

COMMONWEALTH OF PENNSYLVANIA



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June 24, 2024

Via Electronic Filing

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

Re: Petition of the City of Lock Haven
Water Department for Authorization to
Implement a PENNVEST Surcharge.
Docket No. P-2024-3049249

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to the City of Lock Haven Water Department's Petition in this matter.

Copies have been served as shown on the attached Certificate of Service.

Very truly yours,

/s/Christine Maloni Hoover
Christine Maloni Hoover
Of Counsel
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CHoover@paoca.org

Enclosures:

cc: Office of Administrative Law Judge (email only: crainey@pa.gov)
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Certificate of Service

CERTIFICATE OF SERVICE

Petition of the City of Lock Haven Water :
Department for Authorization to Implement : Docket No. P-2024-3049249
a PENNVEST Surcharge. :

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s Answer to Petition, 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.

Dated this 24th day of June 2024.

SERVICE BY E-MAIL ONLY

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Date: June 24, 2024

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of The City of Lock Haven Water :
Department for Authorization to : Docket No. P-2024-3049249
Implement a PENNVEST Surcharge :

ANSWER
OF THE
OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

On May 24, 2024, the City of Lock Haven Water Department (City) petitioned for Authorization to Implement a PENNVEST Surcharge pursuant to Section 1307(a) of the Public Utility Code (Petition), 66 Pa. C.S. § 1307(a), and Sections 69.361-69.364 of the Commission's regulations, 52 Pa. Code §§ 69.361-69.364, requesting a reconcilable per equivalent residential meter size (ERMS) surcharge to recover the principal and interest payments related to the final PENNVEST amortization schedule for the City's PENNVEST loan obligations. *Petition*, ¶ 31. In addition, the City requests that the Commission approve the inclusion of the PENNVEST-funded rate base in base rates for Commission jurisdictional customers (those customers living outside of the City of Lock Haven) at the end of the PENNVEST surcharge period. *Petition*, ¶¶ 6-10.

The City provides water utility service to approximately 1,076 jurisdictional customers located in Allison, Castanea, and Wayne Townships, in Clinton County. If the automatic adjustment clause is permitted, the City will immediately begin to recover \$106,048 from

jurisdictional customers through the PENNVEST surcharge. *Petition*, ¶ 32. The surcharge will be uniformly applied to all classes (with the exception of public fire protection customers and customers served pursuant to pre-existing wholesale contracts) for service rendered on or after July 23, 2024. *Petition*, Amended Exh. 4 (filed June 17, 2024) Tariff Supplement No. [x], Original Page No. 25D.

II. ANSWER

A preliminary examination of the City’s proposed surcharge rate increase request indicates that the proposed charges, increases and changes in rates, rules and regulations are unjust, unreasonable and in violation of law, may be unduly discriminatory, will allow the City an opportunity to recover its utility property investment in violation of the Pennsylvania Public Utility Code, may compensate the City for providing inadequate service to some of its customers, and otherwise may be contrary to sound ratemaking principles and public policy.

A general rate increase is defined as “a tariff filing which affects more than 5% of the customers and amounts to in excess of 3% of the total gross annual intrastate operating revenues of the public utility.” 66 Pa. C.S. § 1308(d). The City’s proposed PENNVEST Surcharge petition would increase its total annual revenues from PUC-jurisdictional customers by \$106,048. City Rate Filing, Statement of the Effect of the Proposed Tariff Changes on the Utility’s Customers, Docket No. R-2024-3049248. That increase equates to an 18.12% increase in PUC-jurisdictional annual revenues, which were \$585,259 in 2023, based upon revenues reported in the City’s 2023 annual report filing to the Commission. Lock Haven City Water Department Annual Report, Filed February 28, 2024.^{1,2} The proposed rate increase applies to all of the City’s jurisdictional

¹ <https://www.puc.pa.gov/pcdocs/1818687.pdf>

² On a total revenue basis, i.e., including customers in the City and the customers outside of the City, the proposed Pennvest surcharge would increase revenues by \$334,396, which would constitute an increase of 21.48% over 2023 total revenues of \$1,557,006. *Petition*, ¶32, 2023 Annual Report <https://www.puc.pa.gov/pcdocs/1818687.pdf>.

customers except public fire and customers served pursuant to pre-existing wholesale contracts. Thus, the proposed PENNVEST Surcharge meets the definition of a general rate increase because it affects more than 5% of the customers and amounts to more than 3% of the total gross annual operating revenues of the public utility from PUC-jurisdictional customers.

The proposed surcharge constitutes a general rate increase as shown above. Further, the proposed surcharge is not lawful under Section 1307(a) of the Public Utility Code. 66 Pa. C.S. § 1307(a). Section 1307(a) of the Public Utility Code provides:

(a) General Rule. – Any public utility . . . may establish a sliding scale of rates or other such method for the automatic adjustment of the rates of the public utility as shall provide a just and reasonable return on the rate base of such public utility, to be determined upon such equitable or reasonable basis as shall provide such fair return. A tariff showing the scale of rates under such arrangement shall first be filed with the commission, and such tariff, and each rate set out therein, approved by it. The commission may revoke its approval at any time and fix other rates for any such public utility if, after notice and hearing, the commission finds the existing rates unjust or unreasonable.

Appellate court decisions have established that it is not lawful to file a PENNVEST surcharge under Section 1307(a). In *Masthope Rapids Property Owners Council v. Pa. P.U.C.*, 135 Pa. Commw. 437, 581 A.2d 994 (1990) (*Masthope*), in the context of a general rate case proceeding, the water utility sought Section 1307(a) automatic adjustment clause recovery of expenses related to principal and interest payments on a loan that financed the utility's purchase of water and wastewater plant. In rejecting surcharge recovery, the Court explained:

Indeed, the very function of the typical automatic adjustment clause is to permit rapid recovery of a specific, identifiable *expense* item, with a more comprehensive analysis upon reconciliation of actual costs with previously projected costs used to establish the effective rate. The initial process is essentially a mathematical review of the projections provided by the public utility. Therefore, there is no initial review to determine the appropriateness or necessity of the rate request. Again, this is inconsistent with the Water Act requirement of a review of the rate request to ensure it is for the limited purpose of recovering of Water Act loan monies.

Masthope, 581 A.2d at 1000 (emphasis added). The Court later specified that the Water Act requirement, 32 Pa. C.S. § 7518, must be read in *pari materia* with the legal obligations of the Commission as mandated in the Public Utility Code and specifically the requirement of Section 1301 that “[e]very rate ... shall be just and reasonable.” *Masthope*, 581 A.2d at 1000-01. “When attempting to set these ‘just and reasonable’ rates, the Commission is guided by general ratemaking principles, including the ‘used and useful’ principle.” *Masthope*, 581 A.2d at 1001.

The proposed 1307(a) surcharge is not required by the Pennsylvania Infrastructure Investment Authority Act, 31 P.S. § 751.14 (PENNVEST Act). Appellate law has addressed the interplay of the PENNVEST Act and the Public Utility Code in the context of the application of traditional ratemaking principles. *Barasch v. Pa. PUC*, 562 A.2d 414 (Pa. Commw. Ct. 1989) (*Factoryville*). In *Factoryville*, the Commission approved a rate increase reflecting a surcharge for Water Facilities Restoration Act¹ (Water Act) funded capital additions (a well and storage tank) that were not used and useful in providing utility service. *Factoryville*, 562 A.2d at 415-16.

The Commonwealth Court found that the plain language of the Water Act requires only that the Commission approve such rate increases as are necessary and appropriate. The Court stated:

That the General Assembly failed to indicate what factors should guide the Commission in determining whether a rate increase is necessary and appropriate does not commit to the Commission the unfettered discretion to make that determination. Rather the Commission’s determination is governed by the provisions of the Public Utility Code, 66 Pa.C.S. §§ 101-3315, and the fundamental principles of our public-utility jurisprudence.

* * *

[W]e believe that if the General Assembly had intended that the Commission grant rate increases to ensure payment of Water Act Loans *without* regard to existing ratemaking principles, it need merely have so stated in the Water Act. We refuse to read into the Water Act an abrogation of either the Public Utility

code or established ratemaking principles without the express legislative statement required by *Barasch*.

Factoryville, 562 A.2d at 418 (emphasis in original). The Court also was not persuaded by the argument that if it did not permit the Commission broad authority to approve rate increases for Water Act funded plant, without regard to existing ratemaking principles, then the Water Board would not extend credit to small water utilities. *Id.* It stated that the Water Act does not make potential approval of rate increases by the Commission a criterion for loan approval. *Id.*

The City relies on the Commission's policy statement at 52 Pa. Code §§ 69.361-69.364 to support its use of the Section 1307(a) surcharge. *Petition*, ¶ 4. The City cannot be permitted to circumvent the statutory requirements by relying on a policy statement.

Thus, the recovery of the PENNVEST principal and interest must be done in accordance with the Public Utility Code which requires a general rate increase request to be filed under Section 1308(d). Addressing the City's request in the pending rate case would be consistent with the statutory language and precedent, and as such, the OCA opposes the granting of the *Petition* and supports the consolidation of the surcharge *Petition* and the relief requested with the pending rate case.

III. CONCLUSION

The Office of Consumer Advocate opposes the City's Petition for Authorization to Implement a PENNVEST Surcharge filed at Docket No. P-2024-3049249 and requests that it not be granted and that it be referred to the Office of Administrative Law Judge for hearings.

Respectfully Submitted,

/s/ Christine Maloni Hoover

Of Counsel

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DATED: June 24, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

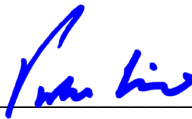
Petition of the City of Lock Haven Water :
Department for Authorization to Implement : Docket No. P-2024-3049249
a PENNVEST Surcharge. :

VERIFICATION

I, Patrick M. Cicero, hereby state that the facts set forth in the Office of Consumer Advocate's Answer to the City of Lock Haven Water Department's Petition for Authorization to Implement a PENNVEST Surcharge are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

DATED: June 24, 2024

Signature:



Patrick M. Cicero
Consumer Advocate

Address:

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