monthly basis, to the extent it is available, for the period ending December 31, 2021 by July 1, 2022, and for the period ending December 31, 2022 by April 23, 2022. The City further agrees to track the requested information (actual capital expenditures, plant additions, and retirements) on a monthly basis on a going forward basis, as of the effective date of this Petition for Settlement.

21. *Valve Exercising.* The City has approximately 13,000 valves in its distribution system, with approximately 9,700 valves in the Commission jurisdictional area and 4,300 valves inside the City of Lancaster. The City will commit to exercising 10% of the system valves (1,300) annually so that all valves are exercised in a 10-year period. The valve exercise program will be based on the pressure zones of the distribution system, with staff exercising the largest valves in a zone first, then the smaller valves in the zone. This plan

takes into consideration the City's resources and utilizes existing employees. The valve exercising efforts will include the following conditions:

- (a) In selecting which valves should be exercised first, the City will consider: (1) the size of the valve; (2) is it a critical valve, *i.e.*, one needed to prevent a water outage of a hospital, school, major customer, etc. from a nearby water main break; (3) when the valve was last operated; and (4) its importance in any proposed water main replacement.
- (b) Each year approximately 25% of total valves exercised will be located inside the City of Lancaster and 75% will be located in the Commission jurisdictional area, unless the criteria set forth in subparagraph (a) above dictates a different allocation;
- (c) The City will submit a Maintenance Log to OCA, OSBA and I&E on April 15 of each year and include the following information for each valve attempted to be exercised the previous year: (1) date attempted to exercise; (2) location and size; (3) in the City of Lancaster or Commission Jurisdictional area; (4) was the exercise successful or unsuccessful; and (5) date of replacement or repair, if applicable. The due date for the initial Maintenance Log hereunder shall be April 15, 2024.
- (d) After a valve has been exercised, the City will continue to maintain it in operating condition. Critical isolation valves that could not be exercised should be repaired or replaced as soon as practicable after the time they are found to be inoperable. If any non-critical valves are not repaired shortly after the time they were found to be inoperable, an estimate of when they will be repaired or replaced will be included on the Maintenance Log.

Joint Petition at 3-9.

The Joint Petition also provides that the Petition for Settlement arises following extensive discovery and discussions and reflects compromises by all sides. It is being proposed to settle the instant case. Accordingly, this Petition for Settlement is made without any admission against, or prejudice to, any positions which any Joint Petitioner might adopt during any subsequent litigation of this proceeding (should this Petition for Settlement be rejected or modified), or in any other proceeding. If the Commission withholds such approval as to any of the terms and conditions, or alters any of the terms and conditions, any Joint Petitioner may withdraw from this Settlement upon written notice of its intent to the Commission and the

remaining parties within three business days of the date of the Commission's Order and may resume with the litigation of this proceeding within ten days of the entry of the Order making any such modifications.

Joint Petitioners also agree that the Petition for Settlement shall be considered to have the same effect as full litigation of the instant proceeding resulting in the establishment of rates that are Commission-made rates. In the event that the Commission does not approve this Petition for Settlement, the signatory parties reserve their respective rights to resume litigation. Additionally, the Joint Petitioners note that if I recommend that the Commission adopt this Joint Petition as herein proposed, they agree to waive the filing of Exceptions. However, Joint Petitioners do not waive their rights to file Exceptions with respect to any additional matters dealt with, or any modifications to the terms and conditions of this Joint Petition

SETTLEMENT TERMS AND STATEMENTS IN SUPPORT

The parties reached this Settlement following thorough discovery and extensive settlement discussions. The parties agree that the Settlement is in the public interest and will save the time and expense of full litigation by the parties. City St. in Support at 9; I&E St. in Support at 4.

As stated by the City, the Settlement "provides for a sound and reasonable revenue requirement and appropriately balances the interest and concerns" of the parties. City St. in Support at 8.

As I&E noted, the parties engaged in extensive discovery for four months and, after lengthy discussions, the parties have reached a settlement "that satisfies all legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding." I&E St. in Support at 5. OCA offered that the parties reached a consensus on issues that they likely could not have achieved with full litigation, and the Settlement reached is within the range of likely outcomes after full litigation. OCA St. in Support at 3. OSBA stated that the Settlement resolved a comprehensive list of issues. OSBA St. in Support at 1.

Mr. Kitzmiller, a customer, spoke highly of the process. He stated that he:

was impressed by the energy displayed by the parties to this rate case to finish their reviews of the many complicated documents and arrive at a settlement on a timely basis. All of the parties who I had contact with were very helpful in answering my questions relating to the procedures used to file the required documents in a timely manner. I cannot say enough about the efforts of the Office of Consumer Advocate to bring my and about 4,600 other customers' billing issue before the Joint Petitioners and have it resolved to the best of their abilities during the settlement procedure.

Kitzmiller St. in Support at 2.

The parties also discussed individual issues addressed or resolved in the Settlement.

A. Rate Effective Date and Stay Out

The Settlement Rates will go into effect, following the entry of a Commission Order approving the Settlement and not earlier than June 29, 2022. Joint Petition, at ¶ 15.

The City has agreed that it will not file for another base rate increase before January 1, 2024. Joint Petition, at ¶ 13. OSBA supports this provision, stating that it will allow small businesses to better budget and forecast their financial needs. OSBA St. in Support at 2. I&E asserted that the stay out provision provides stability and certainty to ratepayers who will experience rate continuity while the stay-out is in effect and while they transition to increased rates. I&E St. in Support at 7. OCA also noted the benefit of rate stability to ratepayers. OCA St. in Support at 4.

B. Revenue Increase and Rates

The original filing sought \$4,024,593, or an approximately 21% increase in rates for outside customers. The Settlement allows the City to establish an increase in annual

operating revenues of approximately \$2,500,000, or about 13.0%. As I&E noted, this is only about 62% of the original request, approximately \$1.525 million in savings for the City's jurisdictional customers. I&E St, in Support at 6.

The quarterly bill of a typical 5/8-inch metered residential jurisdictional customer who utilizes 13,600 gallons of water per quarter will increase from \$77.70 to \$89.08, or by approximately 14.6%. In support of this agreement, OCA noted that this is less than the initially proposed increase of \$77.70 to \$94.14 (or 21.2%). OCA St. in Support at 3. OSBA stated that the effects of the COVID-19 pandemic continue to affect consumers, and the smaller than proposed increase under the Settlement will benefit all consumers, including small business customers. OSBA St. in Support at 2.

The consumption charges per 1,000 gallons for jurisdictional customers will increase as follows:

Residential, Commercial, and Industrial customers:

from \$4.489 to \$4.796 for the first 25,000 gallons/month of consumption;
from \$3.824 to \$3.949 for the next 575,000 gallons/month of consumption;
from \$3.247 to \$3.710 for all over 600,000 gallons/month of consumption;

Large Industrial:

from \$3.202 to \$3.568 for all consumption; and

Sales for Resale:

from \$3.460 to \$3.758 for all consumption.

See Joint Petition, Appendix A, Supplement No. 48, at 27th Revised Page No. 4 and 26th Revised Page No. 5.

The monthly customer charge will also increase as follows:

| Meter Size Classification | Current Monthly Customer Charge | Settlement Monthly Customer Charge |
|----------------------------------|--|---|
| 5/8" | \$5.55 | \$7.95 |
| 3/4" | 5.55 | 9.30 |
| 3/4 x 1" | --- | 16.70 |
| 1" | 14.70 | 21.10 |
| 1-1/2" | 23.20 | 33.20 |
| 2" | 36.20 | 51.90 |
| 3" | 71.50 | 102.40 |
| 4" | 111.60 | 159.90 |
| 6" | 222.00 | 318.00 |
| 8" | 351.60 | 503.60 |
| 10" | 465.10 | 666.20 |
| 12" | 701.50 | 1,004.55 |

City St. in Support at 3; Supplement No. 48 to Tariff-P.U.C. No. 6 (Joint Petition Attachment A).

A concern of Mr. Kitzmiller's was that outside customers using a 1-inch service line with a 3/4-inch meter were charged the 1-inch meter rate and he asserted that the City should be made to bill such customers at a rate between the 3/4 -inch and 1 inch meter rates. OCA witness Mierzwa also recommended modifications to the originally proposed customer charge for 5/8-inch meter customers and 1-inch meter customers with a 3/4 -inch meter and 1-inch service line. Mr. Mierzwa opposed the original proposed increase from \$5.55 per month, or \$16.65 quarterly, to \$9.10 per month, or \$27.30 quarterly, for the combined 5/8-inch and 3/4-inch meter sizes. OCA St. 4 at 14-16.

This Settlement includes a smaller than proposed increase in monthly customer charge for 5/8-inch meter customers. It also creates compromise classifications for meter size. It includes new meter classifications for customers with 3/4-inch meters. The 3/4-inch meter charge shall be for customers having a 3/4-inch meter and a service line to the property that is

3/4-inch in diameter or less. The 3/4 x 1-inch meter charge will be for customers having a 3/4-inch meter and a service line to the property that is 1-inch in diameter. Joint Petition, at ¶ 14.

OCA supports this compromise as reflecting the costs to serve customers with different sized meters. OCA St. in Support at 6-7. I&E supports the meter charge provision in the Settlement as necessary for resolution of the case. I&E St. in Support at 8. OSBA explained its support of the Settlement rate design and structure as follows:

In this proceeding, OSBA witness Brian Kalcic testified that he determined that the City's proposed class revenue allocation in its initial filing was cost based, and therefore acceptable. (*OSBA Statement No. 1*, pp. 2, 4-6). After the City revised its originally filed class cost-of-service study and rate design, Mr. Kalcic reviewed and analyzed the revisions, concluding that the City's revised revenue allocation proposal was acceptable as it would move all customer classes closer to cost of service. (*OSBA Statement No. 1-S*, pp. 2-3). Mr. Kalcic therefore recommended that if the City was awarded an increase less than its requested increase, then the City's proposed class increases should be reduced proportionately. (*OSBA Statement No. 1*, pp. 2, 6; *OSBA Statement No. 1-S*, p.3). Consistent with Mr. Kalcic's recommendation, the *Settlement* revenue allocation is reflective of a proportional reduction in the City's proposed class increases, based on the lower agreed upon revenue requirement, and moves all classes toward cost of service.

OSBA St. in Support at 3.

The Settlement identifies that there are anticipated to be approximately 18,430 quarterly residential customer bills at the new 3/4 x 1-inch customer charge rate. Settlement at Appendix B, Page 15. While the Settlement does not identify that there are any anticipated bills for non-residential customers at the new 3/4 x 1-inch customer charge rate, the City's proposed tariff supplement does not limit rate applicability and eligibility to residential customers. Settlement at Appendix A, 27th Revised Page No. 4. Thus, the customer charge rate for customers with a 3/4-inch meter and a 1-inch service line will apply equally to all customer

classes and will not unreasonably discriminate against similarly situated non-residential customers.⁶

C. Reconnection Fee

The City initially proposed increasing the reconnection fee from \$83 to \$135. However, the City did not reflect additional miscellaneous revenues resulting from this fee increase. City Exhibit GRH-1 at Schedule 2, p. 2, Row “Total Other Revenues,” Column (10). OCA opposed this increase, asserting that it lacked supporting documentation of related costs. OCA St. 2 at 10-11. OCA St. 2SR at 2-4. The Settlement resolves this issue wherein the reconnection fee remains \$83. Joint Petition, at ¶ 14 (c). I&E and OCA support this agreement as protecting customers from charges not supported by the record. I&E St. in Support at 8-9. OCA St. in Support at 8-9. The Settlement reflects no change in miscellaneous revenues. Settlement at Appendix B, p. 3, Row “Total Other Revenues,” Column (10).

D. Tariff Changes

The changes agreed upon will be reflected in the language of the tariff. This will include language clarifying that consumption charges are in addition to customer charges and specifying distinct customer charges for customers with 3/4-inch meters and for customers with a 3/4 x 1-inch meter. Joint Petition ¶ 14.

The tariff changes will also include changes proposed in the Direct Testimony of Stephen Campbell (City Statement No. 2). Those changes are:

⁶ The City indicated that 1-inch service lines are required under Manheim Township’s Residential Building and Plumbing Code. City St. No. 1R at 14-15. However, properties that formerly received residential service from the City may subsequently receive non-residential service.

| Tariff Section(s) | Proposed Modifications |
|---------------------|--|
| 4.12 | Revisions to provide specifications for utility service lines |
| 5A | Administrative changes in application contents for new applicants for service, by class |
| 7.2, 7.4, and 7.5 | Text additions to the sections on meters, location, installation and replacement when damaged by customer |
| 8.4 | Proposed increase in the charge to reconnect service commensurate with cost to restore service |
| 9.1 | Requires utility compliance with statutes and regulations for any deposits taken, removing specific language, as City does not typically require deposits for service. |
| 12.4 | To reflect change in reconnection fee. |
| 13.4, 13.5 and 13.6 | Clarifications and additions on the use of water from hydrants and specific identification of hydrants that were permitted by PADEP under the City’s Bulk Water Permit. Also added the prohibition for water withdrawals from curb boxes to ensure the safety of the water supply. |
| 14.2 through 14.7 | New sections added to address Backflow Prevention and Cross Connection Control to ensure the safety of the water supply. |
| 21.1 | Changed to delete the reference to the City Council approval, as only PUC approval is required for revisions to the outside-City customer tariff |

Table 1, City Statement 2 at 13; Joint Petition, at ¶ 14 (d).

I&E supports this language addition as providing a “clearer, easier to understand explanation for customers to know how charges are being assessed.” I&E St. in Support at 8. OCA supports this change as providing greater clarity regarding applicable charges. OCA St. in Support at 9.

E. Rate Structure and Design

The Proof of Revenues in Appendix B sets forth the distribution of revenue among customers. The City stated that the design and structure of rates for residential customers of the City under the Settlement are developed based upon the fixed and volumetric charges contained within the Rate Schedules set forth in Appendix B to the Joint Petitioners. City St. in Support at 5. I&E stated that the Joint Petitioners agree that the water cost allocation proposed is appropriate and equitable. I&E St. in Support at 8. OCA supports the rate structure as a “reasonable solution.” OCA St. in Support at 4.

F. Customer Complaint Log

The City will revise its customer Complaint log to include more specific and additional information about the complaints and the dispositions. The log will be maintained in an EXCEL format. *See* Joint Petition, at ¶ 19. This item adopts the recommendation of OCA witness Fought regarding the information to be collected. OCA St. 5 at 16. OCA asserted that this information will allow the parties to better evaluate the City’s quality of service in the next rate proceeding. OCA St. in Support at 11. I&E contended that this enhanced log will ensure that complaints are tracked, addressed and resolved and that this is consistent with the City’s obligation to provide safe, adequate and reliable service. I&E St. in Support at 11-12.

G. Future Rate Case Information

The City has agreed to provide various information discussed below in its next water base rate case. Joint Petition ¶ 17. Many of these provisions were recommended by OCA witnesses Fought and Mierzwa. OCA supports these provisions because the additional information will assist in evaluating issues in the next City water base rate filing. OCA St. in Support at 8-9. The information to be provided in a future rate case is as follows:

- 1. Lost and Unaccounted for Water (LUFW).** The City will provide LUFW calculations, including deductions of non-revenue usage and

allowance shown on PUC Section 500 Form. I&E supports this provision, noting that witness Cline testified that the City needed to provide a schedule that more accurately demonstrates unaccounted for water levels. I&E St. in Support at 9; Joint Petition, at ¶ 17(a). As I&E further explained:

I&E supports this term because I&E witness Cline identified a need for the City to provide a schedule that accurately demonstrates UFW levels in its next rate case, and the City's commitment to provide the Section 500 LUFW calculations is consistent with I&E's recommendation. By way of further content, I&E witness Cline explained that a high level of UFW means that the Water Fund is producing much more water than its customer are using, resulting in higher and unwarranted level of expenses for treatment costs being recovered from customers.⁷ Witness Cline recognized that the Commission has determined that UFW levels that are calculated to be above 20% are excessive⁸ and he also noted that data provided from the Water Fund indicated that the Water Fund calculated UFW levels above that threshold for the year of 2017 through 2020.⁹

Although the Water Fund indicates that its calculated levels were evaluated using American Water Works Association ("AWWA") software,¹⁰ the Water Fund did not submit a Section 500 Form so as to enable a review of the calculations and deductions that would otherwise be available. Accordingly, through the Settlement, the City has now committed to provide the Section 500 Form as part of its next rate case, which I&E submits will afford parties and the Commission to have a clearer, more accurate picture of the calculations and deductions that the City relied upon the [sic] calculate the UFW. Readily available access to accurate UFW calculations will become even more important in the City's next rate case because I&E witness Cline has notified the City that if improvement

⁷ I&E St. No. 3, p. 17.

⁸ I&E St. No. 3, p. 16 (citing 52 Pa. Code §65.20(4)).

⁹ *Id.*; I&E Exhibit No. 3, Sch. 9.

¹⁰ Water Fund St. No. 2-S, pp. 5-6.

in UFW levels is not achieved, a monetary adjustment will likely be necessary to protect ratepayers from unwarranted costs.¹¹

I&E St. in Support at 9-10 (footnotes in original).

2. Leak Detection Program. The City will also provide in its next water base rate a description and report on the City leak detection program, which was a recommendation of I&E witness Cline. I&E St. No. 3, p. 18; Water Fund St. No. 2-S, pp. 5-6; Joint Petition, at ¶ 17(b).

3. Pressure Survey. The City will also provide pressure survey information and whether the City is in compliance with 52 Pa. Code § 65.6(a) pressure requirements. I&E supports this provision and asserted that it ensures that the City will comply with system pressure reporting regulatory requirements. I&E St. in Support at 11; Joint Petition, at ¶ 17(c).

4. Customer Complaint Log. The City will also provide in its next rate filing a copy of the more detailed customer complaint log previously discussed. Joint Petition, at ¶ 17(d).

5. Covid-19 Funds Report. The City will also provide a report on all COVID-19 related relief funding, as set forth in Joint Petition, at ¶ 17(f). I&E asserted that such reporting will inform the ratepayers and Commission of the type of funding and whether ratepayers received the benefits of such funding.

6. Leak/Lag Study. If the City requests an increase of over \$1 million in its next rate case, the City will prepare a lead/lag study¹² in support

¹¹ I&E St. No. 3, p. 18.

¹² I&E witness Walker stated that a lead/lag study measures the differences in time between: (1) the time services are rendered until payment of those services is received; (2) the time between the point when a utility has incurred an expense and the actual payment of the expense. I&E St. No. 1, p. 29.

of its cash working capital claim or request a waiver from the Commission from the requirement to do so in advance of filing its base rate case. Joint Petition, at ¶ 17(e). I&E supports this provision, noting that the City did not provide such a study, due to the cost, or request a waiver in this rate case although Commission regulations at 52 Pa. Code § 53.53 require such a study or a waiver. I&E St. in Support at 12-13.

7. Fire Protection Service. OCA witness Mierzwa noted that the significant \$2 million cost of inside and outside the city fire protection services are currently allocated only to the retail metered customer class in the City's COSS. OCA St. 4 at 6-7,11. OCA also noted that the Code at 66 Pa.C.S. § 1328 provides that utilities may charge up to 25% of the cost of Public Fire service directly to municipalities. OCA St. 4 at 10-13. In the Settlement, the City will propose rates to allocate some of the Fire Protection costs for the Commission jurisdiction customers to the municipalities receiving fire protection service. Joint Petition, at ¶ 17(h).

8. Valve Exercising Plan Performance Report. The Settlement provides that the City will prepare a report regarding the effectiveness of its valve exercising plan in its next rate case. Joint Petition, at ¶ 17(g). This program is more fully discussed below.

H. Hydrant Marking (Joint Petition, at ¶ 18)

Based on the City's WaterCAD water model, there are 34 hydrants outside of the City that cannot provide minimum fire flow of 500 gallons per minute. City St. 2-S at 5. Under the Settlement, the City will mark these hydrants and notify the OCA, I&E, OSBA, and the affected municipalities once the marking is completed. This addressed an issue raised by OCA as a means of putting fire companies on notice that using the marked hydrants could cause negative pressure that could contaminate parts of the distribution system. OCA St. No. 5, p. 9; OCA St. in Support at 10. I&E also supports this provision as a means of the City providing

safe, adequate and reliable service as required under the Public Utility Code. I&E St. in Support at 15-16.

I. Financial Reporting

The City will provide updated Fully Projected Future Test Year (“FPFTY”) reporting to I&E, OCA, and OSBA on a monthly basis as set forth in Joint Petition, at ¶ 20 “for the period ending December 31, 2021 by July 1, 2022, and for the period ending December 31, 2022 by April 23, 2022”¹³ I&E supports this provision as it resolves an issue raised by I&E witness Cline concerning the accuracy of the City’s plant addition projections. I&E St. No. 3, pp. 6-9; I&E St. No. 3-SR, pp. 9-10. Monthly tracking, I&E asserts, will provide timely data for the evaluation and confirmation of the projection. I&E St. in Support at 18-19. I&E witness Cline recommended that information for the period ending December 31, 2022 be provided no later than April 1, 2023. I&E St. No. 3 at 12-13.

J. Valve Exercising

OCA witness Fought expressed concern regarding isolation valve maintenance in the City’s system and recommended that the City develop a five-year schedule to exercise its isolation valves. OCA St. 5 at 8. The issue of exercising valves was also raised by Commissioner Yanora in his list of issues to be discussed.¹⁴

The City countered that given that the City had approximately 13,000 valves in its distribution system, 9,700 of which were in the Commission’s jurisdiction, a five-year plan was impossible. City St. 2R at 16. The City witness Stephen Campbell proposed, and the Settlement adopts, a ten-year plan, with the City exercising 10% of its valves per year. City St. 2R at 17.

¹³ Joint Petition ¶ 20. As discussed below, I am recommending a minor modification to this Settlement typographical error regarding when the City must provide information for the period ending December 31, 2022. The proper date should be December 31, 2023.

¹⁴ “The number of City of Lancaster valves exercised in calendar year 2020 and the frequency of valve maintenance;” was issue six of Commissioner Yanora’s December 1, 2021 letter.

OCA supports this settlement term as it includes specific maintenance planning considerations as suggested by OCA and ensures that critical isolation valves are prioritized. OCA St. in Support at 11-12; Joint Petition, at ¶17 (a),(c),(d). I&E submits that this settlement term will strengthen the integrity and safety of the City's distribution system. I&E St. in Support at 19.

CONCLUSION

The Settlement and terms proposed herein are in the public interest. It provides for a restructuring of rates to more accurately reflect the cost of service to the various customer classes. Municipalities, after notice and hearing, may be required to pay a portion of the cost of Fire Protection Service provided by the City, which may reduce the burden of the cost of those services on other customers.

Supporting the City's obligation to provide safe, adequate and reliable service, the City will enhance its valve exercising and hydrant markings programs and augment leak detection programs, pressure surveys and LUFW information. Additionally, the City will collect and maintain more information about consumer complaints and report consumer benefits from COVID-19 relief funding received.

Also, the City has agreed to provide FPFTY reporting to I&E, OCA, and OSBA updating the Original Cost of Utility Plant, including actual capital expenditures, plant additions, and retirements, on a monthly basis, to the extent it is available, for the period ending December 31, 2021 by July 1, 2022, and for the period ending December 31, 2022 by April 23, 2023 and on a going forward basis, as of the effective date of this Petition for Settlement. This will provide the City with more accurate information for evaluation of this data for operations purposes, and the other parties for future rate cases, and ensures the City's compliance with reporting requirements in Section 315(e) of the Public Utility Code. 66 Pa.C.S. § 315(e). However, I recommend minor Settlement modifications to correct an apparent typographical error in the Settlement's Paragraph 20 and to ensure that documents are properly filed with the Commission as follows (corrections in bold):

[t]he City will provide Fully Projected Future Test Year (“FPFTY”) reporting to **the Commission at Docket No. R-2021-3026682**, I&E, OCA, and OSBA updating the Original Cost of Utility Plant in Service as presented in Schedule 4 of Exhibit GRH-1 to the Direct Testimony of Gregory R. Herbert (Lancaster Statement No. 3) (including actual capital expenditures, plant additions, and retirements) on a monthly basis, to the extent it is available, for the period ending December 31, 2021 by July 1, 2022, and for the period ending December 31, 2022 by April 23, ~~2022~~ **2023**. The City further agrees to track the requested information (actual capital expenditures, plant additions, and retirements) on a monthly basis on a going forward basis, as of the effective date of this Petition for Settlement.

Also supporting approval of the Settlement is that the customer complainants have not opposed this Settlement. Of note, Mr. Kitzmiller, filed a statement in support of the agreement and resolution of the meter size issue. Additionally, given the number of issues presented by the parties, full litigation and a hearing would have proven both time and cost consuming. This Settlement saves those expenditures.

For the reasons set forth above, I recommend that the Commission approve the Joint Petition for Complete Settlement of Rate Investigation with the minor modifications as discussed.

PETITION TO WITHDRAW OF JOEL and KAREN WENRICH

On November 11, 2021, Joel and Karen Wenrich sent an email to the undersigned and the parties stating that they no longer wished to pursue their Formal Complaint, Docket No. C-2021-3029469. The email will be treated as a Petition to Withdraw pursuant to 52 Pa. Code § 5.94. A presiding officer or the Commission may disregard an error or defect of procedure or waive a requirement that does not adversely affect a substantive right of a party, 52 Pa. Code §§ 1.2(a), (c), (d).

The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.94 permit parties to petition to withdraw pleadings in a contested proceeding:

Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

52 Pa. Code § 5.94(a). Joel and Karen Wenrich no longer wish to pursue their Formal Complaint. There are no objections to their request to withdraw from this matter. It is in the public interest to dismiss the Complaint because the Complainants no longer wish to pursue it. Accordingly, the request of Joel and Karen Wenrich to withdraw the Complaint shall be granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. §§ 701, 1308(d).
2. Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the Commission. 66 Pa.C.S. § 1301.
3. It is the policy of the Commission to encourage settlements. Settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401.
4. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm'n v. C. S. Water & Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa PUC 1 (1985).

5. The City of Lancaster – Bureau of Water has met its burden of proof and demonstrated through a preponderance of evidence and substantial evidence that the increase in rates agreed to in the Settlement are reasonable and appropriate. 66 Pa.C.S. § 1301(a).

6. The Settlement reached by the parties is reasonable and in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C. S. Water & Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the following complaints against the City of Lancaster – Bureau of Water at the following docket numbers be consolidated with this docket, Docket No. R-2021-3026682:

| | |
|--------------------------|----------------|
| Frank D. Kitzmiller | C-2021-3029426 |
| Andre and Patricia Renna | C-2021-3029450 |
| Joel and Karen Wenrich | C-2021-3029469 |
| William Waters | C-2021-3029470 |
| Tony T. Koenig | C-2021-3029549 |
| Robert T. Arters | C-2021-3030184 |

2. The Petition to Withdraw of Joel and Karen Wenrich at *Wenrich v. City of Lancaster – Bureau of Water*, Docket No. C-2021-3029469 be granted.

3. That the Joint Petition for Complete Settlement of Rate Investigation of the City of Lancaster – Bureau of Water and the Commission’s Bureau of Investigation and

Enforcement, Office of Consumer Advocate and Office of Small Business Advocate, including all terms and conditions, be approved, with the minor modification in ordering paragraph 4.

4. That paragraph 20 of the Joint Petition and Settlement be amended in part to read as follows:

The City will provide Fully Projected Future Test Year (“FPFTY”) reporting to **the Commission at Docket No. R-2021-3026682**, I&E, OCA, and OSBA updating the Original Cost of Utility Plant in Service as presented in Schedule 4 of Exhibit GRH-1 to the Direct Testimony of Gregory R. Herbert (Lancaster Statement No. 3) (including actual capital expenditures, plant additions, and retirements) on a monthly basis, to the extent it is available, for the period ending December 31, 2021 by July 1, 2022, and for the period ending December 31, 2022 by April 23, **2023**. The City further agrees to track the requested information (actual capital expenditures, plant additions, and retirements) on a monthly basis on a going forward basis, as of the effective date of this Petition for Settlement. (amendments in bold)

5. That the City of Lancaster Bureau of Water is authorized to file the tariff supplement containing the rates, rules and regulations as presented in Appendix A to the Joint Petition, Supplement No. 48 to Tariff Water – Pa. P.U. C. No 6, to produce an increase in annual operating revenues of approximately \$2,500,000 for Outside City Service to become effective on at least one day’s notice after entry of the Commission’s Order approving the Settlement, for service rendered on and after June 29, 2022.

6. That the formal complaint of the Office of Consumer Advocate at Docket No. C-2021-3029095 be marked closed as satisfied by the Commission’s Secretary’s Bureau.

7. That the formal complaint of the Office of Small Business Advocate at Docket No. C-2021-3029188 be marked closed as satisfied by the Commission’s Secretary’s Bureau.

8. That the formal complaint of the Frank D. Kitzmiller at Docket No. C-2021-3029426 be marked closed as satisfied by the Commission's Secretary's Bureau.

9. That the formal complaint of Andre and Patricia Renna at Docket No. C-2021-3029450 be dismissed and marked closed by the Commission's Secretary's Bureau.

10. That the formal complaint of Tony T. Koenig at Docket No. C-2021-3029549 be dismissed and marked closed by the Commission's Secretary's Bureau.

11. That the formal complaint of William Waters at Docket No. C-2021-3029470 be dismissed and marked closed by the Commission's Secretary's Bureau.

12. That the formal complaint of Robert T. Arters at Docket No. C-2021-3030184 be dismissed and marked closed by the Commission's Secretary's Bureau.

13. That upon acceptance of the tariff, tariff supplement or tariff revision filed by the City of Lancaster-Bureau of Water consistent with the Commission's Order, the proceeding at Docket No. R-2021-3026682 be marked closed.

Date: April 12, 2022

_____/s/
Darlene Heep
Administrative Law Judge