

COMMONWEALTH OF PENNSYLVANIA



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January 9, 2024

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission
v.
Community Utilities of Pennsylvania, Inc.
Docket Nos. R-2023-3042804
R-2023-3042805

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Jacob D. Guthrie
Jacob D. Guthrie
Assistant Consumer Advocate
PA Attorney I.D. # 334367
JGuthrie@paoca.org

Enclosures:

cc: The Honorable. Steven K. Haas (**email only:** sthaas@pa.gov)
The Honorable Alphonso Arnold (**email only:** alphonarno@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :
v. : Docket Nos. R-2023-3042804 (Water)
Community Utilities of Pennsylvania, Inc. : R-2023-3042805 (Wastewater)
:

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below. This document was filed electronically on the Commission’s electronic filing system.

Dated this 9th day of January 2024.

SERVICE BY E-MAIL ONLY

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Dated: January 9, 2024
*4874-0516-5211

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,	:	Docket Nos. R-2023-3042804 (water)
	:	R-2023-3042805 (wastewater)
Office of Consumer Advocate,	:	C-2023-3044737 (water)
	:	C-2023-3044738 (wastewater)
v.	:	
	:	
Community Utilities of Pennsylvania, Inc.	:	

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and in response to the December 29, 2023 Prehearing Conference Order issued in the above-captioned proceeding, the Office of Consumer Advocate (OCA) provides the following information:

I. INTRODUCTION

On November 9, 2023, Community Utilities of Pennsylvania, Inc. (CUPA or the Company) filed proposed Supplement No. 13 to its Water Service Tariff – Pa. P.U.C. No. 1 (Supplement No. 13) and Supplement No. 11 to its Wastewater Service Tariff – Pa. P.U.C. No. 1 (Supplement No. 11), with effective dates of January 9, 2024. The Company, by filing these tariff supplements, seeks Commission approval to make rate changes that would increase the level of rates that it charges for providing service to its customers.

The Company proposes a combined water and wastewater revenue increase of \$3,169,708, which represents an approximately 56% increase in the Company’s annual revenues at present rates. According to the testimony and supporting schedules submitted with its rate filing, the

breakdown of the increase is a \$1,470,360 increase in water revenues and \$1,738,944 increase in wastewater revenues. However, the tariff supplements provide for a slightly higher increase for water and slightly lower increase for wastewater to reach the same combined total annual increase of \$3,169,708. Supplement 13 states that the proposed water revenue increase is \$1,449,638, and Supplement 11 states that the proposed wastewater revenue increase is \$1,720,070.

CUPA provides water service to approximately 3,257 customers, with approximately 37 commercial customers and the remainder being residential. The Company provides water service in Stroud and Pocono Townships in Monroe County (Penn Estates), a portion of Hanover Township in Northampton County (Westgate), and portions of Lehman Township in Pike County (Tamiment). The Company purchases bulk water from the City of Bethlehem to provide water service to the Westgate service territory.

The Company provides wastewater service to approximately 3,832 customers, including approximately 13 commercial customers. The Company provides wastewater service to the Penn Estates and Tamiment service territories, where it also provides water service, in addition to a portion of West Bradford Township in Chester County (Utilities Inc. of Pennsylvania or UIP).

On November 9, 2023, the Office of Small Business Advocate filed a Formal Complaint and Public Statement in each proceeding. On December 8, 2023, the OCA filed a Formal Complaint and Public Statement in each proceeding. On December 21, 2023, the Commission issued two Suspension Orders initiating an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase requests, and suspended the effective date of the proposed Supplement No. 13 and Supplement No. 11 until August 9, 2024, by operation of law. The Commission assigned this proceeding to the Office of Administrative Law Judge and further assigned this proceeding to Administrative Law Judges (ALJs) Haas and Arnold. ALJs Haas and

Arnold issued a Prehearing Conference Order on December 29, 2023, directing parties to file and serving a Prehearing Memorandum on or before noon on January 9, 2024, and scheduling a telephonic Prehearing Conference for January 11, 2024.

The OCA filed a formal complaint against the proposed rate increase to protect the interests of CUPA's customers and seeks to ensure that CUPA is permitted to implement only those rates that are fully justified and in accordance with sound ratemaking principles. The OCA will strive to prevent CUPA from collecting all alleged costs that cannot be justified, or are unreasonable or unduly discriminatory, or otherwise violate the Public Utility Code. The OCA submits that CUPA's current rates and the rates sought by CUPA may be unjustifiable and unlawful based upon information filed by CUPA in support of its claim.

II. ISSUES AND SUB-ISSUES

Based upon a preliminary analysis of CUPA's filing, the OCA has compiled a list of issues that it anticipates will be included in its investigation of the rate increase request. It is anticipated that other issues will arise and may be pursued as discovery proceeds.

The OCA has identified several issues that may require further review as follows:

A. Low-income Program Design

The OCA has several concerns regarding the proposed low-income and arrearage management programs which will need to be addressed in the course of this proceeding. Specifically, the OCA will require additional information regarding the:

1. **Low-income Program Participation:** The Company's low-income pilot program for its water customers went into effect in January 22, 2022. Since beginning the low-income program, the Company has enrolled only one customer, while having received approximately 24 applications. The OCA requires additional information regarding the low levels

of enrollment and successful applications, as well as the basis for the Company's projection of 120 participating customers by the end of its future test year.

2. Low-income Rate Structure: The Company has proposed a low-income rate which applies to the volumetric charges for its water and wastewater customers. However, the Company's current rate design proposal dramatically increases the fixed customer charge, which would not be reduced if a customer qualified for the low-income rate. As such, the OCA will investigate whether the pilot program is an effective means of providing low-cost service to qualifying customers.

3. Arrearage Management Program: Pursuant to the aforementioned Settlement Agreement in the CUPA merger case, the Company proposed in this case an arrearage management program. The OCA is investigating the reasonableness of the proposed arrearage management program. The OCA needs additional information regarding the details of the implementation of the program to ensure that it conforms with the Merger Settlement, and to ensure that the interests of consumers are represented in its final implementation.

4. Any additional issues and concerns which might arise in the course of this proceeding.

B. Revenue Requirement

The OCA will examine the reasonableness and accuracy of the Company's claims for its current plant in service, as well as its projections for expenses and plant additions for the future test year ended July 31, 2024, and the fully projected future test year ended July 31, 2025. The OCA will assess the need for adjustments to the Company's claimed revenue requirement, and will specifically examine:

1. Expenses: The Company's claims for employee benefits, including pensions, chemicals, testing, office supplies, rate case expense, purchased water, and/or transportation. Additional evidence may be required to support the Company's claims and the OCA may have adjustments expenses based on the information provided.

2. Merger Tracking Mechanism: The Company proposed a mechanism to track costs incurred by CUPA related to the merger between Corix Infrastructure (U.S.), Inc. – a parent company of CUPA – and SW Merger Acquisition Corp. The OCA is investigating whether the proposed merger tracking mechanism conforms with the Commission-approved Settlement Agreement between the OCA and CUPA, in the case wherein the Commission reviewed the merger (Docket Nos. A-2022-3036744 and A-2022-3036745), and what changes may be required to ensure that the mechanism conforms to the settlement and sound ratemaking policies.

3. Commercial Revenues: The Company's claimed revenues in the future and fully projected future test years from its commercial customers. The OCA requires additional evidence to ensure that the Company's anticipated revenues are accurate and reasonable. It is unclear at this time how the Company's commercial customer base and its water and wastewater usage may change within the future and fully projected future test years, and how it has changed since its previous rate filing, considering actual and anticipated commercial usage impact on cost of service in some of the Company's service territories.

4. Lead Service Line Costs: The Company's claimed plant additions for the inventory, removal, and replacement of any Company- or customer-owned lead service lines. Currently, CUPA has a pending Lead Service Line Replacement Program (LSLRP) at Docket No. P-2023-3041855. The OCA may consider the reasonableness of any claimed additions to plant

related to the LSLRP in the base rate proceeding to the extent that conforming to the LSLRP will affect base rates.

5. Cost of Capital: The OCA will examine whether the cost of capital claimed by the Company is appropriate for ratemaking purposes. Currently, the Company's proposed return on equity of 10.6% and embedded cost of debt of 5.24% are excessive and will afford the Company the opportunity to earn an unreasonably high return on the rates of its customers, in excess of returns supported by sound ratemaking policy.

6. Utility Specific Adjustments: The OCA will examine whether any adjustments proposed by Community Utilities are justified.

7. Any additional issues and concerns which might arise in the course of this proceeding.

C. Cost Allocation and Rate Design

The OCA will examine the reasonableness and accuracy of the Company's claims for cost allocation and rate design. The OCA will assess the need for adjustments to the Company's claimed rate structure, and will specifically examine:

1. Fixed Charges: The Company's proposal increases the fixed monthly customer charge to residential customers while decreasing fixed monthly customer charges for all other classes. The OCA will investigate and make recommendations regarding CUPA's proposed restructuring of fixed charges.

2. Metered Wastewater Charges: The Company proposes changing the rates for wastewater service in its Utilities, Inc. of Pennsylvania and Penn Estates service territories from flat to metered rates. The OCA will investigate the Company's proposals and bill impacts.

3. Affordability: Current and proposed CUPA rates may be unaffordable. In addition to reviewing the overall revenue requirement, the OCA will investigate how rates can be structured to improve affordability and customers' ability to control their bills.

4. Any additional issues and concerns which might arise in the course of this proceeding.

D. Quality of Service

The OCA will examine the quality of service provided by CUPA to assure that CUPA's customers receive water which is suitable for household purposes, is continuously available and otherwise conforms with applicable standards for safe and adequate water utility service. The OCA will also examine the quality of CUPA's wastewater service, to ensure that it is safe and reliable and without detrimental environmental impact.

III. WITNESSES

The OCA intends to present the direct, rebuttal and surrebuttal testimony, as may be necessary, of the following witnesses in this proceeding. The witnesses will present testimony in written form and will also attach various exhibits, documents and explanatory information that will assist in the presentation of the OCA's case. The OCA reserves the right to call additional witnesses and will inform the ALJs and the parties if it determines that an additional witness(es) will be necessary. The OCA's witnesses are:

Regulatory Policy/Affordability/
Low-income Programs
Nicholas DeMarco
Regulatory Analyst
Office of Consumer Advocate
555 Walnut St., 5th Floor
Harrisburg, PA 17101-1923

Revenue Requirement
Jennifer Rogers
10480 Little Patuxent Parkway
Suite 300
Columbia, Maryland 21044

Rate of Return

Morgan DeAngelo
Regulatory Analyst
Office of Consumer Advocate
555 Walnut St., 5th Floor
Harrisburg, PA 17101-1923

Cost Allocation and Rate Design

Jerome Mierzwa
10480 Little Patuxent Parkway
Suite 300
Columbia, Maryland 21044

Quality of Service:

Terry L. Fought
780 Cardinal Drive
Harrisburg, Pennsylvania, 17111

All OCA witnesses can be reached at OCACUPA2023@paoca.org. The witnesses will present testimony in written format and may also attach various exhibits, documents and explanatory information, as necessary to assist in the presentation of the OCA's case. The OCA reserves the right to call additional witnesses. The OCA will inform the ALJs and the parties if it determines that additional witnesses are necessary.

IV. EVIDENCE

The OCA will rely on the direct, rebuttal and surrebuttal testimony of its witnesses as well as the testimony of the other parties to the proceeding. The OCA will present relevant exhibits to support its own testimony, including but not limited to, materials obtained from the Company through discovery and cross-examination. As described above, the OCA's witnesses will present testimony in the following areas: low-income program design/policy, revenue requirement adjustments, rate of return, cost allocation, rate design, and quality of service.

V. PROPOSED SCHEDULE

The OCA proposes the below litigation schedule, including the dates the OCA requests for public input hearings.

Public Input Hearings	Telephonic	1/30 – 1 pm
	Telephonic	1/30 – 6 pm
	Westgate	1/31 – 6 pm
	Tamiment	2/01 – 6 pm
Other Parties' Direct	Monday, February 6, 2024	
Rebuttal	Tuesday, March 5, 2024	
Surrebuttal	Tuesday, March 19, 2024	
Written Rejoinder	Monday, March 25, 2024	
Hearings	Thursday, Friday, and Monday, March 28 and 29, and April 1, 2024	
Main Brief	Monday, April 15, 2024	
Reply Brief	Friday, April 26, 2024	
Public Meeting	August 1, 2024	

VI. SERVICE ON THE OCA

The OCA respectfully requests that the Presiding Officer permit electronic service without the requirement of a follow-up hard copy. The OCA will be represented in this case by Erin L. Gannon, Harrison W. Breitman, and Jacob D. Guthrie. Documents should be served on the OCA as follows:

Harrison W. Breitman
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
OCACUPA2023@paoca.org

Only to the extent that materials are not available electronically, the OCA requests that one hard copy be served upon Erin Gannon, Harrison Breitman, and Jacob Guthrie at the above mailing address.

VII. SETTLEMENT

The OCA is willing to participate in settlement discussions.

VIII. DISCOVERY

The OCA has served discovery on CUPA. Going forward, the OCA proposes the following modifications to the Commission's discovery regulations:

- A. Answers to interrogatories and responses to requests for document production, entry for inspection, or other purposes be served in-hand within ten (10) calendar days of service of the interrogatories or requests for production.
- B. Objections to interrogatories and/or requests for production be communicated orally to the propounding party within three (3) days of service; unresolved objections be served in writing to the propounding party within five (5) days of service of the interrogatories and/or requests for production.
- C. Motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production be filed within three (3) days of service of written objections.
- D. Answers to motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production be filed within three (3) days of service of such motions.
- E. Requests for admission be deemed admitted unless answered within ten (10) days or objected to within five (5) days of service.
- F. Discovery requests and discovery related pleadings (such as objections, motions, and answers to same) served after 4:30 p.m. Monday through Thursday or after 12:00 p.m. on a Friday or the day preceding a holiday shall be deemed to have been served on the next business day.

The OCA requests that all discovery due dates be "in-hand" and e-mail service on the due date will satisfy the "in-hand" requirement. Additionally, the OCA requests that, if adopted, the proposed modifications take effect on the date of the Prehearing Conference.

VIII. PUBLIC INPUT HEARINGS

The OCA requests that four Public Input Hearings be held, including two in-person hearings. The OCA has received specific requests from consumer complainants and legislators to hold public input hearings, in-person, in the Tamiment and Westgate service territories. A group of customers in the Tamiment has offered two venues for a public input hearing in the area, including a smaller and larger venue, depending on the number of consumers who wish to testify.

The OCA does not currently have a proposed venue for the Westgate service territory but will work with the ALJs, parties and Commission staff to identify an appropriate venue. Further, due to the high number of consumer complaints relative to the size of the Company’s customer base – including 29 formal complaints from 16 different customers – and the disparate locations of CUPA’s service territories, the OCA further requests that additional public input hearings be held, telephonically, for customers in the Penn Estates and Utilities, Inc. of Pennsylvania service territories to have an opportunity to testify, as well.

The OCA also requests that the Company, at a minimum, place advertisements within its service territory and publications in the newspaper and on the Company’s website to make its consumers aware of these hearings. The OCA will work with the Parties to coordinate public input hearing dates acceptable to all participants and the Presiding Officers.

Respectfully Submitted,

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