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June 7, 2024

By Electronic Filing

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

RE: Community Utilities of Pennsylvania Inc. Water Division;
Docket No. R-2023-3042804;

Community Utilities of Pennsylvania Inc. Wastewater Division;
Docket No. R-2023-3042805;

**COMMUNITY UTILITIES OF PENNSYLVANIA, INC. REPLIES TO
EXCEPTIONS**

Dear Secretary Chiavetta:

Attached are Community Utilities of Pennsylvania, Inc.'s Replies to Exceptions in the above-captioned proceeding.

If you have any questions concerning this filing, please contact me.

Very truly yours,

/s/ Whitney E. Snyder

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*Counsel for
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WES/das
Enclosure

cc: Administrative Law Judge Steven K. Haas (sthaas@pa.gov)
Administrative Law Judge Alphonso Arnold (alphonarno@pa.gov)
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Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMUNITY UTILITIES OF PENNSYLVANIA, INC.
REPLIES TO EXCEPTIONS**

Pursuant to 52 Pa. Code § 5.535(a), Community Utilities of Pennsylvania, Inc. (“CUPA” or “the Company”) submits these Replies to Mr. Joseph Albanese’s (“Mr. Albanese”) Exceptions to the May 28, 2024 Recommended Decision of Administrative Law Judges Steven K. Has (“ALJ Haas”) and Alphonso Arnold III (“ALJ Arnold”) (collectively, “ALJs” or “Presiding Officers”) approving, without modification, the Joint Petition for Full Settlement of Rate Proceedings (“Settlement”) which resolved all issues raised in this proceeding. For the reasons set forth below, CUPA respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) approve the Settlement without modification and deny the Exceptions.

I. INTRODUCTION

1. The Presiding Officers correctly decided to approve, without modification, the Settlement presented in this proceeding. The Commission should likewise adopt the May 28, 2024 Recommended Decision and approve, without modification, the Settlement because it produces

just and reasonable rates that incorporate the principles of gradualism,¹ includes significant customer service “alternatives that may not have been realized during the litigation process,” that are in the public interest.² For example, CUPA has committed to not filing a base rate increase earlier than February 9, 2026, a period of almost two years.³ This “stay out” provision provides customers with rate stability and benefits all parties in this proceeding and the Commission by avoiding the time and expense of fully litigating another rate case for at least one and a half years. This is not relief or a benefit the Commission could order but for the Settlement. Moreover, the Settlement benefits CUPA’s customers by setting lower rates than originally sought thereby allowing CUPA to continue modernizing its wastewater and water systems and providing safe and reliable service to its customers.⁴

2. The Settlement further benefits customers by enhancing the Company’s original proposal to establish a low-income rate for wastewater customers that qualify by providing forty-five percent (45%) discount on the fixed and volumetric portion of customer bills as opposed to a thirty-five percent (35%) discount to only the volumetric portion of the customer bill.⁵ The Settlement also adopts an arrearage management plan (“AMP”) which is enhanced from the Company’s original proposal.⁶

¹ CUPA St. in Support at 2.

² *Pa. Pub. Util. Comm’n v. Peoples TWP, LLC*, Docket No. R-2013-2355886 (Opinion and Order entered Dec. 19, 2013), 2013 WL 6835105 at *16 (*Peoples TWP*).

³ *See* Joint Petition, ¶6.

⁴ CUPA St. in Support at 2.

⁵ CUPA St. in Support at 2-3.

⁶ CUPA St. in Support at 3.

3. The Settlement further provides resolution to issues addressed at the public input hearings while incorporating various requests the Commission’s Bureau of Investigation and Enforcement (“I&E”) and Office of Consumer Advocate (“OCA”) made in their testimony.⁷

4. The Settlement amicably and expeditiously resolved a number of important and potentially contentious issues that would have resulted in expensive and protracted litigation, including appeals, before the Commission.⁸

5. Finally, the Settlement was achieved after extensive scrutiny of CUPA’s rate filing by I&E, OCA, and the Office of Small Business Advocate (“OSBA”), which further evidences that the Settlement is in the public interest.⁹

6. Accordingly, the Commission should deny the Exceptions and approve the Recommended Decision approving the Settlement, which was achieved after extensive scrutiny of CUPA’s filing, including the data in support thereof, and the significant testimony and varying positions concerning revenue requirement, rate of return, rate allocation and rate design. The Settlement is the product of extensive negotiation representing a give and take by the settling parties.

7. For the reasons set forth below, the Exceptions should be denied.

II. REPLIES TO EXCEPTIONS

A. The Exceptions Were Waived for Failure to Object to the Settlement

8. The Settlement, consistent with the Commission’s regulations, required that any party objecting to the Settlement submit objections to the Settlement.

⁷ CUPA St. in Support at 3-4.

⁸ CUPA St. in Support at 4.

⁹ CUPA St. in Support at 5.

9. Filing an objection to the Settlement was made as easy as possible to allow complainants to object to the Settlement, including permitting complainants to raise objections through means other than electronic filing, including via an email to the OCA.

10. Mr. Albanese failed to object to the Settlement.

11. The Commission has time and again held that issues not raised by a party in its Main Brief are deemed to have been waived and cannot be raised in exceptions.¹⁰

12. This proposition equally applies to raising objections to settlements. Where a party fails to raise objections to a settlement, that party cannot get another bite at the apple and raise, via exceptions, issues that could have been addressed in an objection. This prevents a meaningful opportunity for the parties to respond and for the ALJ to address issues.

13. Here, Mr. Albanese failed to file an objection to the Settlement, where he could have raised the arguments made in the Exceptions. The Exceptions are, therefore waived, and the Commission should deny the Exceptions.

B. The Exceptions Provide No Reasonable Basis to Reject the Settlement

14. The Exceptions argue that the Settlement should be denied because the rate increases “do not even remotely track the rate of inflation nor the cost of living increases over the past several years.”¹¹

15. As the Commission is aware, utility base rates are not set in lockstep with inflation, cost of living, salary, or governmental benefit increases. Under the law, including the U.S. Supreme Court’s interpretation of the U.S. Constitution, a public utility’s rates must be developed

¹⁰ *Pennsylvania Pub. Util. Comm’n v. City of Lancaster*, Docket Nos. R-00049862 & R-00049862C0001 (Tentative Opinion and Order entered Jan. 31, 2007), 2007 WL 517134 at *15 (citing *Application of Apollo Gas Company*, 1994 Pa PUC LEXIS 45 (1994)).

¹¹ See Exceptions of Joseph Albanese.

based on specific proven costs to serve its customers and provide the utility the legally required opportunity to earn a fair return on its investment.¹²

16. Moreover, the Settlement constitutes more than just a revenue increase, and the revenue increases cannot be considered in a vacuum apart from the commitments CUPA has made as part of the Settlement when determining whether the Settlement is in the public interest.

17. For instance, CUPA has committed to not filing a base rate increase earlier than February 9, 2026, a period of almost two years.¹³ This “stay out” provision provides customers with rate stability and benefits all parties in this proceeding and the Commission by avoiding the time and expense of fully litigating another rate case for at least one and a half years. This is not relief or a benefit the Commission could order but for the Settlement.

18. Additionally, the Settlement enhances CUPA’s Low-Income Program including: (1) expanding the eligibility from income up to 100% to income up to 200% of the federal poverty line; (2) continuing to provide quarterly report updates detailing the participation, usage, and revenue shortfalls/surpluses of its Low-Income Program; and (3) tracking all costs associated with the administration of its Low-Income Program, will report these costs quarterly, and will identify the costs it will seek to recover as part of its administration of this program.¹⁴

19. Furthermore, the Settlement provides a lower rate increase than what was proposed in CUPA’s initial filing.

20. The Exceptions provide no rational argument or basis for the Commission to reject the Settlement. Absent any evidence that the Settlement is not in the public interest and results in

¹² See, e.g., *Bluefield Water Works & Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679, 692-93 (1923); see also *Federal Power Commission v. Hope Natural Gas*, 320 U.S. 591, 603 (1944).

¹³ See Joint Petition, ¶6.

¹⁴ See Joint Petition, ¶¶ 13, 15, 16.

rates that are not just and reasonable, and given the numerous benefits the Settlement provides, the Commission should approve the Settlement.

21. Accordingly, the Commission should reject the Exceptions and adopt, without modification, the Presiding Officers' Recommended Decision approving the Settlement, which was reached after extensive scrutiny of CUPA's filing by the statutory advocates.

III. CONCLUSION

WHEREFORE, for the reasons stated above, Community Utilities of Pennsylvania, Inc. respectfully requests that the Commission (1) approve the Settlement without modification because it is in the public interest, results in just and reasonable rates, and promotes the Commission's policy to promote settlements, and (2) deny the Exceptions filed by Mr. Joseph Albanese.

Respectfully submitted,

/s/ Whitney E. Snyder

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*Counsel for Community Utilities of Pennsylvania,
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Dated: May 7, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

BY ELECTRONIC MAIL ONLY

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Dated this 7th day of June, 2024.