



Regulation is a maze. We can show you the way!

Whitney E. Snyder  
717.703.0807  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

Erich W. Struble  
717.703.0812  
[ewstruble@hmslegal.com](mailto:ewstruble@hmslegal.com)

---

501 Corporate Circle, Suite 302, Harrisburg, PA 17110 Phone: 717.236.1300 Fax: 717.236.4841 [www.hmslegal.com](http://www.hmslegal.com)

February 3, 2025

**VIA ELECTRONIC FILING**

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

Re: David P. Lewis v. Community Utilities of Pennsylvania, Inc.; Docket No. C-2025-3052926; **COMMUNITY UTILITIES OF PENNSYLVANIA, INC.'S PRELIMINARY OBJECTIONS TO FORMAL COMPLAINT**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Community Utilities of Pennsylvania, Inc.'s Preliminary Objections to Formal Complaint of David P. Lewis in the above-referenced matter.

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

Very truly yours,

*/s/ Whitney E. Snyder*

Whitney E. Snyder  
Erich W. Struble

*Counsel for Community Utilities of Pennsylvania,  
Inc.*

WES/das  
Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVID P. LEWIS	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2025-3052926
	:	
COMMUNITY UTILITIES OF	:	
PENNSYLVANIA, INC.,	:	
	:	
Respondent.	:	

---

**NOTICE TO PLEAD**

---

You are hereby advised that, pursuant to 52 Pa. Code § 5.61, you may file a response within ten (10) days of the attached preliminary objections. Any response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Community Utilities of Pennsylvania, Inc., and where applicable, the Administrative Law Judge presiding over the issue.

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVID P. LEWIS	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2025-3052926
	:	
COMMUNITY UTILITIES OF	:	
PENNSYLVANIA, INC.,	:	
	:	
Respondent.	:	

---

**COMMUNITY UTILITIES OF PENNSYLVANIA, INC.’S  
PRELIMINARY OBJECTIONS TO FORMAL COMPLAINT  
OF DAVID P. LEWIS**

---

Pursuant to 52 Pa. Code § 5.101, Community Utilities of Pennsylvania, Inc. (“CUPA”) files Preliminary Objections to the Formal Complaint of David P. Lewis (“Complainant”). CUPA requests the Complaint be dismissed with prejudice because, assuming everything the Complaint says is true, Complainant is not entitled to relief as a matter of law because CUPA is adhering to Commission orders approving settlements and its Commission-approved tariff.

**I. INTRODUCTION**

1. The Complaint seeks an adjustment to Complainant’s wastewater bills because CUPA utilizes Complainant’s Aqua Pennsylvania Inc. (“Aqua”) usage volumes to calculate Complainant’s bill based on all water used. Complaint at ¶¶ 4-5. Complainant was previously charged a flat rate for wastewater and Complainant’s wastewater bills, once metered, increased. *Id.* at ¶ 4.

2. As explained more fully below, CUPA’s metered rates for wastewater based on volumes of water the customer uses as reported by Aqua are Commission-approved settlement

terms. CUPA's rates were designed based on historic customer usage data from Aqua, meaning the volumes of water used for all purposes were included in the current rate design. By law, CUPA has no choice but to adhere to its tariff. CUPA cannot provide the relief Complainant seeks.

## **II. LEGAL STANDARDS FOR PRELIMINARY OBJECTIONS**

3. The Commission's regulations permit the filing of preliminary objections to any pleading, except motions and prior preliminary objections, under certain circumstances, including when a party lacks standing to participate in a proceeding. 52 Pa. Code § 5.101(a)(7).

4. For purposes of disposing the preliminary objections, the Commission must accept as true all well-pleaded material facts of the non-moving party, as well as every reasonable inference deducible from those facts. *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985); *Commonwealth v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the pleadings in the light most favorable to the non-moving party and should dismiss a pleading only if it appears that the non-moving party would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435, 1994 WL 932315, at \*1 (Opinion and Order entered Jul. 18, 1994); *see also Interstate Traveler Services, Inc. v. Pennsylvania Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

5. "For purposes of testing the legal sufficiency of the challenged pleading, a [motion to dismiss] ... admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts." *Marinoff v. Bell Telephone Co. of Pennsylvania*, Docket No. C-913511, 1991 WL 474858 (1991). Also, when considering preliminary objections, one need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Andrew Star v. PECO Energy Co.*, Docket No. C-2017-2615628, 2017

WL 4864901, at \*2 (Initial Decision entered Oct. 4, 2017) (citing *Commonwealth v. Golden Gate Nat'l Senior Care LLC*, 158 A.3d 203, 213 (Pa. Cmwlth. 2017), *aff'd* (Final Order entered Dec. 5, 2017)).

### **III. THE COMPLAINT SHOULD BE DISMISSED WITH PREJUDICE**

6. The Complaint should be dismissed because: (A) CUPA's rates are presumed just and reasonable and the Commission cannot engage in retroactive ratemaking; (B) it fails to state a claim for which relief can be granted because it fails to show that CUPA violated the Public Utility Code, a Commission regulation or order, or CUPA's tariff; and (C) it is legally insufficient because the requested relief is unavailable as a matter of law.

#### **A. CUPA'S RATES ARE PRESUMED JUST AND REASONABLE AND THE COMMISSION CANNOT ENGAGE IN RETROACTIVE RATEMAKING.**

7. The Commission may not establish just and reasonable utility rates, and then in a subsequent proceeding, ignore its own pronouncement and retroactively repeal the rates that it previously established. In modifying a Commission order that retroactively reduced a utility's rates, the Pennsylvania Supreme Court held that "[t]he company . . . was entitled to rely upon the declaration of the commission as to what was a lawful and reasonable rate until a change was made by the commission acting in its quasi legislative capacity." *Cheltenham & Abington Sewerage Co. v. PUC*, 25 A.2d 334, 336 (Pa. 1942). Commission-made rates are those rates that are "stamped with antecedent Commission-approval based upon notice, hearing and an adjudication of the claims." *Joint Petition of Citizen Power and Pennsylvania Steel and Cement Manufacturers Coalition for a Declaratory Order*, Docket No. P-2010-2195426 (Order entered July 15, 2011) at 16-17.

8. A utility's Commission-approved tariff (list of services, rules for service, and rates for service) has the force of law and is binding on the utility and its customers. *Stiteler v. Bell*

*Telephone Co. of Pennsylvania*, 379 A.2d 339 (Pa. Cmwlth. 1977); *Brockway Glass Co. v. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Pennsylvania Electric Co. v. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995). Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. PUC*, 594 A.2d 816 (Pa. Cmwlth. 1991); 66 Pa. C.S. § 316.

9. Complainant admits that the Commission has already approved CUPA's rates. Complaint ¶ 7.c. ("clearly this issue was approved in the rate case").

10. Here, CUPA's rates are presumed just and reasonable as approved by the Commission at Docket No. Docket Nos. R-2023-3042804 *et al.* The ratemaking process that resulted in those approved rates involved consideration not simply of estimates, but of actual water usage volumes and projections thereof. *See* paragraphs 18-22, *infra*.

11. The Complainant asks the Commission to "intervene and to adjust the incremental rate for sewerage . . . ." However, doing so would constitute improper retroactive ratemaking. CUPA must adhere to its Commission-approved tariff and can only charge the Commission-approved rates on the terms therein.

**B. THE COMPLAINT FAILS TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED BECAUSE IT FAILS TO ALLEGE CUPA VIOLATED THE PUBLIC UTILITY CODE, APUC REGULATION OR ORDER, OR CUPA'S TARIFF.**

12. The Complaint fails to even allege (let alone set forth facts that if true would prove) that CUPA violated the law. Complainant admits that CUPA's rates are approved by the Commission and merely asks the Commission to investigate CUPA's earnings. Complaint ¶ 7.c. ("clearly this issue was approved in the rate case"), 5 ("My proposed remedy if [sic] for the PUC to investigate billing reports").

13. To grant *any relief*, including ordering a utility to perform an investigation, the Complainant must allege and prove CUPA violated the Public Utility Code, a Commission

regulation, or Commission order and that ordering such investigation would remedy the violation. *Township of Spring v. Pennsylvania-American Water Co.*, Dkt. Nos. C-20054919 *et al.*, 2007 WL 2198196, at \*6 (Order entered July 27, 2007) (“If we were to order PAWC to conduct testing of the property in the Stonegate community, we would have to base that order on credible evidence that some act or omission by PAWC in violation of the Code or our Regulations would be remedied by the testing.”) (citing *West Penn, infra*). *See also Lynde Blymier v. SPLP*, Docket No. C-2023-3040188, Initial Decision at 15-17 (dismissing as legally insufficient complaint that sought investigation and did not allege wrongdoing by utility), *adopted* (Order entered Dec. 21, 2023).

14. Here, Complainant fails to allege CUPA did anything wrong and instead asks the Commission to investigate whether there has been wrongdoing. The complaint is thus legally insufficient and should be dismissed.

**C. THE COMPLAINT FAILS TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED BECAUSE IT FAILS TO SHOW CUPA VIOLATED THE PUBLIC UTILITY CODE, APUC REGULATION OR ORDER, OR CUPA’S TARIFF.**

15. The Complaint fails as a matter of law because, even if all statements of fact in the Complaint are true, Complainant has failed to show that CUPA violated the Public Utility Code, a Commission regulation or order, or CUPA’s tariff. *West Penn Power Co. v. Pa. PUC*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984) (“We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer’s complaint, to require any action by the utility.”). *See also* Complaint ¶ 7.c. (“clearly this issue was approved in the rate case”).

16. CUPA is following its Commission-approved tariff regarding wastewater metered charges which resulted from Commission-approved settlements with and supported by the Office

of Consumer Advocate (“OCA”), the Commission’s Bureau of Investigation and Enforcement (“BI&E”), and the Office of Small Business Advocate (“OSBA”). *Pa. PUC et al v. Community Utilities of Pennsylvania Inc.*, Docket Nos. R-2023-3042804 et al. Opinion and Order at 34-35 (entered August 1, 2024) (“2023 Base Rate Case”) (included as **Attachment A**)

17. Furthermore, CUPA filed its rate case notice with the information required by Commission regulations. *See* 52 Pa. Code § 53.45(b) (requirement to provide rate increase percentages for “typical usage level”). Moreover, the information CUPA provided in its rate case can be used to calculate a bill increase at any usage level. *See, e.g.*, Supplement No. 11 at 5, 5A. Complainant receives bills with his water usage data.

18. CUPA agreed to transition flat rate billing customers like Complainant to metered use by utilizing volumes from Aqua PA’s water invoices as part of settlements with OCA, BI&E, and OSBA. Specifically, in the base rate proceeding at R-2021-3025206 *et al.*, the Commission-approved settlement provided that CUPA would attempt to obtain usage data from customers’ water provider, Aqua, and proposed metered rates for flat rate customers. *Pa. PUC et al. v. Community Utilities of Pennsylvania Inc.*, Docket Nos. R-2021-3025206 *et al.* Opinion and Order at 15 (entered January 13, 2022) (“2021 Base Rate Case”) (included as **Attachment B**). The Settlement stated:

10. In its next base rate filing, CUPA will propose metered rates for customers in its Penn Estates wastewater system (made up of fixed and volumetric charges). For its Utilities Inc. of Pennsylvania wastewater system, within 30 days of a final Order in this proceeding, CUPA will reach out to the customers’ water service provider to establish an ongoing arrangement to obtain monthly volumetric usage data and to obtain 24 months of data (which may include historic data). CUPA will advise the parties when such agreement is entered into. If the data is obtained by March 1, 2023 and in usable format, CUPA will propose metered rates (made up of fixed and volumetric charges) for its Utilities Inc. of Pennsylvania wastewater customers in its next base rate filing.

11. To facilitate this proposal, CUPA's filing will also include a cost of service study that assigns costs to customer classes based on flow requirements.

*Id.*

19. In the 2021 Base Rate Case, CUPA had initially proposed maintaining existing flat rates and transitioning all metered wastewater customers to flat rates, but the OCA objected to this proposal:

Specifically, the OCA objected to the Company's proposal to move away from Tamiment's volumetric rates stating that doing so "would be inconsistent with the Commission's policy of eliminating minimum allowances and moving utilities toward metered rates." OCA St. No. 3 at 12. The OCA further stated that the Company's proposed flat rates are inconsistent with cost-of-service principles because customers are not billed for their actual use of CUPA-Wastewater's system. *Id.* To facilitate the Company's proposed metered wastewater rates, CUPA-Wastewater's next base rate filing will also include a cost-of-service study that assigns costs to customer classes based on flow requirements.

*Id.* at 58.

20. The OCA described the benefits of moving away from flat rates, including encouraging conservation of both water and wastewater resources:

The OCA notes that moving to metered rates for the consolidated service territory, as the Settlement proposes to be done in CUPA-Wastewater's next base rate proceeding, is consistent with the Commission's policy of eliminating minimum allowances and moving utility rates toward metered rates. Furthermore, the OCA avers that adopting metered rates for all CUPA customers would provide additional incentives for customers to conserve and reduce their demands for both water and wastewater services. OCA Brief at 6.

*Id.* at 62.

21. The Commission found metered wastewater rates are in the public interest:

We concur with the Joint Petitioners that there is no question that volumetric billing is preferable to flat rate billing, as it provides better price signals and promotes conservation. In addition to encouraging the conservation of water and wastewater services,

volumetric billing also results in a more equitable distribution of the variable costs of wastewater service among ratepayers.

*Id.* at 68-70.

22. In 2023, CUPA complied with the 2021 Settlement and proposed metered rates for previously unmetered, flat rate wastewater customers based on those customers' actual water usage per the water usage data obtained from Aqua. The 2023 Base Rate Case likewise resulted in a Commission-approved settlement with I&E, OCA, and OSBA. The Company's rate design, resultant rates, and average increases were fully set forth in the 2024 Settlement. *2023 Base Rate Case* at 16; Joint Petition for Settlement of 2023 Base Rate Case at Appendices E, F (excerpt included as **Attachment C**). Appendix F contained the percentage of the rate increase for all levels of wastewater usage from flat rates to metered rates. Thus, the Commission approved that customers using higher volumes would face significant rate increases because the Commission expressly approved these rates as just and reasonable. *2023 Base Rate Case* at 28 ("Based upon our review of the record, we concur with the ALJs' finding that the proposed Settlement should be approved, in full, without modification. We are of the opinion that the terms of the Settlement produce just and reasonable rates that balance the concerns of all Parties involved and is in the public interest.").

**D. THE COMPLAINT IS LEGALLY INSUFFICIENT BECAUSE THE REQUESTED RELIEF IS UNAVAILABLE AS A MATTER OF LAW.**

23. The Complaint is legally insufficient because the requested relief is unavailable as a matter of law. Complainant seeks the Commission to order an investigation within this adjudication, improperly intermingling its adjudicatory and prosecutory functions. However, if it does so, the Commission would violate CUPA's due process rights under the Pennsylvania Constitution.

24. The law is clear that an agency with both adjudicatory and investigative/prosecutory functions cannot commingle those functions. *See, e.g., Lyness v. Com. St. Bd. Of Medicine*, 605 A.2d 1204 (Pa. 1992). *See also Snyder Brothers, Inc. v. Pa. Pub. Util. Comm'n*, 198 A.3d 1056, 1062 n.8 (Pa. 2018) (“As the [Public Utility Commission (PUC)] is statutorily structured, its investigative and enforcement bureau and its adjudicative division perform separate functions: I&E is tasked with conducting investigations into alleged violations of laws within its jurisdictional purview, and whenever it determines that a violation has occurred, it files a formal complaint, which is heard by an [Administrative Law Judge (ALJ)] from the PUC’s adjudicative division. If the ALJ finds that a violation has occurred, he or she then determines an appropriate penalty. A party aggrieved by the ALJ’s decision may appeal it to the PUC Commissioners [the Commission], who then collectively sit as an administrative tribunal to decide such challenges.”).

25. The Commission has put up walls of separation to avoid the improper commingling of functions. *Implementation of Act 129 of 2008*; Docket No. M-2008-2071852 (Order entered Aug. 11, 2011).

26. The Commission has expressly assigned adjudication of complaints to the Office of Administrative Law Judge. *Id.* at 8 (citing 66 Pa. C.S. § 304)

27. The Commission has expressly assigned investigative and prosecutorial functions to the Bureau of Investigation and Enforcement (“BI&E”). *Id.* at 4-5.

28. The Commission cannot through its adjudicatory function prosecute or investigate matters on behalf of Complainants. *See, e.g., Sunoco Pipeline L.P. v. PUC*, 295 A.3d 37, 52 (“It is beyond peradventure that an administrative hearing is limited to the legal questions raised by

the parties. The hearing tribunal may not, *sua sponte*, augment the subject matter of a proceeding.”)

29. Accordingly, the Commission cannot order an investigation within this proceeding that is being adjudicated by the Office of Administrative Law Judge.

**IV. REQUESTED RELIEF**

WHEREFORE, Community Utilities of Pennsylvania Inc. respectfully requests the Commission dismiss the Complaint with prejudice.

Respectfully submitted,

/s/Whitney E. Snyder

Whitney E. Snyder, Esq. (PA ID No. 316625)

Erich W. Struble, Esq. (PA ID No. 310768)

HMS Legal LLP

501 Corporate Circle, Suite 302

Harrisburg, PA 17110

Tel: (717) 236-1300

[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

[ewstruble@hmslegal.com](mailto:ewstruble@hmslegal.com)

*Attorneys for Respondent*

*Community Utilities of Pennsylvania, Inc.*

Dated: February 3, 2025

# **ATTACHMENT A**

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held January 13, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
John F. Coleman, Jr., Vice Chairman  
Ralph V. Yanora

Pennsylvania Public Utility Commission	R-2021-3025206
Office of Consumer Advocate	C-2021-3025777
Office of Small Business Advocate	C-2021-3025263
Kerren Ricketts	C-2021-3026119
John & Jane Hoopingarner	C-2021-3026160
Rafail Kovalenko	C-2021-3026188
Philip Villone	C-2021-3026264
Bryan Donnelly	C-2021-3026269
Vincent & Janine Marino	C-2021-3026278
Doritha Palmer	C-2021-3026317
Kathleen & Gerald Raphael	C-2021-3026368
Richard & Susan Di Piazza	C-2021-3026425
Sharon Tunstall	C-2021-3026431
Colville Oswald Browne	C-2021-3026433
Ronald & Janice Fraioli	C-2021-3026438
Christ Nielsen	C-2021-3026440
Mona Annicaro	C-2021-3026441
Severo Barza	C-2021-3026444
Barbara Ann Mirkovic	C-2021-3026449
Gustavo Espinal	C-2021-3026452
David Fuchs	C-2021-3026454
Rose Cocklin	C-2021-3026456
Dominick & Cindy Toscano	C-2021-3026459
Douglas Beckworth	C-2021-3026463
Marcus & Bernalyn Clarke	C-2021-3026465
Katherine Cassidy	C-2021-3026468
David Touma	C-2021-3026475
William & Dahlia Merritt	C-2021-3026546

## ATTACHMENT A

Ronald Pocoro	C-2021-3026561
Christina Boers	C-2021-3026570
John Kis	C-2021-3026576
Bonnie Rudeski	C-2021-3026586
David Squilliciotti	C-2021-3026619
Louis Romano	C-2021-3026629
Kathleen & Gerald Raphael	C-2021-3026633
Vanessa Durcan	C-2021-3026634
Barry Tremper	C-2021-3026656
Anna Paryzki	C-2021-3026657
Grazyna Paryzka	C-2021-3026658
Peter Salomone	C-2021-3026741
Arnold Reyes-Portilla	C-2021-3026745
Susan Nikolaou	C-2021-3026747
William Sullivan	C-2021-3026805
Clark Sutton	C-2021-3026834
Christine Thomson	C-2021-3026840
George Kelly	C-2021-3026842
Maritza Rivera	C-2021-3026843
Joseph Torregrossa	C-2021-3026846
Peter Mauro	C-2021-3026847
Rene Bressant	C-2021-3026849
Daniel McKoy	C-2021-3026853
Thomas Hemeleski	C-2021-3026881
Jean Souders	C-2021-3026883
Mario Carlino	C-2021-3026886
Asment Benjamin	C-2021-3026888
Charles Breitweiser	C-2021-3026899
Aldona Bastek	C-2021-3026901
Larisa Shin	C-2021-3026903
Francis & Mayra Sullivan	C-2021-3026908
David Shook	C-2021-3026911
Wesley & Mildred Mann	C-2021-3026913
Romulo Babaan	C-2021-3026915
Walker Cambrelen	C-2021-3026920
Catherine Gilchrist	C-2021-3026923
Gwendolyn Beckford Wilson & Mark Lillery	C-2021-3026925
Sheila Hunt	C-2021-3026930
Daniel & Suzie Napolitano	C-2021-3026932
Troy Coleman	C-2021-3026937
Moshe Mitchel	C-2021-3026943
Ivan & Theresa Ayala	C-2021-3026945
Michael Kotowski	C-2021-3026948

## ATTACHMENT A

Janine Brown	C-2021-3026949
Henry Kotowski	C-2021-3026950
Richard Rice	C-2021-3026952
Thomas & Patricia Parillo	C-2021-3026955
Ovidio & Aixo Martinez	C-2021-3026957
Grace Moro	C-2021-3026966
Connie Friedfel	C-2021-3026968
Amos & Kathelen Lawson	C-2021-3026971
Dorothy & Feisal Khan	C-2021-3026973
Sharon Lloyd	C-2021-3026975
Usha Parhar	C-2021-3026985
Patricia Merrill	C-2021-3026988
George Tirado	C-2021-3026989
Timothy Weaver	C-2021-3026991
John Murphy	C-2021-3026993
Stilianos & Susan Nikolaou	C-2021-3026995
Yajaida Rodriguez	C-2021-3026998
Gaurav Parhar	C-2021-3027062
Robert Mohr	C-2021-3027065
Roger Fredericks	C-2021-3027066
Rosalie Capitelli	C-2021-3027068
Charles Wright	C-2021-3027070
Brian & Taryn Merrill	C-2021-3027073
Nicholas Corforte	C-2021-3027075
Craig Lowe	C-2021-3027077
Stephen & Kathleen Conrad	C-2021-3027079
Clifford & Cindy McNeil	C-2021-3027083
Maryann Bouco	C-2021-3027085
Thomas & Maxine Shepard	C-2021-3027143
Marcia Mathura	C-2021-3027251

v.

Community Utilities of Pennsylvania Inc. -  
Water Division

## ATTACHMENT A

Pennsylvania Public Utility Commission	R-2021-3025207
Office of Consumer Advocate	C-2021-3025778
Office of Small Business Advocate	C-2021-3025260
Kerren Ricketts	C-2021-3026118
John & Jane Hoopingarner	C-2021-3026161
Rafail Kovalenko	C-2021-3026190
Philip Villone	C-2021-3026261
Bryan Donnelly	C-2021-3026275
Vincent & Janine Marino	C-2021-3026280
Doritha Palmer	C-2021-3026319
Kathleen & Gerald Raphael	C-2021-3026402
Ronald & Janice Fraioli	C-2021-3026429
Sharon Tunstall	C-2021-3026432
Colville Oswald Browne	C-2021-3026434
Mona Annicaro	C-2021-3026442
Richard & Susan Di Piazza	C-2021-3026443
Severo Barza	C-2021-3026445
Barbara Ann Mirkovic	C-2021-3026450
Gustavo Espinal	C-2021-3026453
David Fuchs	C-2021-3026455
Rose Cocklin	C-2021-3026457
Dominick & Cindy Toscano	C-2021-3026460
Douglas Beckworth	C-2021-3026464
Marcus & Bernalyn Clarke	C-2021-3026466
Katherine Cassidy	C-2021-3026469
David Touma	C-2021-3026476
William & Dahlia Merritt	C-2021-3026547
Ronald Pocoro	C-2021-3026559
Christina Boers	C-2021-3026571
Bonnie Rudeski	C-2021-3026587
David Squilliciotti	C-2021-3026588
Kathleen & Gerald Raphael	C-2021-3026624
Louis Romano	C-2021-3026631
Vanessa Durcan	C-2021-3026635
Barry Tremper	C-2021-3026655
Grazyna Paryzka	C-2021-3026659
Michael Miller	C-2021-3026713
Peter Salomone	C-2021-3026740
Susan Nikolaou	C-2021-3026746
Anna Paryzki	C-2021-3026748
Christ Nielsen	C-2021-3026749
Clark Sutton	C-2021-3026764
Arnold Reyes-Portilla	C-2021-3026766

## ATTACHMENT A

William Sullivan	C-2021-3026806
Christine Thomson	C-2021-3026838
Maritza Rivera	C-2021-3026844
Joseph Torregrossa	C-2021-3026845
Peter Mauro	C-2021-3026848
Rene Bressant	C-2021-3026850
Daniel McKoy	C-2021-3026851
Thomas Hemeleski	C-2021-3026882
Jean Souders	C-2021-3026884
Ivan & Theresa Ayala	C-2021-3026885
Mario Carlino	C-2021-3026887
Asment Benjamin	C-2021-3026889
Charles Breitweiser	C-2021-3026892
Aldona Bastek	C-2021-3026902
Larisa Shin	C-2021-3026904
Francis & Mayra Sullivan	C-2021-3026909
David Shook	C-2021-3026912
Wesley & Mildred Mann	C-2021-3026914
Romulo Babaan	C-2021-3026919
Walker Cambrelen	C-2021-3026921
Catherine Gilchrist-Yanluis	C-2021-3026924
Gwendolyn Beckford Wilson & Mark Lillery	C-2021-3026926
Sheila Hunt	C-2021-3026931
Daniel & Suzie Napolitano	C-2021-3026933
Troy Coleman	C-2021-3026942
Moshe Mitchel	C-2021-3026944
Clifford & Cindy McNeil	C-2021-3026946
Michael Kotowski	C-2021-3026947
Henry Kotowski	C-2021-3026951
Richard Rice	C-2021-3026953
Thomas & Patricia Parillo	C-2021-3026956
Ovidio & Aixa Martinez	C-2021-3026958
Grace Moro	C-2021-3026967
Connie Friedfel	C-2021-3026969
Amos & Kathelen Lawson	C-2021-3026972
Dorothy & Feisal Khan	C-2021-3026974
Sharon Lloyd	C-2021-3026976
Usha Parhar	C-2021-3026986
George Tirado	C-2021-3026990
Timothy Weaver	C-2021-3026992
John Murphy	C-2021-3026994
Yajaida Rodriguez	C-2021-3026999
Roger Fredericks	C-2021-3027063

Stilianos & Susan Nikolaou	C-2021-3027064
Rosalie Capitelli	C-2021-3027069
Charles Wright	C-2021-3027071
Brian & Taryn Merrill	C-2021-3027074
Nicholas Corforte	C-2021-3027076
Craig Lowe	C-2021-3027078
Stephen & Kathleen Conrad	C-2021-3027080
Janine Brown	C-2021-3027081
Robert Mohr	C-2021-3027082
George Kelly	C-2021-3027084
Maryann Bouco	C-2021-3027088
Patricia Merrill	C-2021-3027135
Thomas & Maxine Shepard	C-2021-3027144
Marcia Mathura	C-2021-3027252

v.

Community Utilities of Pennsylvania Inc. -  
Wastewater Division

**OPINION AND ORDER**

## TABLE OF CONTENTS

I.	Introduction .....	1
A.	History of the Proceeding.....	3
II.	Legal Standards .....	6
III.	ALJ Order .....	11
IV.	Terms and Conditions of Settlement.....	12
V.	Stipulations of Fact and Conclusions of Law.....	23
VI.	Discussion.....	36
A.	Certification of Material Question .....	37
B.	Revenue Requirement Increases and Black Box Settlement .....	40
C.	Stay Out.....	45
D.	Effective Date.....	49
E.	Rate Design and Structure.....	50
1.	Terms and Conditions of Settlement.....	50
2.	Water Rate Consolidation (Settlement at ¶ II.E.8).....	54
3.	Water Availability Rates (Settlement at ¶ II.E.12) .....	55
4.	Water Customer Charges (Settlement at ¶ II.E.12).....	55
5.	Low-Income Water Rate (Settlement at ¶ II.E.14-15).....	56
6.	Wastewater Rate Consolidation and Availability Rates (Settlement at ¶ II.E.9-10, 13).....	57
7.	Positions of the Parties .....	59
8.	Disposition .....	63
F.	Reporting Requirements / Service-Related Commitments .....	70
G.	Standard Provisions.....	75
H.	Tamiment Rate Base Valuation.....	76
I.	Residential Low-Income Programs.....	80
J.	Public Interest Evaluation of Settlement.....	90
VII.	Conclusion.....	92

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Order Rejecting Settlement and Certifying A Material Question (Material Question) issued by Administrative Law Judge (ALJ) Dennis J. Buckley on November 10, 2021, (*November Order*)<sup>1</sup> relative to the above-captioned consolidated general rate increase proceedings initiated by Community Utilities of Pennsylvania, Inc. (CUPA-Water) and Community Utilities of Pennsylvania, Inc. – Wastewater Division (CUPA-Wastewater).<sup>2</sup> Also, before the Commission are the Briefs filed with respect to the Material Question. This matter centers upon and presents for Commission review, the Joint Petition of All Active Parties for Full Settlement of Rate Proceedings (Joint Petition or Settlement) filed by CUPA,<sup>3</sup> the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Commission’s Bureau of Investigation and Enforcement (I&E) (collectively, Joint Petitioners). For the reasons stated below, we shall deny the Material Question and approve the Joint Petition of All Active Parties for Full Settlement, consistent with this Opinion and Order.

**I. Introduction**

As noted above, before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the *November Order* and the Briefs

---

<sup>1</sup> ALJ Buckley’s Order is dated November 9, 2021 and was served by the Commission on November 10, 2021.

<sup>2</sup> As noted, *infra*, by Opinion and Order entered June 1, 2021, the water and wastewater rate filings at Docket Nos. R-2021-3025206 and R-2021-3025207, respectively, and all Complaints filed with respect thereto, were consolidated for further proceedings and disposition, without objection.

<sup>3</sup> For ease of understanding in this Opinion and Order, when referring jointly to both divisions of the Companies, we shall refer to them as CUPA. Specific references to the water and wastewater divisions shall be to CUPA-Water and CUPA-Wastewater, respectively.

filed with respect to the *November Order's* Material Question. This matter centers upon and presents for Commission review, the Joint Petition of All Active Parties for Full Settlement of Rate Proceedings (Joint Petition or Settlement) filed by CUPA, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Commission's Bureau of Investigation and Enforcement (I&E) (collectively, Joint Petitioners) on October 12, 2021, and the related Stipulations of Fact and Conclusions of Law appended thereto.

Following the ALJ's issuance of the *November Order*, by Secretarial Letter issued on November 12, 2021, the Commission granted the unopposed page extension request of CUPA to permit a forty-page brief in response to the *November Order* and waiving the thirty-day timeframe for the issuance of a ruling on the certified material question. Briefs in Response to the *November Order* were filed on November 16, 2021, by the following Parties: the OCA, the OSBA, I&E, and CUPA.

For the reasons stated, *infra*, we shall answer the Material Question in the negative, grant the Parties' Joint Petition, and approve the Settlement in its entirety as in the public interest. As discussed, *infra*, under the terms of the Settlement, the approved increase to CUPA-Water's annual operating revenues is proposed to be \$630,000, which reflects a substantial decrease from CUPA-Water's original proposal for a \$757,517 rate increase. The approved rate increase to CUPA-Wastewater's annual operating revenues is proposed to be \$830,000, which reflects a substantial decrease from CUPA-Wastewater's original proposal for a \$998,705 rate increase. We conclude that the terms of the Settlement contain important provisions which, on balance, protect ratepayers and mitigate the rate increases at a time in which many ratepayers are suffering economic hardship due to the 2019 Coronavirus (COVID-19) Pandemic emergency, while providing CUPA with a level of revenues to earn a sufficient return to ensure CUPA's continued provision of safe and reliable water and wastewater service within the Commonwealth.

Therefore, based upon our review of the record, we shall approve an annual revenue increase for CUPA-Water of \$630,000 and \$830,000 for CUPA-Wastewater, as reasonable and in the public interest. We also approve the entirety of the Settlement terms and conditions, which include, *inter alia*, important service-related provisions and low-income program modifications, to the distinct benefit of CUPA's customers.

**A. History of the Proceeding**

On April 12, 2021, CUPA-Water filed Supplement No. 9 to Tariff Water-Pa. P.U.C. No. 1 (Supplement No. 9) to become effective June 12, 2021. Supplement No. 9 would increase CUPA-Water's total annual operating revenues for water service by approximately \$757,517 or 36.6%. On April 12, 2021, CUPA-Wastewater filed Supplement No. 7 to Tariff Wastewater-Pa. P.U.C. No. 1 (Supplement No. 7) to become effective June 12, 2021, unless permitted by Commission Order to become effective at an earlier date. Supplement No. 7 would increase CUPA-Wastewater's total annual operating revenues for wastewater service by approximately \$998,705, or 37.4%.

On April 15, 2021, the OSBA filed Formal Complaints against both general base rate requests. On April 26, 2021, the I&E filed a Notice of Appearance in both general base rate filing proceedings.

On May 6, 2021, pursuant to 66 Pa. C.S. § 1308(d) of the Public Utility Code (Code), the Commission suspended both rate filings by operation of law until January 12, 2022, unless permitted by Commission Order to become effective at an earlier date. On May 7, 2021, the OCA filed Formal Complaints against both general base rate requests.

On May 13, 2021, a telephonic prehearing conference was held, and a procedural schedule was adopted. On June 1, 2021, the ALJ consolidated the rate proceedings for hearing and adjudication.

On or about June 16, 2021, the Commission's Secretary's Bureau began serving customer complaints received for filing. Approximately 100 similar form complaints against the proposed rate increases were filed.

On June 29, 2021, a telephonic public input hearing was held. On July 22, 2021, Chief ALJ Rainey issued an Order approving the Joint Petitioners' request for extension of procedural schedule, which extended the statutory suspension period from January 12, 2022, to February 18, 2022, and which permits CUPA to recover any rate increase granted in these proceedings back to the original suspension date of January 12, 2022.<sup>4</sup>

On July 23, 2021, a revised procedural schedule was issued and on August 31, 2021, a Protective Order was issued.

On September 8, 2021, an evidentiary hearing was held. All of the Joint Petitioners' pre-served testimony and exhibits with accompanying verifications were entered into the record, as reflected in Joint Hearing Exhibit 1 (amended September 10, 2021) and memorialized in an Order dated September 10, 2021. On September 28, 2021, the ALJ granted CUPA's unopposed motion and admitted CUPA W Exhibit 1-T with an accompanying verification.

---

<sup>4</sup> See Order Granting the Joint Petition for Extension of Procedural Schedule, Chief Administrative Law Judge Charles E. Rainey Jr., dated and entered July 22, 2021.

On September 30, 2021, a notice of telephonic post-hearing conference was issued. On October 4, 2021, the date for filing a Joint Petition for Settlement was extended to October 12, 2021. On October 5, 2021, a telephonic post-hearing conference was held. On October 12, 2021, CUPA and the active Parties filed a Joint Petition for Settlement, which proposes to resolve all issues raised in this proceeding with accompanying statements in support from each of the Joint Petitioners.

On October 22, 2021, Complainants Bryan Donnelly and Mona Annicaro each filed a formal Objection to the proposed Settlement. On October 25, 2021, Complainant Yajaida Rodriguez filed a formal Objection to the proposed Settlement.<sup>5</sup>

On November 10, 2021, the ALJ issued an Order Rejecting the Proposed Joint Settlement and Certifying a Material Question to the Commission.

On November 10, 2021, CUPA filed with the Commission its Unopposed Request for Extension of Page Limits for Briefs on Material Question. By Secretarial Letter issued on November 12, 2021, the Commission granted the brief page extension request to permit a forty-page brief and waived the thirty-day time period for action by the Commission on the Material Question.

On November 16, 2021, I&E, CUPA, the OCA and the OSBA filed briefs on the Material Question presented in the *November Order*, in accordance with 52 Pa. Code § 5.305(c), therein asserting that the ALJ's rejection of the Settlement was

---

<sup>5</sup> The Objections briefly take issue with the affordability of the proposed Settlement rates and argue those rates will produce rate shock and fail for a lack of gradualism. One Complainant also requested a longer stay-out due to the unstable economy at present. As discussed in our evaluation of the Settlement below, we determine that these objections do not form a basis for rejection of the Settlement and, thus, we deny and dismiss them.

improper and requesting that the Commission approve the Settlement in its entirety, without modification.

## II. Legal Standards

In deciding general rate increase cases brought under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), certain general principles always apply. A public utility is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. PUC v. Pennsylvania Gas and Water Co.*, 341 A.2d 239, 251 (Pa. Cmwlth. 1975). 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 and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923) (*Bluefield*) and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (*Hope Natural Gas*). 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 too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

*Bluefield*, 262 U.S. at 692-693.

In addition, Section 1301(a) of the Code mandates 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. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002) (*City of Lancaster*). Importantly, there is no single way to arrive at just and reasonable rates, and “[t]he [Commission] has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.” *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996) (*Popowsky II*).

The burden of proof to establish the justness and reasonableness of every element of a public utility’s rate increase request rests solely upon the public utility in all proceedings filed under Section 1308(d) of the Code. The standard to be met by the public utility is set forth in Section 315(a) of the Code, 66 Pa. C.S. § 315(a), as follows:

**Reasonableness of rates.** – In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

In reviewing Section 315(a) of the Code, the Pennsylvania Commonwealth Court interpreted a public utility’s burden of proof in a rate proceeding as follows:

Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the public utility. *It is well-*

*established that the evidence adduced by a utility to meet this burden must be substantial.*

*Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980) (emphasis added). *See also, Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

In general rate increase proceedings, it is well established that the burden of proof does not shift to parties challenging a requested rate increase. Rather, the utility's burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one, and that burden remains with the public utility throughout the course of the rate proceeding. There is no similar burden placed on parties to justify a proposed adjustment to the Company's filing. The Pennsylvania Supreme Court has held:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations, and that is the burden which the utility patently failed to carry.

*Berner v. Pa. PUC*, 116 A.2d 738, 744 (Pa. 1955).

This does not mean, however, that in proving that its proposed rates are just and reasonable, a public utility must affirmatively defend every claim it has made in its filing, even those which no other party has questioned. As the Pennsylvania Commonwealth Court has held:

While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.

*Allegheny Center Assocs. v. Pa. PUC*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990) (citation omitted). *See also, Pa. PUC v. Equitable Gas Co.*, 73 Pa. P.U.C. 310, 359-360 (1990). Furthermore, the mere rejection of evidence contrary to that adduced by the public utility is not an impermissible shifting of the evidentiary burden. *United States Steel Corp. v. Pa. PUC*, 456 A.2d 686 (Pa. Cmwlth. 1983).

In considering settlements, the Commission must determine whether the settlement rates are just and reasonable and whether the settlement is in the public interest. *See* 66 Pa. C.S. § 1301; *Pa. PUC v. C.S. Water and Sewer Associates*, 74 Pa. PUC 767 (1991); *Pa. PUC v. Philadelphia Electric Company*, 60 Pa. PUC 1 (1985).

In recognition of its regulation promoting settlements at 52 Pa. Code § 5.231(a), the Commission has set forth settlement guidelines and procedures for major rate cases at 52 Pa. Code § 69.401, which states:

**§ 69.401. General.**

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402-69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases. A partial settlement is a comprehensive resolution of all issues in which less than all interested parties have joined.

Importantly, however, the Commission has also stated:

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. 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. Because the Joint Petitioners request the Commission enter an order in this proceeding approving the Partial Settlement without modification, they share the burden of proof to show that the terms and conditions of the Partial Settlement are in the public interest.

*Pa. PUC v. PECO Energy Co.*, Docket No. R-2018-3000164 (Order entered Dec. 20, 2018), at 15 (emphasis supplied).

Notwithstanding this promotion of settlements, it is without question that not all proposed settlements must be accepted, in whole or in part, if they are determined to be in contravention of the public interest. It is, however, unusual for a proposed settlement in a general base rate case to be rejected in its entirety, but this action is not without precedent. *See, Pennsylvania PUC, et al. v. C.S. Water and Sewer Associates*, Docket No. R-881147, 74 Pa. P.U.C. 716 (1991) (*C.S. Water and Sewer Associates*).

As we proceed in our review of the various positions espoused in this proceeding, we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any argument or aspect of the *November Order* that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

It is axiomatic that Commission decisions must be supported by substantial evidence in the record. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlt. 1984).

Finally, the instant matter involves a black box settlement. The particular legal standards applicable thereto are discussed in Section VI (Discussion), *infra*. Likewise, the legal standards regarding the certification of material questions and the issuance of recommended decisions and the associated preservation of the due process rights of base rate case litigants also are addressed in Section VI.

### III. ALJ Order

The *November Order* rejected the Settlement in its entirety and certified the following Material Question for consideration pursuant to 52 Pa. Code 5.305:

Whether the action of the presiding Administrative Law Judge rejecting the proposed Joint Settlement filed by the parties in the consolidated proceeding at Docket Nos. R-2021-3025206 and R-2021-3025207 was proper?

Suggested Answer: Yes.

*November Order* at 3.

After discussing the terms and conditions in the Joint Petition for Settlement (*November Order* at 11-18), CUPA's 2019 general rate proceedings (*November Order* at 18-19), and the Public Input testimony of June 29, 2021 (*November Order* at 19-24), the ALJ concluded that the Settlement was not in the public interest, would not result in just and reasonable rates, and thus, should be rejected. The main reasons for his rejection of the Settlement were: (1) rate shock and gradualism; (2) an inadequate stay out period; and (3) quality of service concerns. *November Order* at 27-36.

Each of the issues is discussed in detail in the Discussion Section (Section VI) of this Opinion and Order.

#### **IV. Terms and Conditions of Settlement**

The Settlement consists of the following terms and conditions, excerpted in relevant part from the Joint Petition (footnotes omitted):

1. The Company, I&E, OCA, and the OSBA engaged in a series of long, detailed, and productive discussions to determine if, consistent with the Commission's policy to "encourage settlements," stated at 52 Pa. Code §5.231(a), a settlement was possible. After extensive discovery by I&E, OCA, and OSBA and testimonial presentation by all parties, CUPA, I&E, OSBA, and OCA engaged in an even more extensive series of settlement negotiations. The settlement provided in this Joint Petition is the product of those comprehensive negotiations, representing give-and-take by all Joint Petitioners, and which resulted in a settlement that is in the public interest balancing CUPA's significant investment to modernize facilities in its territories and the need for cost-based rates and measures to further enhance service and future performance with the principle of gradualism in rate changes and recognition of potential ongoing financial hardships for some customers resulting from the COVID-19 pandemic. In response to service

concerns raised by customers, the proposed Settlement imposes requirements to investigate pressure and water supply and increase communication with customers and the statutory advocates to enable them to monitor progress. The settlement is a typical “black box” settlement; that is, without admission on any particular issue though the terms agreed to are enforceable upon approval by the Commission. The Joint Petitioners agree that this settlement is a reasonable resolution of competing positions and interests in a way that meets and promotes the public interest. It also avoids significant rate case and time and expense of all involved and avoids further expense including expensive briefing, exceptions and potential appeals. Under prevailing Pennsylvania law, the reasonable rate case costs are borne by the ratepayers. The proposed Settlement consists of the following terms and conditions:

**A. Revenue Requirement Increase – Water**

2. Upon the Commission’s approval of this Settlement, the Company will be permitted to charge the rates for water service set forth in the proposed Tariff Supplement attached hereto as Appendix B (“Settlement Rates”), to become effective upon one day’s notice. Instead of the \$757,517 increase requested in the filing, the Settlement Rates are designed to produce an increase of annual water revenue of \$630,000 as shown in greater detail on the Proof of Revenues attached hereto as Appendix E.

**B. Revenue Requirement Increase – Wastewater**

3. Upon the Commission’s approval of this Settlement, the Company will be permitted to charge the rates for wastewater service set forth in the proposed Tariff Supplement attached hereto as Appendix C (“Settlement Rates”), to become effective upon one day’s notice. Instead of the \$998,705 increase requested in the filing, the Settlement Rates are designed to produce an increase of annual wastewater revenue of \$830,000 as shown in greater detail on the Proof of Revenues attached hereto as Appendix F.

**C. Stay Out**

4. The Company agrees that it will not file for a general increase pursuant to 66 Pa C.S. § 1308(d) to water or wastewater base rates earlier than September 30, 2023. This paragraph does not apply to extraordinary or emergency rate relief pursuant to 66 Pa. C.S. § 1308(e) (or upon a petition for emergency rate increase), tariff changes required by Commission order or industrywide changes in regulatory policy which affect CUPA's rates.

**D. Effective Date**

5. Upon the entry of a Commission Order approving this Joint Petition, the Company will be permitted to file a tariff for water service, in the form attached hereto as Appendix B, and a tariff for wastewater service, in the form attached hereto as Appendix C, reflecting the agreed to additional operating revenue. The Joint Petitioners agree to the implementation of the Settlement Rates on January 12, 2022, when the original statutory suspension period was to expire, if the Commission enters an Order approving the Joint Petition prior to or on that date.

6. If the Commission approval of this Settlement occurs after January 12, 2022, the Joint Petitioners agree that CUPA shall be entitled to recoup the revenue increase not billed from the effective date of January 12, 2022, through the date of any PUC approval of new rates in the manner set forth in the Commission's final Order in this proceeding. The revenue increases not billed from the effective date of January 12, 2022, through the date of PUC approval of new rates will be recovered over a six-month period that shall be applied proportionately to all customer classes via a surcharge on each monthly bill during the six-month recovery period. The Company will be permitted to file a tariff page, in the form attached hereto as Appendix D, to implement the surcharge.

**E. Rate Design and Structure**

7. The parties agree to the rate design reflected in Appendix E and Appendix F, which reflects the following rate design principles:

8. The parties agree to a partial consolidation of Tamiment (50% movement toward consolidation). Specifically, Tamiment usage rates will move approximately 50% of the way from their existing place to the consolidated rates of CUPA, with full consolidation in CUPA's next case.

9. Tamiment wastewater rates will continue to be based on metered usage, i.e. not converted to a fixed flat rate as proposed by the Company.

10. In its next base rate filing, CUPA will propose metered rates for customers in its Penn Estates wastewater system (made up of fixed and volumetric charges). For its Utilities Inc. of Pennsylvania wastewater system, within 30 days of a final Order in this proceeding, CUPA will reach out to the customers' water service provider to establish an ongoing arrangement to obtain monthly volumetric usage data and to obtain 24 months of data (which may include historic data). CUPA will advise the parties when such agreement is entered into. If the data is obtained by March 1, 2023 and in usable format, CUPA will propose metered rates (made up of fixed and volumetric charges) for its Utilities Inc. of Pennsylvania wastewater customers in its next base rate filing.

11. To facilitate this proposal, CUPA's filing will also include a cost of service study that assigns costs to customer classes based on flow requirements.

12. All current water service monthly customer charges will be maintained, except that the Tamiment 6-inch commercial water customer charge will be increased by the system average increase. Availability charges will be increased by 1.5 times the system average.

13. The current Tamiment wastewater availability charge will be moved halfway toward the consolidated charge

approved by the Commission in this proceeding. All of CUPA's other proposed availability and volumetric charges will be proportionately scaled back to reflect the decreased in revenue requirement from the filed-for amount. For the consolidated systems, the wastewater service flat and schools rates will be proportionately scaled back.

14. CUPA's proposed Low-Income Rate for residential water service will be approved as a pilot program until the next base rate proceeding, with the following modifications: after scaleback for the reduction in revenue requirement provided in this settlement, the low-income rates for each system will provide a 35% discount rather than 65% as originally proposed (pinned to 35% of the regular residential rate), from the regular residential volumetric rates. In the next base rate case, all parties reserve their rights to address continuation or modification of the program.

15. During the period that the residential low-income rate for water service is considered a pilot program, the Company will record a regulatory asset or liability for amounts over or under the amount included in rates for recovery or refund in the next base rate case. The amount of revenue included in rates is the projected CUPA residential low-income gallonage of 15,066.541 kilogallons multiplied by the low-income rate of \$8.784, plus the projected Tamiment low-income gallonage of 2,590.588 kilogallons multiplied by the low-income rate of \$7.444. The amount of water revenue to be included in the regulatory asset or liability is the difference between the projected and the actual residential low-income gallonage multiplied by the difference between the low-income rate and the regular residential rate. The Company will provide quarterly updates detailing total customer participation, total gallons used by enrolled customers, and the associated water revenue shortfall or surplus resulting from the reduced volumetric rates for enrolled customers. The regulatory asset/liability provision and quarterly update requirements will be subject to review and modification in the next base rate case.

16. In its next base rate proceeding, CUPA will propose a Low-Income Rate for residential wastewater

service, as a pilot program. All parties reserve the right to challenge the proposal.

17. The Company will participate in the Low Income Household Water Assistance Program (LIHWAP) providing a bill insert to all customers once the program is available with information on how to register for the program, providing that information when contacting customers about disconnection or arrearages, and utilizing LIHWAP funds for its water and wastewater customers consistent with the final PA Department of Human Services requirements.

Funds received by CUPA from PA LIHWAP will be included in the quarterly reports in Paragraph 7 above. In the next base rate case, all parties reserve the right to review and address whether any of the PA LIHWAP funding received by CUPA should be included in the regulatory asset or liability.

**F. Reporting Requirements**

18. The Company will provide the Commission's Bureau of Technical Utility Services and the signatories to the Settlement with an update to CUPA Supporting Data, Section 1, p. 17 of the water and wastewater filing no later than April 1, 2022, under this docket number, which should include actual capital expenditures, plant additions, and retirements by month for the twelve months ending December 31, 2021. An additional update should be provided for actuals through December 31, 2022, no later than April 1, 2023.

19. Until the Company files its next base rate case, CUPA will serve a copy to the Settlement Parties of any Boil Water Advisory ("BWA") or Do Not Consume Advisory issued to customers. Service can be effected by email.

20. Going forward, when CUPA submits a progress report to the Pennsylvania Department of Environmental Protection (DEP) regarding the Consent Order and Agreement dated October 22, 2020 (related to the Penn Estates wastewater system), CUPA will serve a copy to the Settlement parties. Service can be effected by email.

**G. Service-Related Commitments**

21. In future base rate cases, the Company will submit an individual PUC Form 500 for each of its water systems. Also, in its next base rate proceeding, CUPA will provide a breakdown of Lost and Unaccounted for Water (LUFW) by system detailing all identified causes.

22. For each of its water systems, the Company's records regarding isolation valves will include (1) the valve location, (2) date of attempt to exercise each valve; and (3) if the valve was broken or operable (successfully exercised). If the valve could not be properly exercised, the valve will be scheduled to be repaired or be replaced. As part of its next base rate filing, the Company will provide the exercising records and schedule for any repair/replacements.

23. For the Tamiment Water System, the Company will provide advance notice to customers regarding planned system maintenance that may discolor water (including flushing and switching wells).

24. For the Penn Estates Water System:

- a) Within one year of the Commission's final order in this proceeding, the Company will have a study conducted to determine whether it can reduce normal operating pressures exceeding 125 psi in its mains without adversely impacting water pressure of some customers. So long as the study shows customer water pressure will not be adversely impacted, CUPA will reduce normal operating pressures exceeding 125 psi in its mains.
- b) As part of its next base rate filing, CUPA will provide a report on its proposed implementation of the GHD<sup>6</sup> Report and

---

<sup>6</sup> GHD is CUPA's outside consultant assigned to assess and improve system operations to minimize loss of service in the Penn Estate's system. See Joint Petition at 27.

any action taken with regard to  
(1) providing adequate supply;  
(2) complying with minimum pressure requirements; (3) increasing pressures in low pressure areas so that it is suitable for all household purposes; (5) drilling a new well(s) or interconnecting with another utility for water supply; and  
(6) obtaining local, state or federal funding for water supply and pressure projects.

25. While recognizing that grinder pumps are customer-owned facilities and the responsibility of customers, the Company agrees to provide every new wastewater customer that has a grinder pump with information on operation and maintenance of grinder pumps or how to obtain such information. The Company will also continue to provide the information to existing wastewater customers via an annual bill insert, which will be delivered electronically to those customers who have chosen to receive bills electronically.

26. As part of its next base rate filing, CUPA will update the call center performance data contained in Parks Rebuttal Exhibit 1.

#### **H. Tamiment Rate Base Valuation**

27. In compliance with the Commission's Final Orders in Docket Nos. A-20183005430 et al., to establish a rate base value for Tamiment water and wastewater facilities in this rate case, based on traditional and generally accepted

ratemaking principles, the Joint Petitioners agree that the value for Tamiment rate base is as follows:

Description	UPIS	Accumulated		Rate Base
		Depreciation	CWIP	
Water	2,212,733	(888,472)	-	1,324,261
Wastewater	2,861,017	(1,617,881)	-	1,243,135
<b>Total</b>	<b>5,073,750</b>	<b>(2,506,354)</b>	<b>-</b>	<b>2,567,397</b>

28. Included in the Company's incremental revenue increase for wastewater is the amortization expenses of the Tamiment Construction Work in Progress (CWIP), which is being amortized over 11 years ( $\$439,920 / 11 = \$39,992.73$ ). The unamortized balance of the Tamiment CWIP ( $\$439,920$ ) will not be included in rate base at any time during or after the amortization period. Also, CUPA is authorized to record the  $\$39,992.73$  of expense through depreciation, if allowed by its external auditor or accounting firm.

#### **I. Standard Terms**

29. The Commission's approval of the Settlement shall not be construed as approval of any Joint Petitioner's position on any issue but rather as an agreed-to compromise of the Joint Petitioners' competing positions. It is understood and agreed among the Joint Petitioners that the proposed Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any Joint Petitioner in this or any other proceeding if it were fully litigated. Accordingly, this Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement any term specifically agreed to by the Joint Petitioners or to enforce this Settlement.

30. This Settlement is presented without prejudice to the position any of the Joint Petitioners may advance in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to by the Joint Petitioners in this Settlement that would carry forward into subsequent rate cases.

31. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. In reaching this proposed Settlement, the Joint Petitioners thoroughly considered all issues and give and take of positions. As a result of that consideration, the Joint Petitioners believe that the settlement agreement meaningfully addresses all such issues raised and therefore should be approved without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within five (5) business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Joint Petitioner elects to withdraw the Settlement as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

32. All Joint Petitioners support the Settlement and agree, as a result of this negotiated settlement and the facts and data examined and in view of existing ratemaking law and principles, to make reasonable and good faith efforts to obtain approval of the Settlement by the ALJ and the Commission without modification. If the ALJ, in the Recommended Decision, recommends that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions. However, to the extent any terms and conditions of the Settlement are modified, or additional matters are proposed by the ALJ in the Recommended Decision, the Joint Petitioners do not waive their rights to file Exceptions in support of the Settlement. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed provided such Replies support the Settlement.

33. The Joint Petitioners recognize that this Joint Petition is a settlement of, and binding upon, only among the parties signing this document.

34. The OCA represents it will, on the date of the signing of this settlement petition, send a letter providing instructions concerning the Complainants' opportunity to address the proposed Settlement. OCA also represents that the letter will explain that the Complainant has until October 22, 2021 to join, disagree but not actively oppose, or object to the proposed settlement and provides contact information for the OCA.

35. The Joint Petitioners agree that this document may be signed or executed in separate counterparts or signature pages that shall be binding upon the Joint Petitioners and such counterparts shall be considered as one document.

36. The Joint Petitioners agree and request that if the proposed Settlement is approved, the OCA's and OSBA's Formal Complaints in this matter should be marked satisfied and closed due to the Settlement.

Joint Petition at 6-16, ¶¶ 1-36.

In support of the Joint Petition, the Joint Petitioners relied upon: the evidentiary record submitted in support of the original proposed rate increase, including testimony and exhibits offered into the record in the proceeding; Stipulations of Fact included in the Joint Petition; Appendices A-G to the Joint Petition, constituting proposed tariff supplements, proof of revenues and average bill impact calculations; as well as Appendices H-K, consisting of the Statements in Support of the Joint Petition of CUPA, the OCA, I&E, and the OSBA. *See* Stipulations of Fact, Joint Petition at 16, Appendix A (Procedural History, Proposed Conclusions of Law, and Proposed Ordering Paragraphs); Joint Petition Appendix B (Water Tariff Supplement); Appendix C (Wastewater Tariff Supplement); Appendix D (Surcharge Tariff Supplements); Appendix E (Water Proof of Revenues); Appendix F (Wastewater Proof of Revenues); Appendix G (Average Bill Impact); Appendix H (CUPA Statement in Support);

Appendix I (OCA Statement in Support); Appendix J (I&E Statement in Support); Appendix K (OSBA Statement in Support).

The Joint Petitioners respectfully requested that the Commission (1) approve the Settlement, including all terms and conditions thereof, consistent with the Appendices A-K; and (2) grant CUPA the permission to file the tariffs consistent with Appendices.

### **V. Stipulations of Fact and Conclusions of Law**

The Joint Petitioners agreed upon twenty-four Stipulations of Fact that were included in the Joint Petition. Joint Petition at 16-34, ¶¶ 37-60. The Joint Petitioners also included two proposed Conclusions of Law as part of Appendix A to the Joint Petition. Joint Petition, Appendix A-3. We adopt these Stipulations of Fact in their entirety without modification and list them below as Nos. 1-24, for ease of reference. We also adopt the proposed Conclusions of Law and list them below. Because there is no Recommended Decision, the ALJ did not make Findings of Fact or Conclusions of Law. However, the Stipulations of Fact detailed in the Joint Petition and quoted verbatim in this Opinion and Order are incorporated herein by reference and are adopted unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The Stipulations of Fact constitute substantial evidence of record in support of the Settlement. Our review of these agreed-upon facts results in a determination that the Settlement is well-supported by all of the active Parties and underlies our determination that the Settlement is in the public interest. We also adopt the proposed Conclusions of Law as agreed upon by the Joint Petitioners, as adjusted slightly to correct a grammatical error in the text of Conclusion of Law No. 2.

The Stipulations of Fact are as follows:

1. CUPA is a Pennsylvania public utility providing service to modernize water and wastewater systems, operating in four service territories in Pennsylvania, formerly known as – Penn Estates, Westgate, Utilities Inc., and Pennsylvania Utility Company (Tamiment).<sup>1</sup> CUPA serves approximately 3,412 water customers and 3,971 wastewater customers.
2. I&E was created by the Commission pursuant to 66 Pa. C.S. § 308.2(a)(7) as a prosecutory bureau for purposes of, inter alia, representing the public interest in ratemaking matters before the Office of Administrative Law Judge. Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011, at 4-5).
3. OCA is empowered to represent the interests of Pennsylvania consumers before the Commission, pursuant to Act 1976-161 of the General Assembly, as amended, 71 Pa. C.S. §§ 3901 et seq.
4. OSBA is authorized by the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50, to represent the interests of small business consumers of utility services in matters before the Commission.
5. CUPA's original base rate filings requested an increase in its water rates of \$757,517, wastewater rates of \$998,705, a 36.78% and 37.48% increase over service revenues previously generated respectively. CUPA proposed full consolidation of the rates charged to

---

<sup>1</sup> CUPA acquired Tamiment in 2019 in a state of disrepair and has already made significant upgrades, repairs, and replacements. CUPA W&WW Statement No. 7-R at 9:21-3, 10:6-11:2; Exhibit No. EL-4R (before and after photos).

customers in the Pennsylvania Utility Company or Tamiment area with rates charged to CUPA's other customers for both water and wastewater. For water, CUPA proposed increases to both customer charges and volumetric rates. For wastewater, CUPA proposed non-volumetric rates for all customers (i.e. continuing non-volumetric rates for customers outside the Tamiment area and moving Tamiment customers to non-volumetric rates).

In the course of developing proposed Settlement rates, the Joint Petitioners identified that the customer notice to CUPA's Tamiment wastewater customers as well as page 1-6 (responses to 52 Pa. Code § 53.52(b)(1)) in CUPA's wastewater rate increase filing utilized the incorrect current usage rate for Tamiment wastewater customers, which is \$13.73, not \$5.13.<sup>2</sup> This resulted in significantly understating current Tamiment wastewater residential customer average bills.

Specifically, those customers were noticed for an increase from \$38.93 to \$78.22 per month or by 100.95%, when the actual increase that CUPA proposed for the average Tamiment wastewater residential bill was from \$63.14 to \$78.22 or by 23.88%.<sup>3, 4</sup>

---

<sup>2</sup> The correct usage charge, \$13.73, was reflected in rate filing supporting schedule number 1, pages 1-3.

<sup>3</sup> Per CUPA's filing, proposed rates were designed using different volumes than existing rates. CUPA W Exhibit No. DMC-1 at 1-6 (showing 2022 versus 2020 average usage).

<sup>4</sup> The Tamiment wastewater commercial customers were correctly noticed, using the correct current usage charge of \$13.73 as identified in the wastewater rate filing supporting schedule number 1, pages 1-3. CUPA WW Exhibit No. DMC-1.

6. Including the correction identified above, CUPA’s proposal would have resulted in the following impacts on average customer bills:

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	
Name	WWW	Class	Meter Size	12/31/22				PWAC Surcharge	Average Bill	12/31/22				Proposed Increase	Increase %	Proposed			
				Average Usage	BFC	Usage Rate				Average Usage	Proposed BFC*	Proposed Usage*	Proposed Average Bill			Average Bill	Average Bill	Proposed Increase	Increase %
CUPA Consolidated Service Territories	W	RES	5/8"	3,976	\$ 17.25	\$ 9.28	\$ -	\$ 54.16	3,976	\$ 25.86	\$ 11.93	\$ 73.27	\$ 19.11	35.28%	\$ 54.16	\$ 73.27	\$ 19.11	35.28%	
Tamiment Service Territory	W	RES	5/8"	2,738	\$ 18.18	\$ 5.13	\$ -	\$ 32.23	2,738	\$ 25.86	\$ 11.93	\$ 58.51	\$ 26.28	81.54%	\$ 32.23	\$ 58.51	\$ 26.28	81.54%	
Low Income Customer	W	RES	5/8"	3,500	\$ 17.25	\$ 9.28	\$ -	\$ 49.74	3,500	\$ 25.86	\$ 4.13	\$ 40.30	\$ (9.44)	-18.99%	\$ 49.74	\$ 40.30	\$ (9.44)	-18.99%	
CUPA Consolidated Service Territories	WW	RES	5/8"	-	\$ 55.39	\$ -	\$ -	\$ 55.39	-	\$ 78.22	\$ -	\$ 78.22	\$ 22.83	41.21%	\$ 55.39	\$ 78.22	\$ 22.83	41.21%	
Tamiment Service Territory	WW	RES	5/8"	2,816	\$ 24.48	\$ 13.73	\$ -	\$ 63.14	-	\$ 78.22	\$ -	\$ 78.22	\$ 15.08	23.88%	\$ 63.14	\$ 78.22	\$ 15.08	23.88%	
CUPA Consolidated Service Territories	W	COM	5/8"	2,861	\$ 17.25	\$ 9.28	\$ -	\$ 43.81	2,861	\$ 25.86	\$ 10.99	\$ 57.30	\$ 13.49	30.78%	\$ 43.81	\$ 57.30	\$ 13.49	30.78%	
Tamiment Service Territory	W	COM	5/8"	5,956	\$ 121.25	\$ 5.13	\$ -	\$ 151.80	5,956	\$ 25.86	\$ 10.99	\$ 91.31	\$ (60.50)	-39.85%	\$ 151.80	\$ 91.31	\$ (60.50)	-39.85%	
CUPA Consolidated Service Territories	WW	COM	5/8"	-	\$ 55.39	\$ -	\$ -	\$ 55.39	-	\$ 78.22	\$ -	\$ 78.22	\$ 22.83	41.21%	\$ 55.39	\$ 78.22	\$ 22.83	41.21%	
Tamiment Service Territory	WW	COM	5/8"	6,125	\$ 163.24	\$ 13.73	\$ -	\$ 247.34	-	\$ 78.22	\$ -	\$ 78.22	\$ (169.12)	-68.38%	\$ 247.34	\$ 78.22	\$ (169.12)	-68.38%	

7. CUPA also proposed a low-income program for water customers to assist those most impacted by a rate increase.
8. OCA, I&E, and OSBA each made different proposals for the rate design and consolidation of Tamiment customers. For example, the parties took different positions on CUPA's proposed low-income program and whether CUPA's proposal to fully consolidate water rates for the Tamiment system should be adopted in this case. OCA and I&E also proposed various adjustments to CUPA's operating expenses. OCA and I&E also proposed lower rates of return than what CUPA proposed. The Settlement resolves these differences in a way that is in the public interest.
9. At the public input hearing, customers alleged the following service-related concerns:
  - Communications with customers and ability to contact CUPA
  - Tamiment Water Service:
    - o Water quality, drinkability, and appliance issues
    - o Hydrant flushing
    - o Low water pressure
    - o Rings in toilets or Discolored laundry
    - o Sediment in water
    - o Damaged appliances
    - o Failing hot water heaters
  - Tamiment Wastewater Service:
    - o sewer backflow
    - o issues with grinder pumps

- Penn Estates Water Service:
    - o August 2020 system outage
    - o Boil water advisories
    - o Sediment in water and appliance issues
  - Westgate service territory:
    - o hydrants
    - o valve exercising and testing
10. In their direct testimony, OCA and I&E also raised various issues regarding CUPA's service. Based on the testimony heard at the public input hearing, I&E recommended that for water CUPA receive a zero percent rate of return due to the alleged service issues.
11. In rebuttal testimony, CUPA provided evidence of its service record, steps taken to resolve service issues, and ongoing work to upgrade service, as detailed in the following paragraphs.
12. Customer Communications:
- a. CUPA's Tamiment system customer complaint logs show a reasonably low number of customer complaints received from 2019-2021 in light of the number of customers served. CUPA W&WW Statement No. 7-R at 5:19 – 6:21. See also OCA St. 4 at 18:18-20.
  - b. CUPA communicates with customers through the customer's individual preferred method, whether that be email, text, or phone, in addition to mailings to the service address or another address a customer has on file if not a permanent residence (particularly in the Tamiment service territory where many of the service addresses are vacation homes or rentals). Customers can access their online account or call customer service to update their contact information and preferred method of communication at any time to keep CUPA

informed of any changes. CUPA W&WW Statement No. 7-R at 3:13-25.

- c. CUPA's standard is to respond to all emergency calls – such as water outages, sewer back-ups, main breaks, etc. immediately. Contact center personnel are trained to ask the customer a series of questions to assist field personnel in their response. Once all pertinent information has been gathered by the contact center, a “field activity” (“FA”) is prepared and pushed out to the appropriate field staff for further investigation and intervention. After-hours emergency issues are handled by a third-party service and answered by a live agent. The agent records pertinent information including (1) location: (2) contact information: and (3) service issue. The information is then relayed to the on-call operations technician through text, cell phone and/or email. If the on-call technician does not respond within 15 minutes, the next designated manager/technician is contacted. The Company has multiple staff members across the State serving in on-call status for after hour emergencies every day. CUPA W&WW Statement No. 7-R at 4:1-12. The average hold time for customers calling the Company in 2021 is approximately 41 seconds. Call-by-call volume times can vary based on time of day, system issues, and how busy the call center is at any given time but we operate against a “Target Average Speed of Answer Service Level” of eighty (80%) percent of all calls answered within sixty (60) seconds of entering queue. Most issues are resolved within 6-7 minutes representing the average customer “treatment time”. CUPA W&WW Statement No. 7-R at 4:17-5:2.
- d. Previously, if customers called the Company seeking support, the customer might have been directed to a customer support representative

located in any Corix location. Now CUPA customers are directed to a customer service representative responsible for customers in Pennsylvania. CUPA W&WW Statement No. 8-R at 4:5-10.

- e. CUPA has implemented new customer service efforts to improve overall customer service, and CUPA’s customer service metrics show that CUPA’s customer service has improved in 2020 and 2021. CUPA St. No. 8-R at 7:5-15; Parks Rebuttal Exhibit 1. The OCA recommended that CUPA provide information regarding its call center performance to Pennsylvania customers as part of its next base rate case filing. OCA St. 1SR at 10:20-24, 11:1-2

13. Tamiment Water:

- a. CUPA’s Annual Water Quality Reports for the Tamiment System from 2019-2020 showed only recordkeeping and monitoring violations which the Company has implemented steps to prevent in the future. CUPA W&WW Statement No. 7-R at 6:22 – 7:16.
- b. In 2019, CUPA received 3 dirty water complaints and one low pressure complaint. These complaints were related to operations switching between wells while performing maintenance which affected the systems pressure zones. CUPA responded to each of these calls, of which two of the three customer’s water had cleared up by the time CUPA arrived to investigate, and the remaining one cleared up after 2-3 minutes of running water once CUPA was on site. There were no follow-up complaints by these customers. In 2020, CUPA received 7 low pressure and 2 chlorine odor water complaints. Five of the low pressure complaints were due to customer plumbing issues such as bad pressure release

valves (“PRV”) which are the responsibility of the customer. The remaining 2 low pressure calls were the result of Tamiment’s Tank 1 level dropping lower than normal from an electrical issue related to a Variable Frequency Device (“VFD”). The VFD issue was resolved within 12 hours of notification to the Company. The 2 chlorine odor complaints were investigated by CUPA, but the operator could not detect any chlorine or other odors from the water at the premises. The hydrants in the area were flushed as a precaution. CUPA W&WW Statement No. 7-R at 5:23-6:15.

- c. Tamiment hydrants were flushed 7/1/20 – 7/6/20. Community wide communication was sent 6/29/20 and 7/2/20 letting customers know hydrants would be flushed. Hydrants were flushed 6/14/21 – 6/18/21, community wide communication was sent 6/11/21. CUPA has a 3 year hydrant operation and maintenance schedule with Rogers Hydrant Service starting in 2020. CUPA W&WW Statement No. 7-R at 7:20-8:2.
- d. CUPA has received very few low-pressure complaints, the majority of which were due to customer plumbing issues, while only 2 were related to CUPA’s system. Further, only two Tamiment customers at the public input hearings indicated they had low pressure issues. CUPA W&WW Statement No. 7-R at 8:16-19.
- e. Since acquiring the system in 2019, CUPA has already made significant investment and upgrades to the Tamiment water system. In September 2019, Well 3 pump failed and was replaced. Due to poor condition, CUPA also replaced the pump electrical wire and piping, check valve, and all fittings. In June 2020, Well 1 pump failed and was replaced. Due to

poor condition, CUPA also replaced the pump electrical wire and piping, check valve, and all fittings. Once acquired, CUPA operators performed all internal lab work to ensure the system was operating properly. CUPA W&WW Statement No. 7-R at 9:21-3.

14. Tamiment Wastewater:

- a. Since acquiring the system in 2019, CUPA has made significant investment and upgrades to the Tamiment wastewater system. When CUPA first took over operations, there was excessive sludge in the trains of the wastewater treatment plant. The filter could not be backwashed due to failed equipment. CUPA proactively rehabbed the WWTP filter throughout 2019 – 2020. This consisted of new filter media, new pumps, and piping. Likewise, when CUPA first took over operations, the lagoon pump was broken and the spray irrigation system could not be utilized. CUPA hired a 3rd party to mow the grass around spray heads, replace irrigation spray heads, install a new pump, and unblocked the lagoon pump intake screen once CUPA took over operations after the acquisition. The entire Wastewater Treatment Plant (WWTP) and office were covered in bird fecal matter. The WWTP, office, and warehouse were cluttered with the personal belongings of Pennsylvania Utility Company operators such as abandoned vehicles, living room furniture, large fish tanks containing snapping turtles, tires, etc. CUPA cleaned these areas in 2019 and also improved the facility in 2020. The WWTP electrical system was in disrepair and was replaced and upgraded in 2020. CUPA W&WW Statement No. 7-R at 10:6-11:2; Exhibit No. EL-4R (before and after pictures).

- b. A sewer backflow valve, also known as a sewer check valve, is valve which only allows flow in one direction. Its purpose is to prevent sewer from flowing into a home when the grinder pump is not running. CUPA is not responsible for the maintenance or operation of sewer check valves on customer-owned facilities or lines, instead they are the customer's responsibility to maintain. CUPA W&WW Statement No. 7-R at 11:17-21.
  
- c. The Glen at Tamiment is serviced by a low pressure sewer force main. Due to the elevation changes of the terrain in The Glen a gravity collection system was not installed. A grinder pump is needed to discharge wastewater into the low pressure force main. These types of customer-owned facilities are not unusual. Not all customers in Tamiment require grinder pumps, and the customer grinder pumps are limited to certain areas as the system was originally designed. Ultimately, the grinder pump is the customer's property and responsibility to maintain. CUPA W&WW Statement No. 7-R at 12:1-7.
  
- d. In early-mid June 2020 CUPA became aware of customer concerns related to the customer's grinder pumps. CUPA and its contractor, Environmental Services Corporation (ESC), attended a board meeting at The Glen on July 19, 2020. CUPA answered questions relating to the gravity collections system, low-pressure force main system, lift stations, and maintenance of them. CUPA and ESC explained grinder pumps, the customer check valves, CUPA's operating PSI, and customer responsibilities related to grinder pumps. On July 20, 2020 CUPA and ESC investigated the areas of The Glen experiencing grinder pump issues. They found no blockages and force main pressures ranging from 5-20 PSI, which is below the operating PSI of a grinder pump.

ESC released air within the low pressure force main. After releasing the air, the system pressure remained 5-20 PSI. ESC installed 3 new air release valves (ARV) in the low pressure force main and repaired the one existing ARV. Based on CUPA's and ESC's investigation, the 2019 and 2020 grinder pump issues are not the result of CUPA's system or failure thereof. CUPA W&WW Statement No. 7-R at 12:13-13:8.

15. Penn Estates Water:

- a. CUPA's Annual Water Quality Reports for the Penn Estates System from 2018-2020 showed only minor violations which the Company took action to correct as well as recordkeeping and monitoring violations which the Company has implemented steps to prevent in the future. CUPA W&WW Statement No. 7-R at 18:6-17.
- b. In August 2020, CUPA's Penn Estates' system experienced a water outage event as a result of leaks in the distribution system. Operators at Penn Estates systematically searched for leaks in the system beginning in early 2020 to confirm whether there were other contributing factors to tank level issues. A leak detecting company was contracted to look for leaks in targeted areas of the community. In May 2020, CUPA started sending voice reaches (VR) asking customers to conserve water and look for leaks within and around their homes. Also, on May 20, 2020, CUPA started hauling in bulk water to supplement tank levels. The highest elevation tanks became critically low and CUPA issued boil water advisory on August 3, 2020. CUPA provided customers with access to bottled water and hauled bulk water to supplement tank levels. CUPA found and repaired the leaks, water levels stabilized, and the boil water advisory was rescinded August 13, 2020. A letter explaining what

happened was mailed to all customers September 8, 2020. That letter was posted in the Community's monthly newsletter in October 2020. CUPA W&WW Statement No. 7-R at 15:1-23.

- c. CUPA replaced 3 well pumps in 2020 and 1 in 2021. CUPA W&WW Statement No. 7-R at 15:2-4.
- d. From July 2019 through June 30, 2021 in the Penn Estates territory, CUPA received only one sediment related call and four appliance related calls. Regarding the sediment call, the customer called about red rusty sediment in their pressure gauge located just after the meter. CUPA provided the customer with a new pressure gauge upon investigating the complaint. The four appliance calls were complaints related to the water pressure being too high and either claiming that the pressure damaged their water heater or the heaters pressure reducing valve (PRV). CUPA recommends all homes have PRVs. The maintenance of PRVs is the responsibility of the customer, a fact of which CUPA informed each customer at the time of CUPA's investigation. CUPA W&WW Statement No. 7-R at 17:12-22.
- e. CUPA worked with its outside consultant, GHD, to assess and improve system operations to minimize loss of service in the Penn Estate's system. By report dated February 23, 2021, various recommendations were made. CUPA W&WW Statement No. 7-R at 21:13-14; OCA St. 4SR at 8:13- 14:2.

16. Westgate Water:

- a. CUPA purchases water for its Westgate system from the City of Bethlehem. CUPA W&WW Statement No. 7-R at 20:8. The annual water

quality reports for Westgate show no violations for 2018-2019, and only a single failure to monitor and report violation in 2020.

*Id.* at 20:8-11.

- b. CUPA has a 3-year hydrant operation and maintenance schedule with a new service company, Rogers Hydrant Service, which started in 2020. The schedule includes hydrants being flushed two times per year, and customers receive notice of the flushing at least one day in advance through their on-file preferred communication method. CUPA W&WW Statement No. 7-R at 19:3-7.
  - c. CUPA actively maintains and monitors its valves at regular intervals. In 2020, CUPA undertook an extensive valve inspection program on Westgate water mains and generated inspection reports which allowed CUPA to create a strategic plan to isolate areas and insert new valves and/or repair or replace existing valves. Based on the inspection program, CUPA began its valve replacement program in early 2021 and is in the process of replacing valves and inserting additional valves in the system. CUPA W&WW Statement No. 7-R at 19:7-13.
17. After reviewing CUPA's rebuttal testimony, in its surrebuttal testimony, I&E withdrew its zero percent rate of return recommendation, acknowledged that CUPA had addressed or offered explanatory or contextual evidence in response to the issues raised at the public input hearing, and recommended the company complete additional reporting. I&E WW St. No. 3-SR at 16:11-16; I&E W St. No. 3-SR at 29:12-20; I&E St. No. 2-SR at 22:13-17. OCA in its surrebuttal testimony suggested, inter alia, that CUPA submit individual PUC Form 500's for each water system, report boil water advisories and do not consume advisories to the parties, have Tamiment Wells Nos. 1 and 3 tested for secondary contaminants,

have its engineer make recommendations for the Company to ensure adequate supply and pressures in the Penn Estates water system, provide information to new and existing customers regarding operation and maintenance of grinder pumps and, for the Penn Estates wastewater system, provide copies of progress reports on the Company's compliance with the October 22, 2020 Department of Environmental Protection/CUPA Consent Order & Agreement to the parties. OCA St. 4SR at 14:8-15:20.

18. In response to OCA's suggestion and based on customer testimony, on September 10, 2021, CUPA tested Tamiment Well Nos. 1 and 3 for secondary containments. The results show these wells are in compliance with secondary water quality standards. CUPA W Exhibit No. 1-T.
19. The surrebuttal and rejoinder testimony demonstrated Joint Petitioner's continued disagreement on revenue requirement, rate design, and rate of return.
20. In establishing a proposed base rate increase, the proposed Settlement fairly balances CUPA's revenue needs with the challenges raised by the parties concerning a rate increase and the structure of that rate increase, particularly given each of the Joint Petitioners had a different view on rate design. The Settlement also contains provisions to address the other concerns the parties identified about various aspects of CUPA's operations and service including customer service, customer assistance, safety and customer education. As such, it represents a comprehensive resolution of issues in dispute and a reasonable compromise of differing objectives and views.
21. Fairly balancing the Joint Petitioner's positions, the proposed Settlement provides for a total combined increase for water and wastewater of \$1,460,000, which is approximately 17% less than the originally proposed increase. The rate design also fairly balances positions of the parties. While CUPA

wanted to fully consolidate Tamiment rates, other parties disagreed with full consolidation in this proceeding due to magnitude of rate increase necessary to achieve full consolidation. Instead, the Settlement provides for approximately 50% consolidation for Tamiment rates toward the rates of the other CUPA customers. Moreover, the Settlement allocates rate increases to volumetric charges, not fixed customer charges, to encourage conservation.

22. The combination of the negotiated revenue increase and rate design results in rate increases to customers that are fair. For those customers most impacted, the Settlement provides for low income rates for water, provision for CUPA to propose a low income pilot program for wastewater customers in its next base rate case, and participation by CUPA in the Low Income Household Water Assistance Program and commitment to help promote registration by eligible customers. The Settlement also provides for a stay-out, so that customer base rates will not increase again for at least two years. The rate increases on an average bill basis are as follows:

ATTACHMENT A

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	
Name	W/WW	Class	Meter Size	12/31/22				PWAC Surcharge	Current Average Bill	12/31/22		Proposed		Proposed Increase	Proposed Increase %	Settlement			
				Average Usage	BFC	Usage Rate	Usage Rate			Average Usage	Proposed BFC*	Usage Rate*	Proposed Average Bill			Current Average Bill	Proposed Average Bill	Proposed Increase	Settlement Increase %
CUPA Consolidated Service Territories	W	RES	5/8"	3,976	\$ 17.25	\$ 9.283	\$ -	\$ 54.16	3,976	\$ 17.25	\$ 13.514	\$ 70.98	\$ 16.82	31.06%	\$ 54.16	\$ 70.98	\$ 16.82	31.06%	
CUPA Low Income Customer	W	RES	5/8"	3,976	\$ 17.25	\$ 9.283	\$ -	\$ 54.16	3,976	\$ 17.25	\$ 8.784	\$ 52.18	\$ (1.99)	-3.67%	\$ 54.16	\$ 52.18	\$ (1.99)	-3.67%	
Tamiment Service Territory	W	RES	5/8"	2,738	\$ 18.18	\$ 5.130	\$ -	\$ 32.23	2,738	\$ 18.18	\$ 11.452	\$ 49.54	\$ 17.31	53.71%	\$ 32.23	\$ 49.54	\$ 17.31	53.71%	
Tamiment Low Income Customer	W	RES	5/8"	2,738	\$ 18.18	\$ 5.130	\$ -	\$ 32.23	2,738	\$ 18.18	\$ 7.444	\$ 38.57	\$ 6.34	19.66%	\$ 32.23	\$ 38.57	\$ 6.34	19.66%	
CUPA Consolidated Service Territories	WW	RES	5/8"	-	\$ 55.39	\$ -	\$ -	\$ 55.39	-	\$ 74.73	\$ -	\$ 74.73	\$ 19.34	34.91%	\$ 55.39	\$ 74.73	\$ 19.34	34.91%	
Tamiment Service Territory	WW	RES	5/8"	3,406	\$ 24.48	\$ 13.730	\$ -	\$ 71.24	3,406	\$ 26.15	\$ 13.977	\$ 73.75	\$ 2.51	3.53%	\$ 71.24	\$ 73.75	\$ 2.51	3.53%	
CUPA Consolidated Service Territories	W	COM	5/8"	2,861	\$ 17.25	\$ 9.283	\$ -	\$ 43.81	2,861	\$ 17.25	\$ 12.876	\$ 54.09	\$ 10.28	23.46%	\$ 43.81	\$ 54.09	\$ 10.28	23.46%	
Tamiment Service Territory	W	COM	5/8"	5,956	\$ 121.25	\$ 5.130	\$ -	\$ 151.80	5,956	\$ 121.25	\$ 10.815	\$ 185.66	\$ 33.86	22.30%	\$ 151.80	\$ 185.66	\$ 33.86	22.30%	
CUPA Consolidated Service Territories	WW	COM	5/8"	-	\$ 55.39	\$ -	\$ -	\$ 55.39	-	\$ 74.73	\$ -	\$ 74.73	\$ 19.34	34.91%	\$ 55.39	\$ 74.73	\$ 19.34	34.91%	
Tamiment Service Territory	WW	COM	5/8"	6,125	\$ 163.24	\$ 13.730	\$ -	\$ 247.34	6,125	\$ 26.15	\$ 13.977	\$ 111.76	\$(135.58)	-54.81%	\$ 247.34	\$ 111.76	\$(135.58)	-54.81%	

23. To the extent service issues were not addressed via the evidence recited above, the Settlement also includes terms to improve service, including the reporting and other terms OCA and I&E requested in testimony on boil water advisories, do not consume advisories, compliance with DEP Consent Order and agreement, submission of information on lost and unaccounted for water broken down by service territory and cause, record keeping on isolation valve exercising, advance notice to Tamiment customers regarding planned system maintenance that may discolor water, terms to address low water pressure and improvement of water supply for Penn Estate's customers, provision of information to wastewater customers regarding grinder pumps, and updated call center performance data.
24. On balance, the Settlement comprehensively resolves all issues raised during the proceeding in a manner that is consistent with the public interest.

The Conclusions of Law are as follows:

1. The Joint Petition for Settlement is in the public interest.
2. The rates, terms and conditions contained in the Joint Petition for Settlement are, until changed on a going-forward basis as provided in the Public Utility Code, Commission-made, just and reasonable, and in the public interest.

## **VI. Discussion**

As a preliminary matter, we note that any issue discussed in the briefs or the *November Order* that we do not specifically delineate herein shall be deemed to have been duly considered without further discussion in our approval of the Settlement. We are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also*

*see, generally, University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).*

#### **A. Certification of Material Question**

We begin by noting that when certifying a material question, the ALJ must explain the compelling reasons why interlocutory review will prevent prejudice or expedite the conduct of the proceeding. The Commission's Regulations with respect to Petitions for Interlocutory Review may be found at 52 Pa. Code § 5.301, *et seq*, which states:

##### **§ 5.305. Interlocutory review of a material question submitted by a presiding officer.**

- (a) During the course of a proceeding, a presiding officer may certify to the Commission for review and answer a material question which has arisen or is likely to arise. The question will be accompanied by the following:
  - (1) An explanation of the compelling reasons why interlocutory review will prevent prejudice or expedite the conduct of the proceeding.
  - (2) A statement as to whether a stay of the proceedings has been placed in effect.
  - (3) An extract from the record that will assist the Commission.
- (b) A copy of the question certified and the accompanying information will be served on the parties at the same time it is submitted to the Commission.
- (c) Within 7 days of service of the certification, each party may submit a brief directed to the Commission addressing the merits of the question for which an answer is requested and whether a stay of proceedings

is required to protect the substantial rights of a party.  
The brief may not exceed 15 pages.

- (d) Additional briefs will not be permitted unless directed by the Commission.
- (e) Within 30 days of receipt of the certified question, the Commission will, without permitting oral argument, do one of the following:
  - (1) Continue, revoke or grant a stay of proceedings.
  - (2) Determine that the certification was improper and return the matter to the presiding officer for resolution.
  - (3) Answer the certified question.
- (f) Failure of the Commission to act upon a certified question within 30 days of its receipt will be deemed to be an affirmance of the decision of the presiding officer.

52 Pa. Code § 5.305.

We recognize that there may indeed be situations where interlocutory review of a recommendation by a presiding officer of a proposed settlement may be appropriate. Under the circumstances presented here, however, we see no compelling reasons why prejudice would be prevented nor how answering the question would expedite the proceeding; in fact, the ALJ specified that, “[b]ecause this is a general base rate case with a statutory deadline” the choice to certify a Material Question was “not about expediting the proceeding or preventing prejudice.” *November Order* at 3. Therefore, as interlocutory review is not necessary, the material question must be answered in the negative.

In the *November Order*, the ALJ explained that both precedent and the Commission's Procedures Manual dictated that his recommendation should be in the form of an order. He cited *Pa. PUC, et al. v. C.S. Water and Sewer Associates*, Docket No. R-881147, 74 Pa. P.U.C. 716 (1991) (*C.S. Water and Sewer Associates*), in which the ALJ issued an Interim Order rejecting a proposed settlement in a general base rate case; the parties there filed a Petition for Interlocutory Review with the Commission seeking review of the judge's determination, which review the Commission granted. *November Order* at 8.

In the instant case the record was fully developed. For this reason, the recommendation should have been issued in the form of a recommended decision, as is customary in base rate cases, which have specific statutory deadlines.

Recommended decisions allow for full review of the record by the ALJ and vetting by the parties through the clearly delineated process of filing exceptions and replies thereto. This provides the Commission the most useful information in a condensed, but complete format to render a decision on the merits of a proposed settlement. It also gives the parties a full and fair opportunity to be heard on complex and detailed base rate case issues, while the use of exceptions and replies to exceptions allow the parties to fully analyze and discuss the ALJ's reasoning and weighing of the evidence presented in the proceeding.

In contrast to the Recommended Decision process, the issuance of an Order and Certification of a Material Question purposefully employs a truncated briefing process with short timeframes and page limits that do not equate to the comprehensive Exception/Replies procedural scheme. Interlocutory review lends itself to abbreviated analysis of material questions impacting how a case moves forward. Brevity is its hallmark. Even if permissible, it is not the ideal process for full consideration of a comprehensive base rate case settlement and its many issues.

We encourage the Office of Administrative Law Judge to issue Recommended Decisions in base rate cases, as contemplated by our Regulations and Section 334(a) of the Code, 66 Pa. C. S. §334(a), even if they recommend rejection of comprehensive settlements agreed-to by all active parties, unless particular circumstances require a different option, such as the use of interlocutory review or a certification order.

In this particular case, interlocutory review by means of a certified question was unnecessary; the better approach would have been through issuance of a Recommended Decision pursuant to Section 334(a) of the Code, 66 Pa. C.S. § 334(a). However, the Parties were given notice and an opportunity to respond. The *November Order* clearly explained the rationale for rejecting the proposed settlement, supported by record citations. While the *November Order*, as certification of a material question, would have limited both the response period and page limitations to those associated with interlocutory review, those limitations were waived by Secretarial Letter issued on November 12, 2021, in which the Commission granted the brief page extension request to permit a 40-page brief and waived the 30-day time period for action by the Commission on the material question.

Having answered the material question in the negative, as being improperly presented, we also note that we disagree with the *November Order's* conclusion that rejection of the Settlement was proper. Instead, and as detailed in the discussion that follows, we determine that the Settlement, as a whole, is in the public interest and approve it in its entirety.

**B. Revenue Requirement Increases and Black Box Settlement**

The Joint Petition reduces the water revenue requirement from the \$757,517 originally sought to \$630,000, constituting a reduction of \$127,571 or 16.8%. See Supplement No. 9 to Tariff Water-Pa. P.U.C. No.1 filed April 12, 2021, Joint Petition

filed October 12, 2021. Similarly, the Joint Petition reduces the wastewater revenue requirement from the \$998,705 originally sought to \$830,000, constituting a reduction of \$168,705 or 16.9%. *See* Supplement No. 7 to Tariff Wastewater-Pa. P.U.C. No.1, Joint Petition filed October 12, 2021.

Both of these revenue requirement reductions are a part of what is referred to as a “black box” settlement. This means that the settling parties were not able to agree on each and every element of the revenue requirement calculation. The Commission has recognized that “black box” settlements can serve an important purpose in reaching consensus in rate cases:

We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. *See, Pa. PUC v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. PUC v. Citizens’ Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). 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. PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013).

Acceptance of “black box” settlements comports with the Commission’s policy encouraging both full and partial settlements. *See* 52 Pa. Code §§ 5.231(a), 69.401. Rate increase proceedings are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of

preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yielding significant expense savings for the utility's customers. *Cf., United Water Pennsylvania, Inc.*, Docket No. R-2015-2462723 (Order entered August 20, 2015 adopting Recommended Decision dated July 13, 2015) and cases cited therein.

In this case each of the public advocates (I&E, the OCA and the OSBA) specifically address the advantages of a "black box" settlement with respect to required revenue in their respective statements in support of the Joint Petition.

The Settlement rates represent a compromise of I&E's overall revenue position. It is important to note that due to the "black box" nature of the Settlement, there is no agreement upon individual issues. Instead, the Joint Petitioners have agreed to an overall increase to base rates that is less than what was requested by the Company. Line-by-line identification and ultimate resolution of every issue raised in the proceeding is not necessary to find that the Settlement satisfies the public interest, nor could such a result be achieved as part of a settlement. Black box settlements benefit ratepayers because they allow for the resolution of a contested proceeding at a level of increase that is below the amount requested by the regulated entity and in a manner that avoids the significant expenditure of time and resources related to further litigation.

Appendix J to Joint Petition, I&E Statement in Support at 7.

The Settlement represents a "black box" approach to the revenue requirement including cost of capital issues. Black box settlements avoid the need for protracted disputes over the merits of individual revenue requirement adjustments and avoid the need for a diverse group of stakeholders to attempt to reach a consensus on each of the disputed accounting and ratemaking issues raised in this matter, as policy and legal

positions can differ. As such, the parties have not specified a dollar amount for each issue or adjustment raised in this case. Attempting to reach agreement regarding each adjustment in this proceeding would have likely prevented any settlement from being reached.

Based on the OCA's analysis of CUPA's filing, discovery responses received, and testimony by all parties, the revenue increase under the Settlement represents a result that would be within the range of likely outcomes in the event of full litigation of the case.

Appendix I to Joint Petition, OCA Statement in Support at 5-6.

At a time when all types of utility service are becoming more expensive, and the effects of the COVID-19 pandemic are still being felt by customers,<sup>1</sup> the significant reduction in the overall revenue increase provided by the *Settlement* will benefit all of CUPA's customers, including the Company's small business customers. The *Settlement* substantially reduces the Company's originally proposed rate increase to mitigate the economic burden on ratepayers, while affording the Company sufficient revenue to proceed with planned investments necessary to provide safe, effective and reliable water and wastewater service.

Appendix K to Joint Petition, OSBA Statement in Support at 2 (footnote omitted).

It is especially significant that each of the public advocates adopt a "black box" settlement resolution of the revenue requirement issue, given their legally-prescribed responsibilities in a general rate increase case before the Commission.

The OCA is empowered to represent the interests of Pennsylvania consumers before the Commission, pursuant to Act 1976-161 of the General Assembly, as amended, 71 Pa. C.S. §§ 309-1 et seq. This includes base rate proceedings such as the instant matter.

The OSBA is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50) to represent the interests of small business consumers as a party in proceedings before the Commission, including base rate cases such as the instant matter.

I&E is statutorily charged with taking “appropriate enforcement actions, including rate proceedings . . . to insure compliance with this title [Title 66, Pennsylvania Consolidated Statutes], commission regulations and orders.” 66 Pa. C.S. § 308.2.(a)(11). *See, also, Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Final Procedural Order adopted and entered August 11, 2011) (BI&E will serve as the prosecutory bureau for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge.)

The Commission, in *Pa. PUC v. UGI Utilities, Inc. – Electric Division (UGI)* has recently observed:

One could argue that these three entities alone constitute representation of the entire public whose welfare is to be protected. The OCA represents the interests of all of UGI Electric’s individual ratepayers, including, in this case, Ms. Brace. The OSBA represents the interests of all of UGI Electric’s small business ratepayers. I&E represents the Commission as the entity charged with ensuring that rates are just and reasonable and, therefore, protective of all of UGI Electric’s ratepayers of whatever category.

All three of these entities, frequently described as the “public advocates,” actively participated in the instant case, and all three participated in the negotiation of the Settlement contained in the Joint Petition and have stated their support for its adoption by the Commission. *See* OCA Statement in Support, OSBA Statement in Support, and I&E Statement in Support. We fully find that the combined efforts of the OCA,

the OSBA, and I&E adequately and completely protect the public interest in this case.

*Pa. PUC v. UGI Utilities, Inc. – Electric Division*, Docket No. R-2021-3023618 (Opinion and Order entered October 28, 2021).

The Commission’s observations in *UGI* apply with equal force in this case. The public interest is protected with respect to the determination of CUPA’s required revenue although such requirement is determined as a part of a “black box” settlement. As discussed more fully, *infra.*, our examination of the comprehensive Settlement, as a whole, leads us to conclude that, on balance, the Settlement is in the public interest and should be approved.

### C. Stay Out

Public utility companies such as CUPA may only attempt to receive a general rate increase through the mechanism of a base rate case. 66 Pa. C.S. § 1308(d). *See Popowsky v. Pa. PUC*, 869 A.2d 1144 (Pa. Cmwlth. 2005). A time period limitation on a public utility’s ability to seek a general rate increase is contained in 66 Pa. C.S. § 1308(d.1). The Pennsylvania Commonwealth Court has succinctly summarized the operation of these provisions of the Code as follows:

Public utilities may file for a general rate increase pursuant to Section 1308(d) of the Code, 66 Pa.C.S. § 1308(d). A general rate increase is defined therein as one which affects more than five percent of the public utility’s customers and amounts to an increase in excess of three percent of the utility’s total gross annual intrastate operating revenues. A general rate increase may be suspended for a maximum of seven months, after an initial sixty-day review by the Commission. Section 1308(d.1) of the Code, 66 Pa.C.S. § 1308(d.1), however, prohibits a public utility from filing multiple general rate requests with the

Commission. Such multiple filings are referred to as “pancaking.”

*Masthope Rapids Property Owners Council v. Pa. PUC*, 135 Pa. Commw. 437, 581 A.2d 994 (1990).

Were it not for the prohibition against filing another general rate increase request “until the commission has made a final decision and order on the prior general rate increase request or until the expiration of the maximum period of suspension of the prior general rate increase request” contained in 66 Pa. C.S. § 1308(d.1), a public utility would be free to file multiple general rate increase requests on a monthly, weekly or even daily basis. In reality, as prescribed by the Code, a public utility must “stay out” from requesting a subsequent general rate increase for approximately nine months. Public utility companies may, however, and often do, agree to “stay out” for longer periods of time as part of the negotiated settlement of a contested general rate increase case.

The benefits derived from a “stay out” agreement such as that presented in the instant case are numerous. A “stay out” settlement provision provides ratepayers, whether individuals, small businesses, or large commercial enterprises, rate stability for a definite time period. This allows ratepayers to plan and budget with respect to public utility expense. Additionally, all parties who usually actively participate in general rate increase cases, *i.e.*, the utility company involved, and the public advocates (the OCA, the OSBA and the Commission through I&E), as well as the Office of Administrative Law Judge and the Commission itself), are relieved of the time and expense of litigating another base rate case for the “stay out” period.

It must be emphasized, however, that settlement agreement “stay out” provisions are not required but are voluntary and achieved only as a part of a larger negotiation.

In the instant case, CUPA agrees to a “stay out” provision that provides:

The Company agrees that it will not file for a general increase pursuant to 66 Pa C.S. § 1308(d) to water or wastewater base rates earlier than September 30, 2023. This paragraph does not apply to extraordinary or emergency rate relief pursuant to 66 Pa. C.S. § 1308(e) (or upon a petition for emergency rate increase), tariff changes required by Commission order or industry-wide changes in regulatory policy which affect CUPA’s rates.

Joint Petition at 8.

Given that the suspension date for Commission action has been extended to February 18, 2022, CUPA agrees to a “stay out” period of more than seventeen months. With the addition of the normal nine-month time period for conducting a general rate increase case, any future rate increase by CUPA appears to be more than two years in the future.

A two-year “stay out” or less, has been a part of Commission-approved settlements in a number of general rate increase cases. *See Pa. PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886, (Opinion and Order entered December 19, 2013) (company agrees not to increase base rates prior to January 1, 2014), *Pa. PUC v. Pike County Light & Power Company – Electric*, Docket No. R-2020-3022135 (Opinion and Order entered July 21, 2021) (rate increase to be effective not sooner than July 28, 2021, company will not file for DSIC increase with an effective date prior to July 1, 2022), *Pa. PUC v. Pennsylvania-American Water Company*, Docket No. R-2020-3019369 (Opinion and Order entered February 25, 2021) (rate increase to be phased in using two installments, the first effective January 28. 2021 and the second effective January 1, 2022 – this is the functional equivalent of a “stay out” for part of the rate increase), *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-2018-3003558 (Opinion and Order entered May 9, 2019) (company will not file for a general rate

increase prior to April 30, 2021), *Pa. PUC v. Total Environmental Solutions, Inc. – Treasure Lake Water Division*, Docket No. R-2010-2171918 (Opinion and Order entered March 17, 2011) (one-year “stay out” provision).

Commission approval of settlement agreements containing less than a two-year “stay out” provision has occurred even in cases where the settlement provides for double digit percentage revenue increases for the utility. *See Pa. PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886, (Opinion and Order entered December 19, 2013), *Pa. PUC v. Pike County Light & Power Company – Electric*, Docket No. R-2020-3022135 (Opinion and Order entered July 21, 2021).

Of even greater importance, the Commission has approved settlement agreements that do not contain any “stay out” provision at all. *See Pa. PUC v. City of Bethlehem – Water Department*, Docket No. R-2020-3020256 (Opinion and Order entered April 15, 2021), *Pa. PUC v. UGI Utilities, Inc. – Electric Division*, Docket No. R-2021-3023618, (Opinion and Order entered October 28, 2021).

Determining an appropriate “stay out” period depends upon a number of factors. These factors include the utility’s past history regarding its frequency of filing general rate increase cases, the utility’s acquisition of other troubled utility companies, the utility’s commitment in the settlement agreement to undertake significant system and service improvements and major exogenous factors such as an ongoing pandemic or unanticipated rapid inflation.

The duration of a “stay out” provision negotiated by the utility and the public advocates, as only one aspect of a comprehensive settlement agreement, is entitled to an inference of being just and reasonable. It must always be remembered that there is no requirement for a settlement agreement to contain any “stay out” provision. The inclusion of one is voluntary and is achieved only by negotiation. For these reasons, we

find that the inclusion of a stay provision in the comprehensive Settlement negotiated here is in the public interest.

#### **D. Effective Date**

The Joint Petitioners agreed that, upon the entry of a Commission Order approving the Joint Petition, the Company will be permitted to file a tariff for water service, in the form attached to the Joint Petition as Appendix B, and a tariff for wastewater service, in the form attached thereto as Appendix C, reflecting the agreed upon additional operating revenue. Joint Petition at 8, ¶ 5. The Joint Petitioners also agreed to the implementation of the Settlement rates on January 12, 2022, when the original statutory suspension period was to expire, if the Commission were to enter an Order approving the Joint Petition, prior to, or on that date.<sup>7</sup> *Id.*

Acknowledging that the Commission may act upon the Settlement after January 12, 2022, the Joint Petitioners agreed that, should the Commission approve the Settlement after that date, CUPA shall be entitled to recoup the revenue increase not billed from the effective date of January 12, 2022, through the date of any Commission approval of new rates in the manner set forth in the Commission's final Order in this proceeding. Joint Petition at 8, ¶ 6. The Joint Petitioners agreed that the revenue increases not billed from the effective date of January 12, 2022, through the date of Commission approval of new rates will be recovered over a six-month period that shall be applied proportionately to all customer classes via a surcharge on each monthly bill during the six-month recovery period. Finally, the Joint Petitioners agreed that the Company will be permitted to file a tariff page, in the form attached to the Joint Petition as Appendix D, to implement the surcharge. *Id.*

---

<sup>7</sup> As noted previously, by Order entered July 22, 2021, the procedural suspension date was extended from January 12, 2022 to February 18, 2022.

We agree with the Joint Petitioners that these effective date terms are consistent with the public interest in our overall determination that the negotiated settlement package is in the public interest.

## **E. Rate Design and Structure**

### **1. Terms and Conditions of Settlement**

This section of the Opinion and Order addresses the provisions of the Settlement pertaining to rate design. When a utility files for a rate increase and the proposed increase exceeds \$1 million, the utility must include with its filing an allocated class cost-of-service study (ACCOSS) in which it assigns to each customer class a rate based upon operating costs that it incurred in providing that service. 52 Pa. Code § 53.53; *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1015 (Pa. Cmwlth. 2006) (*Lloyd*). Public utility rates should enable the utility to recover its cost of service and should allocate this cost among its customers. These rates are required by statute to be just, reasonable and non-discriminatory. 66 Pa. C.S. §§ 1301, 2804(10).

An ACCOSS is a benchmark for evaluating customer class cost responsibility with the fundamental purpose of aiding in the accurate and reasonable design of rates by identifying all the capital and operating costs incurred by the utility in serving its customers, and then directly assigning or allocating these costs to each individual rate class based on established principles of cost-causation.

Although not required under Commission Regulations to submit an ACCOSS for a rate increase under \$1 million, CUPA prepared and presented consolidated cost-of-service studies for the Company's water and wastewater divisions, encompassing all territories serviced by CUPA, including the Tamiment service

territory.<sup>8</sup> In recognition of the Company's purported relatively homogenous nature of its customer base, CUPA's cost-of-service studies do not distinguish between types of metered customers; that is, residential and commercial customers are treated equivalently. CUPA-W Exh. SAM-1 (Revised); CUPA-WW Exh. SAM-1 (Revised).

The cost-of-service study prepared by CUPA, for the purpose of designing proposed rates for the Company's water division, utilized the well-accepted Base-Extra Capacity method. This methodology identifies costs and allocates them to the functional cost categories of base costs, extra capacity costs, customer costs and fire hydrant costs. As previously indicated and as shown on CUPA-W Exhibit SAM-1 (Revised), Mr. Miller's analysis does not differentiate classes of service between metered residential and commercial, but rather only between general metered service, public fire, and to some extent, availability. Therefore, because CUPA's proposed rate design initially maintains the same usage (volumetric) rates for residential and commercial customers, but then increases the residential usage rate to provide recovery of the discounts provided for under the Low-Income Program, there are no complications created in evaluating the reasonableness of the Company's residential versus commercial metered rates, and furthermore, there are no interclass subsidies created. *See* CUPA-W St. No. 4-RJ at 3-4.

The wastewater cost-of-service study prepared by CUPA is based on the U.S. Environmental Protection Agency's (EPA) User Charge System. As explained by Mr. Miller who also sponsored the wastewater study, the User Charge System was

---

<sup>8</sup> As previously explained, CUPA provides water service in three service territories: Westgate, Penn Estates, and Tamiment. The water rates for the Westgate and Penn Estates service territories are consolidated in that the same rates are currently applicable to customers in both service territories. Likewise, CUPA provides wastewater service in three service territories: Utilities, Inc. of Pennsylvania, Penn Estates, and Tamiment. The wastewater rates for the Utilities, Inc. of Pennsylvania and Penn Estates service territories are consolidated in that the same rates are currently applicable to customers in both service territories.

originally developed and required by the EPA for wastewater projects receiving federal grant funding during the construction grants program of the 1980s. *See* CUPA-WW St. No. 6 at 7. The rates produced in CUPA-WW Exhibit SAM-1 (Revised) use a share of allocable equivalent meters (16.16%) to identify a share of treatment and disposal costs to assign to Tamiment customers, but it is not necessary to allocate this cost to classes as residential and commercial customers are treated equivalently.

We note that, consistent with the Company's goal of adopting rates that reflect a unified rate structure for its multiple water and wastewater territories, the cost-of-service studies presented by CUPA in this proceeding are clear, in that there is only one set of demand characteristics used, which are for the entirety of CUPA; phrased another way, there is only one class. Therefore, as the Settlement ultimately does not provide for full consolidation of Tamiment customers in this proceeding, the cost-of-service studies presented can only be used as a starting point or rough guide in the movement to reduce the rate differences between the consolidated CUPA systems and Tamiment customers, water and wastewater.

In this proceeding CUPA originally proposed to consolidate the Tamiment rates with the rates for Westgate and Penn Estates, which, if approved, would result in the same rates for all three service territories. CUPA-Water's current rates for water service consist of a fixed customer charge which varies based on meter size and a volumetric usage charge.<sup>9</sup> In addition to these rates, CUPA-Water assesses a fixed availability charge to customers in the Penn Estates and Tamiment service territories that own lots without buildings where water service is available. CUPA-W Exhibit AWD-2, sponsored by CUPA witness Mr. Andrew W. Dickson, identified CUPA-Water's existing and

---

<sup>9</sup> Westgate and Penn Estates customers are currently billed monthly and Tamiment customers are currently billed quarterly. CUPA-Water proposed to bill all customers on a monthly basis.

proposed rates for water service.<sup>10</sup> As indicated in CUPA-W Exhibit AWD-2, the Company proposed the introduction of a Low-Income residential volumetric usage charge. OSBA witness, Brian Kalcic, summarized the Company's proposed increases, as presented in its rebuttal testimony, to its consolidated and Tamiment water rate areas, as well as on a total system basis, as follows:

Class	Currently Consolidated		Tamiment		Total System	
	Proposed Increase		Proposed Increase		Proposed Increase	
<b>Residential</b>	\$488,675	28.6%	\$187,036	73.6%	\$675,711	34.4%
<b>Commercial</b>	\$6,415	23.8%	\$17,087	204.0%	\$23,502	66.5%
<b>Availability</b>	(\$1,662)	-16.2%	\$36,959	147.2%	\$35,297	99.7%
<b>Public Fire</b>	\$23,243	111.1%	\$0	0.0%	\$23,243	111.1%
<b>Total</b>	<b>\$516,670</b>	<b>29.2%</b>	<b>\$241,082</b>	<b>83.8%</b>	<b>\$757,752</b>	<b>36.9%</b>

See OSBA Exh. BK-1S, Sch. BK-1S.

All customers in the consolidated Utilities, Inc. of Pennsylvania and Penn Estates service territories, except schools and availability customers, are currently assessed the same fixed monthly rate for wastewater service. Schools are currently assessed a fixed per student charge and availability customers in the Penn Estates service territory are assessed a fixed monthly charge. Wastewater customers in the Tamiment service territory are currently assessed a fixed quarterly customer charge and a volumetric

<sup>10</sup> In order to be consistent with Section 1328 of the Code, CUPA-Water revised its proposed rates in rebuttal testimony to limit the increase to public fire protection rates to 25 percent of the cost of providing service to that class. CUPA-W St. No. 4-R at 13; 66 Pa. C.S. § 1328(b)(1). The Company revised its as-filed availability and customer charges upward to recover the foregone revenue associated with its reduced hydrant charge.

usage charge based on water usage. Availability customers in the Tamiment service territory are currently assessed a quarterly fixed charge.

In this proceeding, CUPA-Wastewater originally proposed to consolidate the wastewater rates for all three service territories and charge all customers, except schools and availability customers, a single monthly fixed charge. Schools would continue to be assessed a fixed per student charge and the same fixed charge would be applicable to all availability customers. CUPA-WW Exhibit AWD-2, sponsored by CUPA witness Mr. Dickson, identified CUPA-Wastewater’s existing and proposed rates for wastewater service. OSBA witness, Mr. Kalcic, summarized the Company’s proposed increases to its consolidated and Tamiment wastewater rate areas, as well as on a total system basis, as follows:

Class	Currently Consolidated		Tamiment		Total System	
	Proposed Increase		Proposed Increase		Proposed Increase	
Residential	\$885,884	41.5%	\$45,510	9.8%	\$931,393	35.9%
Commercial	\$1,788	41.2%	(\$6,088)	-68.4%	(\$4,300)	-32.5%
Schools	\$5,787	35.2%	\$0	0.0%	\$5,787	35.2%
Availability	\$5,759	74.7%	\$60,149	200.2%	\$65,908	174.5%
<b>Total</b>	<b>\$899,219</b>	<b>41.6%</b>	<b>\$99,570</b>	<b>19.8%</b>	<b>\$998,789</b>	<b>37.5%</b>

See OSBA Exh. BK-1, Sch. BK-2.

**2. Water Rate Consolidation (Settlement at ¶ II.E.8)**

As previously indicated, CUPA-Water originally proposed that Tamiment customers’ rates be fully consolidated with the rates of the other CUPA-Water systems. However, incorporating the principles of gradualism, the Settlement achieves an

approximately 50% move towards consolidation, with full consolidation in CUPA-Water's next base rate proceeding. This aspect of the Settlement is responsive to the concerns raised by the OCA. OCA St. No. 3 at 7-9. Specifically, as shown above, CUPA-Water proposed to increase its total system water rates by an average of 36.9%; however, this meant a rate increase of over 80% for Tamiment water customers. The OCA noted that this stepped approach is consistent with how rates in the Penn Estates, Westgate and Utilities, Inc. of Pennsylvania systems were consolidated and recognizes the appropriateness of gradualism, while also reducing the gap in rates paid by Tamiment water customers relative to customers in the consolidated systems. OCA Statement in Support at 8.

### **3. Water Availability Rates (Settlement at ¶ II.E.12)**

For water availability rates, the Settlement limits the increases to 1.5 times the system average increase. This aspect of the Settlement is responsive to the concerns raised by the OCA and I&E in this proceeding. OCA St. No. 3 at 9; I&E St. No. 3 (Water) at 21-22. Initially, CUPA-Water proposed to convert the current Tamiment availability rate of approximately \$19.14 per quarter (equivalent to \$6.38 per month) to \$15.32 per month, resulting in an increase of approximately 141%. The approach in the Settlement, limiting the increase to 1.5 times the system average, comports with the concept of gradualism, because as OCA witness, Jerome D. Mierzwa testified, "While there is no hard and fast rule with respect to applying the concept of gradualism, typically an increase of 1.5 to 2.0 times the system average increase is considered consistent with the concept of gradualism." OCA St. No. 3 at 8.

### **4. Water Customer Charges (Settlement at ¶ II.E.12)**

The Settlement addresses another aspect of the rate design that CUPA-Water originally proposed. While recognizing that recovering revenue through

volumetric rates allows customers to control their bills, the Company sought to maintain the current level of fixed rate recovery (35% of total rate revenue) by proposing increases to both its volumetric rates and its fixed customer charges. CUPA-W St. No. 4 at 4. The OCA opposed this proposal because the Company's analysis showed that existing residential customer charges for all service territories already exceed cost-based charges. OCA St. No. 3 at 9-10; CUPA-W Exh. SAM-1 (Revised) at 16. Recognizing the concerns raised by the OCA in this proceeding, the Settlement provides that all current water service monthly customer charges will be maintained, excluding the Tamiment 6-inch commercial customer charge, which will be increased by the system average increase. This is responsive to the concerns raised by I&E in this proceeding. I&E St. No. 3 (Water) at 19. Initially, CUPA-Water proposed to increase the current Tamiment 6-inch customer charge rate of \$121.25 per month to \$873.09 per month, resulting in an increase of approximately 620%. The approach in the Settlement, limiting the increase to the system average, comports with the concept of gradualism, which requires that rates slowly increase so that customers do not receive sudden large increases and can become accustomed to paying a higher rate over time. *See* I&E St. No. 3 (Water) at 17.

#### **5. Low-Income Water Rate (Settlement at ¶ II.E.14-15)**

For low-income customers impacted by any rate increase, the Settlement provides an immediate low-income program for water customers; however, it is modified from the Company's original request in the following ways: (1) the discount rate is moderated;<sup>11</sup> (2) a regulatory asset/liability will be established to address any over/under

---

<sup>11</sup> Through settlement negotiations, the Parties agreed to a residential volumetric rate discount of 35% in lieu of the 65.4% discount proposed by the Company. This moderated discount lessens the bill impact on CUPA-Water customers paying full tariff rates while also providing low-income customers bill relief through the 35% volumetric rate discount.

collections from what is recovered in base rates;<sup>12</sup> and (3) the discount rate will be implemented on a pilot basis.<sup>13</sup>

The low-income water rate is a component of the Residential Low-Income Program that resulted from the negotiations leading up to this Settlement. A more detailed discussion of the low-income water rate will be addressed in Section I (Residential Low-Income Program), *infra*, along with the second component of the Residential Low-Income Program – the Low-Income Household Water Assistance Program (LIHWAP).

**6. Wastewater Rate Consolidation and Availability Rates (Settlement at ¶ II.E.9-10, 13)**

As noted above, CUPA-Wastewater also proposed to fully consolidate the Tamiment wastewater rates with the rates of the other CUPA systems. CUPA-WW St.

---

<sup>12</sup> This was an important element of the Settlement to address I&E's concern about the potential for over-recovery in base rates:

The projected levels of revenue shortfalls generated by the Company's generic analysis will cause harm to customers through the setting of the higher base rates necessary to subsidize this program. Finally, since the revenue shortfall is built into base rates with no reconciliation of actual participation costs to those projected in this base rate case, the potential excess revenue generated by low participation in the program merely provides excess revenues to the Company through the establishment of unreasonable and unsupported base rates.

I&E St. No. 3-SR (Water) at 26-27.

<sup>13</sup> Implementing this discount rate on a pilot, rather than permanent, basis provides the Company and the Parties an opportunity to evaluate whether there is an established need for the low-income rate and, if so, to assess whether the current rate is properly designed.

No. 1 at 8-9. Currently, wastewater customers in the consolidated territories pay unmetered, flat rates. *See* CUPA-WW Exh. DCM-1 at 2-1a. Wastewater customers in the Tamiment service territory are currently charged metered rates. As proposed by CUPA-Wastewater, consolidation of wastewater rates would mean eliminating metered rates for Tamiment wastewater customers. However, pursuant to the Settlement, the Company has committed to move away from its flat wastewater rates and move to metered usage for all divisions by developing and proposing metered rates in its next base rate filing. This aspect of the Settlement is responsive to the concerns raised by the OCA. Specifically, the OCA objected to the Company's proposal to move away from Tamiment's volumetric rates stating that doing so "would be inconsistent with the Commission's policy of eliminating minimum allowances and moving utilities toward metered rates." OCA St. No. 3 at 12. The OCA further stated that the Company's proposed flat rates are inconsistent with cost-of-service principles because customers are not billed for their actual use of CUPA-Wastewater's system. *Id.* To facilitate the Company's proposed metered wastewater rates, CUPA-Wastewater's next base rate filing will also include a cost-of-service study that assigns costs to customer classes based on flow requirements.

For wastewater availability rates, the Settlement moves the current Tamiment wastewater availability rate halfway toward the availability rate for the Penn Estates and Utilities, Inc. of Pennsylvania customers. Settlement ¶ II.E.13. This is a lesser increase than the 200% increase proposed by CUPA-Wastewater in its filing. OCA St. No. 3 at 13. While it is more than the rate recommended by OCA witness Mr. Mierzwa, it will serve to reduce the gap in availability rates between the CUPA-Wastewater systems. Accordingly, the rate change is a reasonable compromise of competing interests.

## 7. Positions of the Parties

In its Brief CUPA maintains, *inter alia*, that the Settlement provides for a gradual change in rates, especially to those customers in the Tamiment subdivision, which have not experienced a rate increase for over ten years and will not experience full rate consolidation until after September 30, 2023, pursuant to the two-year stay out provision included in the Settlement. CUPA Brief at 5-6. The rate design terms reflect the gradual incorporation of the Tamiment division by moving Tamiment usage rates for water service approximately 50% of the way from their existing level to the consolidated rates of CUPA-Water. The OCA points out that this gradual approach has been used in many cases where an acquired system's rates differ from main rate zone rates. OCA Brief at 5 (citing, *Pa. PUC v. Pennsylvania-American Water Co.*, R-2020-3019369 *et al.*, Order at 78-79 (approving a Settlement that mitigated the subsidies proposed in the rate case and moved the divisions closer to their cost to serve); *Pa. PUC v. Aqua Pennsylvania, Inc.*, R-2018-3003558 *et al.*, Order at 55, 58 (“In our view, it is fair, just and reasonable for rate divisions with current rates below the cost of service to receive larger increases”); *see also Lloyd v. Pa. PUC*, 904 A.2d 1010 at 1020 (Pa. Cmwlth. 2004); *A Guide to Utility Ratemaking*, James H. Cawley & Norman J. Kennard, Pa. P.U.C. (2018) (“This is the ratemaking principle of gradualism, counseling a slower incremental movement toward actual cost of service and the avoidance of sudden, quick increases in rates.”) (citations omitted)).

Both the Company and I&E highlight the fact that, although customers in the Tamiment service territory have not experienced a rate increase for more than ten years, the Company has already made significant improvements to both the water and wastewater systems, as shown by its capital expenditure reports:

Year end 2019

- Water - \$914,165 in plant additions
- Wastewater - \$610,472 in plant additions

Year end 2020

- Water - \$756,031 in plant additions
- Wastewater - \$835,457 in plant additions

*See* CUPA Brief at 16-17. The Parties argue that the ALJ's belief that CUPA's increases are too much cannot override the reality that the Company has significantly invested in its water and wastewater systems since its last base rate proceeding and will continue to make investments in the test year. I&E states that denying CUPA recovery is not legally supported and must be rejected. I&E Brief at 12-13.

CUPA notes that the *November Order* criticizes and rejects the Settlement on the basis that its rates "have not been tried in the fire of litigation" and are merely "deemed by the parties as just and reasonable *per se*." CUPA Brief at 15 (citing, *November Order* at 11). The Company argues this reasoning is incorrect, in that it fails to consider both the expertise and judgement of the Parties (I&E, the OCA, the OSBA, and CUPA), whose competing positions were included in the extensive and fully developed evidentiary record in this proceeding. A review of the litigation positions in this proceeding demonstrates that the Settlement rates are supported by the record, and moreover, are a substantial compromise and not "*de minimus*" reductions from CUPA's litigated position, as concluded in the *November Order* (*November Order* at 30):

Party	Litigation Position - Water	Litigation Position Wastewater
CUPA (Rejoinder Position)	\$752,106	\$992,203
I&E (Surrebuttal Position)	\$550,938	\$701,845
OCA (Surrebuttal Position)	\$607,708	\$682,198
Settlement Revenue Requirement		
CUPA, I&E, OCA, OSBA	\$630,000	\$830,000

*See* CUPA Brief at 15-16. CUPA points out that the Settlement rates are approximately 50% between the lowest litigation position of the advocates and CUPA’s litigation position. I&E notes that it “does not negotiate settlement rates based on expectation that rates should be lower, let alone substantially lower, than the filed request. Settlement negotiations are not outcome determinative as I&E uses the ratemaking equation to determine an appropriate settlement range. I&E begins with its litigation position as a starting point, which in this proceeding utilized a 9.25% return on equity and included operating expense adjustments totaling \$100,276 for water and \$139,837 for wastewater. Next, I&E adjusts its equity position and evaluates the strengths and weakness of its individual expense adjustments to determine an appropriate settlement range. The ALJ’s expectation that negotiated rates should be ‘substantially lower’ is not part of I&E’s settlement analysis especially since I&E’s mission is to protect the public interest, which includes balancing the interests of the utility.” I&E Brief at 11-12 (citations omitted).

CUPA also indicates that it has recognized affordability for low-income customers as a policy regarding its rate design. The proposed Settlement adopts, with slight modification, CUPA-Water’s proposal to establish a low-income program (discount volumetric rate) for water customers. The Company also notes the Settlement’s inclusion of a commitment by CUPA-Wastewater to propose a low-income pilot program for wastewater customers in its next base rate proceeding. Under the proposed

Settlement, rates for water service will increase more than wastewater, by percentage. The Company maintains that these programs, along with other Settlement provisions, will help to offset those increases for those most impacted. CUPA Brief at 11, 13, and 19.

In the *November Order*, the ALJ recognizes that under the proposed Settlement, the entire water increase for residential customers will be allocated to water volumetric rates as opposed to fixed customer charges. *November Order* at 32. The ALJ disagrees, however, that allocating the increase in this manner will allow customers more control over their bills on the basis that demand for water is inelastic and customers have already cut their volumetric consumption. *Id.* As the Parties have pointed out, the Commission recognizes the ability for customers to conserve and promotes conservation. CUPA Brief at 19 (citing, 52 Pa. Code § 65.20); OCA Brief at 5-6. The Parties argue that the Settlement term placing the water rate increase solely in volumetric rates allows customers greater control over their water bills compared to CUPA's initial proposal that would have increased fixed customer charges irrespective of reduced volumetric consumption. CUPA Brief at 19-20; OCA Brief at 5-6. The OCA noted, "[a]s Representative Sappey identified, rate increases placed on fixed customer charges have a disproportionate and burdensome effect on low-income seniors and working families." OCA Brief at 6 (citing, Tr. at 37).

Regarding the issue of conservation, the OCA also notes that the *November Order* does not recognize the impact of the Settlement on wastewater rate design. The OCA notes that moving to metered rates for the consolidated service territory, as the Settlement proposes to be done in CUPA-Wastewater's next base rate proceeding, is consistent with the Commission's policy of eliminating minimum allowances and moving utility rates toward metered rates. Furthermore, the OCA avers that adopting metered rates for all CUPA customers would provide additional incentives for customers to conserve and reduce their demands for both water and wastewater services. OCA Brief at 6.

## 8. Disposition

We note that although the *November Order* concludes that the Settlement, as set forth by the Joint Petitioners, must be rejected outright, it does not contest any specific provision concerning rate design, which, consistent with the stipulated revenue increase and the other provisions contained in the Settlement, were achieved through compromise. As previously indicated, this is a “black box” settlement as to the revenue requirement. Likewise, the Settlement does not provide any indication as to how specific costs are allocated among the various customer classes served. However, we agree with the positions of the Joint Petitioners, that the rate design provided for under the Settlement is a reasonable resolution of the Parties’ positions, affording appropriate primary consideration to cost causation principles per *Lloyd*<sup>14</sup> in tandem with secondary consideration for the value of service, gradualism, and affordability.

---

<sup>14</sup> The “polestar” of ratemaking concerns is the “cost of providing service.” *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1019-21 (Pa. Cmwlth. 2006) (*Lloyd*). Inherent in this principle of ratemaking is the recognition that public utilities are natural monopolies and that the Commission’s oversight through cost-of-service ratemaking serves as a proxy for a competitive market in appropriately restraining, or exerting downward pressure on, the profit-maximizing prices a monopoly could otherwise charge in the absence of price regulation. *See, e.g.*, OCA St. 1 at 4. With respect to a utility’s recovery of costs related to providing service, we have previously explained:

It is our opinion that in exchange for the utility’s provision of safe, adequate and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return for the utility’s investors. Thus, as the OCA contends, a quid pro quo relationship exists between the utility and its ratepayers. In return for providing safe and adequate service, the utility is entitled to recover, through rates, these enumerated costs. We find this principle to be consistent with the standards enunciated in [*Hope Natural Gas*] wherein it was stated that

There is not a prescribed “ratemaking formula” that the Commission must adhere to when determining just and reasonable rates. Rather, the Commission “has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.” *Popowsky v. Pa. PUC*, 683 A.2d at 961 (Pa. Cmwlth. 1996) (*Popowsky*). Included in the Commission’s broad ratemaking authority is the authority to approve alternative rates and rate mechanisms, including formula rates as well as decoupling mechanisms, performance-based rates, and multiyear rate plans. 66 Pa. C.S. § 1330(b)(1)(i)-(v).<sup>15</sup>

---

the “...fixing of ‘just and reasonable’ rates, involves a balancing of the investor and the consumer interests...”

*Pa. PUC v. Pennsylvania Gas & Water Co.*, Docket No. R-850178 (Order entered April 24, 1986), 61 Pa. P.U.C. 409, 415-16, 1986 WL 1301279.

<sup>15</sup> Section 1330(b)(1)(i)-(v) of the Code, 66 Pa. C.S. § 1330(b)(1)(i)-(v), provides the following:

**(b) *Alternative rate mechanisms.*—**

(1) Notwithstanding any other provision of law, including, but not limited to, sections 2806.1(k)(2) (relating to energy efficiency and conservation program) and 2807(f)(4) (relating to duties of electric distribution companies), the commission may approve an application by a utility in a base rate proceeding to establish alternative rates and rate mechanisms, including, but not limited to, the following mechanisms:

- (i) decoupling mechanisms;
- (ii) performance-based rates;
- (iii) formula rates;
- (iv) multiyear rate plans; or
- (v) rates based on a combination of more than one of the mechanisms in subparagraphs (i), (ii), (iii) and (iv) or other ratemaking mechanisms as provided under this chapter.

With that said, we acknowledge that a set of ratemaking norms have been developed over time and consistently utilized by parties in rate cases before the Commission to determine the appropriate level of a utility's requested revenue increase in accordance with all applicable legal and constitutional standards. These norms, or traditional ratemaking methodologies,<sup>16</sup> are used to determine a utility's cost of providing service, or its revenue requirement, and to determine appropriate rate structure, which includes, among other things, the appropriate allocation of the revenue requirement to various customer classes. However, while these ratemaking norms provide a rational and methodical way to analyze and determine the utility's cost of service, they also permit the consideration and weighing of important factors or principles in setting just and reasonable rates, such as quality of service,<sup>17</sup> gradualism,<sup>18</sup> and rate affordability.<sup>19</sup>

We acknowledge that there are several factors that must be considered when designing a rate recovery proposal, one of which is the concept of gradualism and affordability, which are classic small water company challenges faced by many similar-sized utilities across the nation. However, while affordability is permitted to be considered, it is but one of many factors to be considered and weighed by the Commission in determining a utility's rates. The rate increase reflects the business challenges the Company currently faces, including required investments in the

---

<sup>16</sup> See, e.g., *Pa. PUC et al. v. PPL Electric Utilities Corporation*, Docket Nos. R-2015-2469275 *et al.* (Recommended Decision issued October 5, 2015) at 32-33.

<sup>17</sup> See 66 Pa. C.S. §§ 523, 526(a).

<sup>18</sup> See *Lloyd*, 904 A.2d at 1020 (explaining that gradualism is the principle under which utility rates are gradually increased in order to avoid rate shock, as part of what is overall considered a reasonable rate under the circumstances and is permitted in implementing large rate increases).

<sup>19</sup> See *Pa. PUC et al. v. Twin Lakes Utilities, Inc.*, Docket No. R-2019-3010958 (Order entered March 26, 2020) at 48, 80 (the ALJ did not err in considering evidence relating to the various quality of service and rate affordability issues in the proceeding and factoring in such evidence as part of her overall determination on which expert witnesses' cost of equity to adopt for setting just and reasonable rates).

repair/replacement or improvement of its distribution systems, including acquired troubled water utilities' distribution system; and the high costs associated with maintaining a distribution system necessary to provide safe and reliable water and wastewater service within the Commonwealth.

As discussed *supra*, under the terms of the Settlement, the Parties noted significant concessions, resulting in the mitigation of the economic impact of the rate increases. Specifically, through the settlement rates, the Company's proposed increases in annual water and wastewater revenues were lowered by \$127,517 to \$630,000 and by \$168,705 to \$830,000, respectively (approximately 50% between the lowest litigation position of the advocates and CUPA's litigation position). We acknowledge the extensive improvements and large investments CUPA has made, and proposes be made, to ensure that water and wastewater customers in all of their service territories receive safe, reliable and reasonable service.<sup>20</sup> Investments such as these cannot be sustained without rate increases, such as provided for under the Settlement, needed to make reasonable progress in moving Tamiment's rates closer to their cost of service.

We find that the rate design provided for under the Settlement is a reasonable compromise between the conflicting objectives of moving towards fully consolidated rates and maintaining gradualism in customer bill impacts, as shown below:

---

<sup>20</sup> CUPA's originally requested rate increases reflect approximately \$1,757,031 in total capital expenditures for its water systems and approximately \$4,042,135 in total capital project expenditures for its wastewater systems in 2021 and 2022. CUPA-W St. No. 1 at 15; CUPA-WW St. No. 1 at 15.

**Water Division**  
**Bill Comparison of 5/8" Metered Customers with Average Usage\***

	Average	<b>Initial CUPA Proposal</b>		<b>Settlement</b>	
	Current	Monthly Bill	% Increase	Monthly Bill	% Increase
<b>CUPA Consolidated</b>					
Residential	\$54.16	\$73.27	35.3%	\$70.98	31.1%
Low Income	\$54.16	\$44.96	-17.0%	\$52.18	-3.7%
Commercial	\$43.81	\$57.30	30.8%	\$54.09	23.5%
<b>Tamiment</b>					
Residential	\$32.23	\$58.51	81.5%	\$49.54	53.7%
Low Income	\$32.23	\$36.14	12.1%	\$38.57	19.7%
Commercial	\$151.80	\$91.30	-39.9%	\$185.66	22.3%

\* Average consolidated 5/8" residential customer using 3,976 gallons per month.

\* Average 5/8" Tamiment residential customer using 2,738 gallons per month.

\* Average consolidated 5/8" commercial customer using 2,861 gallons per month.

\* Average 5/8" Tamiment commercial customer using 5,956 gallons per month.

**Wastewater Division**  
**Bill Comparison of 5/8" Metered Customers with Average Usage\***

	Average	<b>Initial CUPA Proposal</b>		<b>Settlement</b>	
	Current	Monthly Bill	% Increase	Monthly Bill	% Increase
<b>CUPA Consolidated</b>					
Residential	\$55.39	\$78.22	41.2%	\$74.73	34.9%
Commercial	\$55.39	\$78.22	41.2%	\$74.73	34.9%
<b>Tamiment</b>					
Residential	\$71.24	\$78.22	9.8%	\$73.75	3.5%
Commercial	\$247.34	\$78.22	-68.4%	\$111.76	-54.8%

\* Average 5/8" Tamiment residential customer using 3,406 gallons per month.

\* Average 5/8" Tamiment commercial customer using 6,125 gallons per month.

As shown above, under the Settlement rates, the water bill for the typical residential customer in the Penn Estates and Westgate service territories would increase

from \$54.16 to \$70.98 per month, a 31.1% increase, rather than the 35.3% increase initially proposed by CUPA-Water. The water bill for a typical residential customer in the Tamiment service territory would increase from \$32.23 to \$49.54, a 53.7% increase, rather than the 81.5% increase initially proposed by CUPA-Water.

Likewise, under the Settlement rates, the wastewater bill for the typical residential customer in the Penn Estates and Utilities, Inc. of Pennsylvania service territories would increase from \$55.39 to \$74.73 per month, a 34.9% increase, rather than the 41.2% increase originally proposed by CUPA-Wastewater. The wastewater bill for a typical residential customer in the Tamiment service territory would increase from \$71.24 to \$73.75 per month, a 3.5% increase, rather than the 9.8% increase as originally proposed. Stated another way, under the proposed Settlement, the average bills in the consolidated territories will increase by approximately 31% (water) and 35% (wastewater). The average bills in the Tamiment service territory will increase by approximately 54% (water) and 3.5% (wastewater). *See Settlement, Appendix G.*

As the data above clearly show, viewed in relation to the actual water and wastewater bills customers will pay, the increases under the Settlement do not violate the principle of gradualism and will not induce “rate shock.” Rather, the rate design proposed in the Settlement fairly balances the interests of the customers in the different service territories by moving toward rate consolidation in a gradual manner and is accompanied by important conditions to help customers control their bills and mitigate the rate increases, including the application of the rate increases to the residential volumetric rates, rather than customer charges, the continuation and expansion of metered rates for wastewater service, and the low-income proposals.

We concur with the Joint Petitioners that there is no question that volumetric billing is preferable to flat rate billing, as it provides better price signals and promotes conservation. In addition to encouraging the conservation of water and

wastewater services, volumetric billing also results in a more equitable distribution of the variable costs of wastewater service among ratepayers.

Furthermore, the percentage increase in the water bill for the typical residential customer in the Penn Estates and Westgate service territories (31.1%) is less than the 32.2% increase in annual operating revenue the Commission approved for those water customers in the Company's 2016 base rate proceeding, as well as the resulting 33.65% increase to the average bill for a customer residing in the Penn Estates service territory. *See Pa. PUC, et al. v. Community Utilities of Pennsylvania, Inc. – Water Division*, Docket No. R-2016-2538660, *et al.* (Order entered November 9, 2016).

The 53.7% increase in the average monthly water bill of a typical Tamiment residential customer is larger than Settlement rates provide for CUPA's consolidated service territories but has been mitigated by the Settlement's incorporation of a partial rate consolidation, as opposed to a full consolidation of Tamiment rates with those of CUPA's consolidated systems, as was initially proposed by the Company. Such an increase is reasonable given that Tamiment customers have experienced a long period (10 years) without rate changes. Given Tamiment's significant shortfalls in revenue as an outcome of years without rate increases, increasing operation costs, and capital investments required to provide adequate service, an increase equating to a little over 5% per year (53.7% / 10 years) is not unreasonable.

It has not been shown that the Settlement rates would recover more than the cost to serve CUPA's multiple service territories. However, as indicated previously, CUPA customers already under consolidated rates will continue to subsidize Tamiment customers until Tamiment customers are eased into consolidated rates; CUPA residential customers are already paying rates that more closely represent their cost to serve, which is emblematic of the lower percentage increase they will experience under Settlement rates.

Reduced to its essence, the *November Order* rejects the increases the Settlement rates would produce without providing a concrete, evidenced-based alternative proposal. Rather than providing a generalized recommendation that the Commission approve increases for CUPA that are less, by some unspecified amount, than those under the Settlement, the *November Order* instead seeks approval of an outright rejection on the entire Settlement. This ignores the well-considered and carefully balanced rate structures that the Joint Petitioners collectively agreed, based on extensive record evidence presented in the case, are just and reasonable.<sup>21</sup> Having conducted a careful review of the record, we must conclude for these reasons and all those stated throughout this Opinion and Order, that the Settlement as a whole is in the public interest.

#### **F. Reporting Requirements/Service-Related Commitments**

As noted above, the Joint Petition contains a number of reporting requirements and service-related commitments agreed to by CUPA. *See* Petition Section II.F and G. No Party has expressed objection to or suggested modification of any of these provisions.

With respect to reporting, CUPA has agreed to the following: It will provide the Commission and the signatory Parties with updates to its water and wastewater filing showing actual capital expenditures, plant additions and retirements monthly through December 31, 2022 (Petition, II.F.18). In addition, it will provide the signatories (via email) copies of any boil water or do not consume advisory issued to customers as well as any progress report submitted to the Pennsylvania Department of

---

<sup>21</sup> In this regard, it is particularly significant that the statutory advocates fully support the settlement rates, and therefore, implicitly agree that the principle of gradualism has been properly observed in developing the consensus position embodied in those rates.

Environmental Protection (PA DEP) concerning the October 22, 2020 Consent Order and Agreement related to the Penn Estates wastewater system Joint Petition at II.F.19-20.

These particular provisions are reasonable and appropriate. As noted by the OCA in its Statement in Support at 16, the updating of capital expenditures, plant additions and retirements is consistent with Section 315(e) of the Code, 66 Pa. C.S. § 315(e), which states that a utility utilizing a future test year or a fully projected future test year shall provide “appropriate data evidencing the accuracy of the estimates contained in the future test year or a fully projected future test year. . . .” These updates will allow the Commission and the statutory parties to review CUPA’s on -going investments in the provision of service, as well as providing a basis to evaluate the accuracy of CUPA’s projections. The other provisions will enable the statutory public interest parties to monitor CUPA’s communications with its customers regarding the provision of reasonably continuous service, as well as compliance with the PA DEP Consent Order and Agreement.

The Settlement contains a number of other specific service-related provisions: CUPA-Water agreed that in future base rate cases, it will provide more detailed information concerning Lost and Unaccounted For Water (LUFW) including an individual PUC Form 500 for each of its water systems as well as additional information concerning isolation valves and call center performance data. Joint Petition at II.G.21-22 and 26. For the Tamiment water system, CUPA-Water agreed that it will provide advance notice to customers regarding planned maintenance that may discolor water. Joint Petition at II.G.23. For the Penn Estates water system, CUPA-Water agreed to conduct a study concerning the pressure and supply issues and to report on that in its next base rate filing. Joint Petition at II.G.24. In addition, CUPA-Wastewater agreed to provide information annually to wastewater customers concerning the operation of grinder pumps. Joint Petition at II.G.25.

The *November Order* at 31 provides that, “[w]ith respect to quality of service, this is another factor that argues against approval of this settlement. . . . While the parties have agreed to laudable future system improvements to address these ongoing deficiencies, these prospective improvements do not outweigh the unacceptable level of the agreed upon rates. Indeed, one might argue that the improvements now promised should have already been substantially accomplished in the wake of the double-digit percentage 2019 rate increases.”

The conclusion that the Joint Petition should be rejected was based, in part, because CUPA has not provided “that quality of utility service that would warrant further increases” by citing the testimony presented by several elected representatives and a number of customers at the June 29, 2021, public input hearing. This conclusion, however, must be rejected as it does not reflect the record as a whole. While that testimony was compelling, it must be considered in conjunction with the responsive rebuttal testimony submitted by CUPA that addressed each of the quality-of-service concerns by providing testimony concerning its service record, steps taken to resolve service issues and ongoing work to upgrade service, as described in detail in the Stipulations of Fact agreed to by all the Joint Petitioners. Joint Petition at III, ¶¶ 47-55, as well as the testimony and exhibits supporting each stipulated fact.

Indeed, while footnote 8 of the *November Order* highlighted the recommendation put forth by I&E that CUPA receive a zero return on equity based on the expressed customer concerns, it failed to recognize that I&E withdrew this in surrebuttal testimony based on the extensive CUPA rebuttal testimony on service issues and actively joined in the Settlement. As stated in Stipulated Fact 53,<sup>22</sup> “After reviewing CUPA’s rebuttal testimony, in its surrebuttal testimony, I&E withdrew its zero percent

---

<sup>22</sup> This Stipulation of Fact is listed as No. 17 in the Stipulations of Fact Section of this Opinion and Order.

rate of return recommendation, acknowledged that CUPA had addressed or offered explanatory or contextual evidence in response to the issues raised at the public input hearing, and recommended the company complete additional reporting.” Joint Petition at 27-28; Joint Petition at ¶ 55.

Similarly, the *November Order* at 34-35 provided that the Parties failed to respond adequately in the Settlement to a complaint about grinder pumps, stating the issue is not a lack of information but that the customer testimony was that “CUPA’s system is backing up into [customer owned] grinder pumps and is destroying them.” There is no evidence to support this conclusion. In fact, as described in Stipulated Fact 50, CUPA investigated this allegation in 2020 and determined that issues with the grinder pumps (which are customer owned equipment) were not the result of CUPA’s “system or the failure thereof.”

As discussed in detail by each of the Joint Petitioners in their respective Briefs to the *November Order*, the record contains ample evidence to support findings that the current service rendered by CUPA-Wastewater is adequate, efficient, safe and reasonable as required by the Section 1501 of the Code, 66 Pa. C.S. § 1501.<sup>23</sup> It should be noted that no service mandates were imposed in CUPA-Wastewater’s last general rate proceeding, nor was there any evidence that the services provided by CUPA-Wastewater are in violation of any Commission order or regulation. The commitments undertaken by CUPA-Wastewater will ensure that service quality continues to improve by requiring the submission of information to enable the Commission and the statutory parties to monitor and evaluate the service provided.

---

<sup>23</sup> CUPA Brief at 22-30; I&E Brief at 13-16; OCA Brief at 7-10; OSBA Brief at 13-15.

While the *November Order* characterizes the specific service commitments agreed to by CUPA as “laudatory,” it does not appear that these commitments were given any weight when evaluating the Settlement as a whole. Each of these provisions is reasonable, meaningful and appropriate; together they clearly are in the public interest because they are designed to ensure that the service provided to CUPA’s water and wastewater customers is adequate, efficient, safe and reasonable as required by the Code. The submission of more detailed LUFW and isolation valve data will assist the Commission and the statutory parties in ensuring that CUPA-Water’s expenses through lost water and water breaks are as low as possible, and, as noted by OCA in its Statement in Support at 17, may assist in water conservation. Call center performance, discolored water associated with maintenance activities (Tamiment) and water pressure/supply (Penn Estates) were issues raised by customers at the public input hearing; CUPA-Water agreed to provisions designed to address those concerns by improving communications and customer service. Although grinder pumps are customer-owned equipment, CUPA-Wastewater agreed to annually provide information to customers who use them. Together, these commitments represent an important aspect of the proposed Settlement that will ensure that CUPA’s customers receive the quality of service to which they are entitled, and the Parties are to be commended for addressing these issues in a reasonable manner.

The Joint Petition notes that CUPA agreed to these commitments, which were requested by the OCA and I&E in response to testimony presented at the public input hearing. We wish to express our appreciation to those customers and elected representatives who took the time to attend that hearing. Their comments were thoughtful, sincere and helpful in putting a human face on the matters discussed, a reminder that decisions made in this proceeding directly impact the lives of real, individual people, not just “customers” as a group.

## G. Standard Provisions

The Joint Petition contains standard provisions that are routinely included in settlement petitions presented to the Commission. These terms and conditions provide that Commission approval of the Settlement does not constitute approval of any signatory's position on any issue but, rather, the Settlement agreement represents a compromise of competing positions, that the Settlement does not necessarily represent the position(s) that would be advanced in this or any other proceeding, and that it cannot be cited as precedent in any future proceeding except to the extent required to implement specific terms agreed to or to enforce the Settlement agreement. Joint Petition at II.I ¶¶ 29-30.

Further, it explains that the Settlement is conditioned upon the Commission's approval of the terms and conditions without modification, that if the Commission fails to grant approval of the Joint Petition or modifies any material term or condition, any Party can withdraw upon written notice to the Commission and active Parties within five business days of the entry of the Commission's order and in that case, the Settlement will be of no force or effect and each Party reserves its right to fully litigate the case including but not limited to presentation of witnesses, cross-examination and submission of briefs, exceptions and replies to exceptions. The signatories agreed to make good reasonable and good faith efforts to obtain approval of the Settlement by the ALJ and the Commission without modification, waived the filing of exceptions in the event the ALJ recommended that the Commission adopt the settlement without modification, but reserved the right to file exceptions and reply exceptions should the ALJ modify or reject the Settlement agreement. Joint Petition at II.I ¶¶ 31-32.

Finally, the Joint Petition provided that the Parties to the Settlement recognize that the settlement agreement is binding only upon the signatories, that the OCA would provide instructions to complainants informing them that they could join,

disagree but not actively oppose or object to the proposed settlement and that upon approval of the proposed settlement, the formal complaints of the OCA and the OSBA would be marked satisfied and closed. Joint Petition at II.I ¶¶ 33-36.

Of particular application here is the reservation of the right to file exceptions and reply exceptions should the presiding officer modify or reject the Settlement, in light of the fact that the ALJ concluded via the *November Order* that the Settlement be rejected on substantive grounds. In order to allow the Parties to execute their right to respond to the ALJ's recommendation to reject the Settlement, as well as to address the certified question presented for interlocutory review, the Commission by Secretarial letter dated November 12, 2021, approved CUPA's unopposed request that the briefing page limit be extended to forty pages, as is allowed for the filing of exceptions.

We determine that these important provisions in the Joint Petition are part of a comprehensive settlement that is in the public interest.

#### **H. Tamiment Rate Base Valuation**

On June 25, 2019, the Commission entered an Order at Docket Nos. A-2018-3005430 and A-2018-305432 that approved CUPA's acquisition of the current Tamiment water and wastewater divisions from Pennsylvania Utility Company-Water

and Pennsylvania Utility Company-Wastewater, respectively.<sup>24</sup> The *June 2019 Order* directed CUPA to file base rate cases for the acquired water and wastewater divisions with the Commission within eighteen months of closing, or by February 28, 2021,<sup>25</sup> at which time it shall establish individual rate bases for Tamiment’s water and wastewater facilities that meet “accepted ratemaking principles and is otherwise in accordance with law” so that “CUPA and Pennsylvania Utility Company will true-up the purchase price with the final rate base value.”<sup>26</sup> *June 2019 Order* at 7; Ordering Paragraph No. 9 at 13.

In compliance with the *June 2019 Order*, the instant Settlement provides for the establishment of separate rate bases for Tamiment’s water and wastewater divisions. Joint Petition at 20-21. In developing the rate base values for Tamiment’s water and wastewater facilities, CUPA included the book value of the assets and associated depreciation based on the fixed asset schedules provided by Pennsylvania

---

<sup>24</sup> *Joint Application of Community Utilities of Pennsylvania, Inc. – Water (CUPA-Water) and Pennsylvania Utility Company – Water (PA Utility Co.-Water) for approval of: the transfer, by sale, of the water system assets of PA Utility Co.-Water; the right of CUPA-Water to begin to offer, render, furnish and supply water service to the public in a portion of Lehman Township, Pike County, Pennsylvania; and the abandonment of all water service by PA Utility Co.-Water to the public in Lehman Township, Pike County, Pennsylvania, Docket Nos. A-2018-3005430 and A-2018-3005432 (Order entered June 25, 2019) (June 2019 Order).*

<sup>25</sup> The acquisitions closed on August 28, 2019. As such, CUPA-Water and CUPA-Wastewater base rate case filings were due by February 28, 2021.

<sup>26</sup> On December 14, 2020, CUPA filed separate petitions with the Commission seeking a six-week extension of the February 28, 2021 deadline, or until April 12, 2021, to file base rate case filings for CUPA-Water and CUPA-Wastewater. The Commission granted both of the Company’s requests by Secretarial Letter dated February 9, 2021, at Docket Nos. P-2020-3023277 and P-2020-3023281. CUPA W Statement No. 2 at 17.

Utility Company at the time the acquisition was recorded. CUPA W St. No. 2 at 16;<sup>27</sup>  
CUPA WW St. No. 2 at 10.

For its water division, Tamiment recorded a rate base value of \$1,324,261 for its water assets. Included in the rate base value was a plant balance of \$2,212,733 and an accumulated depreciated balance of \$888,472 at the time of acquisition. Joint Petition at 13-14; CUPA W St. No. 2 at 16. CUPA also prepared a separate schedule to support the Tamiment Rate Base determination for its water division. *See* CUPA W Exh. No. PAB-2.

For its wastewater division, Tamiment recorded a rate base value of \$1,683,056 for its wastewater assets. Included in the rate base value was a plant balance of \$2,861,017, an accumulated depreciated balance of \$1,617,881, and a CWIP balance of \$439,920 at the time of the acquisition. Joint Petition at 13-14; CUPA WW St. No. 2 at 10. CUPA also prepared a separate schedule to support the Tamiment Rate Base determination for its wastewater divisions. *See* CUPA WW Exh. No. PAB-2.

Regarding the wastewater division's \$439,920 CWIP balance, CUPA indicated that it would not be appropriate to include that CWIP balance in rate base because the work associated with that balance was not CWIP and "is currently not in progress, will not be in progress during the future test year and will not be in service

---

<sup>27</sup> CUPA W St. No. 2 discusses the rate base for its *wastewater* division on pages 16 and 17 of the testimony. However, based on the name of the Statement (CUPA W St. No. 2), it is obvious that the Company intended that discussion to apply to its *water* division.

shortly after the future test period.”<sup>28</sup> CUPA St. No. 9-R at 3-4; I&E Statement in Support at 21. CUPA-Wastewater averred that these costs were prudently incurred by the prior owner and are related to engineering studies and permitting work for potential upgrades to the wastewater facilities. CUPA St. No. 9-R at 3-4. CUPA contends that the prior owner prudently incurred these costs to assess and perform due diligence to evaluate what projects should be considered. *Id.* Because no projects are currently in progress, no projects will be in progress during the future test year, and no projects will be in service shortly after the future test period, CUPA-Wastewater proposed to amortize the \$439,920 wastewater CWIP balance over eleven years. *Id.*

None of the Parties objected to the rate base value for Tamiment water and wastewater facilities in this rate case or with CUPA-Wastewater’s proposal to amortize the \$439,920 wastewater *CWIP* balance over eleven years. I&E, in particular, submitted that the values comprising the rate bases are based on traditional and generally accepted ratemaking principles. I&E Statement in Support at 21.

Accordingly, the Joint Petitioners agree with the rate base values for Tamiment’s water and wastewater assets of \$1,324,261 and \$1,243, 135, respectively. Joint Petition at 13-14. They also agree: (1) that part of the Company’s incremental revenue increase for wastewater will include the amortization expenses of the Tamiment CWIP, which will be amortized over eleven years ( $\$439,920/11 = \$39,992.73$ ); (2) that the unamortized balance of the Tamiment CWIP will not be included in rate base at any time during or after the amortization period; and (3) that CUPA be authorized to record

---

<sup>28</sup> *Pa. PUC v. City of Bethlehem –Water Department*, Docket Nos. R-2020-3020256 *et al.* 2021 WL 1534307 Opinion and Order at \*26 (Order entered April 15, 2021) (“as the ALJ found, the Commission may allow claimed expenditures to undertake construction for plant that will not be completed, *i.e.*, used and useful at the end of the FYT, in rate base. However, in those circumstances, construction of the specific project has been required to be “in progress” (construction work in progress) during the FTY, and “in service” shortly thereafter.).

the \$39,992.73 of expense through depreciation, if allowed by its external auditor or accounting firm. Joint Petition at 13-14; *November Order* at 18.

The table below summarizes the final values for the Tamiment's rate bases for its water and wastewater divisions that are included in the Settlement:

Description	UPIS	Accumulated Depreciation	CWIP	Rate Base
Water	2,212,733	(888,472)	-	1,324,261
Wastewater	2,861,017	(1,617,881)	-	1,243,135
<b>Total</b>	<b>5,073,750</b>	<b>(2,506,354)</b>	-	<b>2,567,397</b>

Joint Petition at 13; CUPA St. No. 9-R at 4; *November Order* at 18.

Based on our review of the record, we are of the opinion that the valuations of the rate bases for Tamiment's water and wastewater divisions, as set forth in the Settlement, comply with our *June 2019 Order* in that the record shows that they are based on traditional and generally accepted ratemaking principles. I&E Statement in Support at 21. In addition, we believe it is prudent for the Company to amortize the \$439,920 wastewater CWIP balance over eleven years.

## I. Residential Low-Income Programs

Implementation of a low-income program for residential water customers was a contested issue in this proceeding. As noted, and as discussed in more detail below, the proposed Settlement will make two low-income programs available to its residential customers: (1) the Residential Low-Income Water Service Rate and (2) the Low Income Household Water Assistance Program (LIHWAP).

The Company originally proposed a low-income tariffed rate for qualifying residence water customers of \$4.13 per thousand gallons, which is a \$7.80 discount or

65.4% of the proposed full residential usage rate of \$11.93 per thousand gallons. CUPA St. No. 4 at 7-8. The low-income rate would apply for usage up to the class average of 3.498 kgals. CUPA St. No. 4 at 6. CUPA-Water customers whose annual income falls below the federal poverty level, for a household of their size, would be eligible for the proposed low-income rate. CUPA St. No. 4 at 6. Because the low-income rate is intended to provide relief to customers using average volumes of water, any usage over the class average would be charged to qualifying customers at the regular residential volumetric rate. *Id.*

I&E recommended that the Company's low-income rate, as proposed, be rejected due to the impact on other residential ratepayers. I&E St. No. 3 at 20-21. I&E was concerned that CUPA-Water's proposed low-income usage rate would result in a revenue shortfall that would have to be recovered from other residential customers paying full tariff rates. I&E Statement in Support at 13. Thus, I&E asserted that any additional increases to other customers would have to be carefully considered, especially in this case where many customers testified about the financial hardship of the Company's overall increase at the public input hearing. I&E Statement No. 3-SR at 23-24.

I&E was also concerned that the Company's generic analysis and estimation of customers who will qualify for the low-income rate could potentially permit the Company to over-recover in base rates. In this regard, I&E provided the following testimony:

The projected levels of revenue shortfalls generated by the Company's generic analysis will cause harm to customers through the setting of the higher base rates necessary to subsidize this program. Finally, since the revenue shortfall is built into base rates with no reconciliation of actual participation costs to those projected in this base rate case, the potential excess revenue generated by low participation in the program merely provides excess revenues to the Company

through the establishment of unreasonable and unsupported base rates.

I&E Statement No. 3-SR at 26-27. Because the low-income rate is a discount to the usage rates (rather than the fixed customer charges), assumptions need to be made about the number of customers who will participate and their usage volumes in order to set the regular and low-income rates that will recover CUPA-Water's revenue requirement. If the actual residential low-income usage (gallage) is lower than projected, the Company will recover more revenue than intended. Therefore, I&E argued that if the Company recovers more revenue than intended, CUPA-Water should return any revenue surplus to customers (regulatory liability) in its next base rate case. Conversely, if the Company recovers less than intended because the actual residential low-income usage (gallage) is higher than projected, I&E submitted that CUPA-Water should be permitted to claim any revenue shortfall in its next base rate case (regulatory asset).

The OCA supported a low-income rate program but recommended that it should be approved on a pilot basis so that it can be evaluated and changed in the next base rate case, as appropriate, after some experience has been gained regarding the number of customers participating and their volumetric usage. OCA St. 3 at 10; OCA Statement in Support at 12.

CUPA-Wastewater did not originally propose a low-income program for its wastewater customers based on consistency, customer understanding of bill under new rates, and to consolidate the Tamiment service territory into CUPA-Wastewater's existing rate design. OCA St. 3 at 14 (citing OCA Set IV-5). The OCA, however, testified in favor of a low-income wastewater rate for residential customers in this proceeding. OCA St. 3 at 14. The OCA argued that the same reasons that support CUPA-Water's proposal to mitigate bills for its low-income residential water customers also support mitigating bills for CUPA-Wastewater's low-income residential wastewater

customers. *Id.* In further support of a low-income wastewater rate, the OCA noted that CUPA's uncollectible rate is higher for its wastewater customers than its water customers. *Id.* As set forth below, OCA's witness, Mr. Mierzwa, provided testimony in favor of establishing a low-income wastewater residential pilot rate program in this proceeding:

I recommend that CUPA establish a Low-Income Residential volumetric charge for the Tamiment Residential wastewater customers in this proceeding, calculated in the same manner as its proposed low-income rate for water customers after reflecting the scale back discussed above. For CUPA's low-income Residential wastewater customers in the other systems, who are not currently charged volumetric rates, I recommend a proportionate reduction to their flat charges after reflecting the scale back discussed above. The volumetric (Tamiment) and flat rates (Utilities, Inc. of Pennsylvania and Penn Estates) for the other Residential wastewater customers should be increased proportionately to recover the revenue associated with the discount.

The Low-Income Residential wastewater rates should be approved in this proceeding as a pilot program. In CUPA's next base rate proceeding, the Company should identify the number of customers participating in the program and the volumetric usage of those customers in the Tamiment system, so that the OCA and other parties can evaluate the program and recommend appropriate changes.

OCA St. No. 3 at 14-15. Nevertheless, in negotiations, the OCA agreed to establishing a pilot low-income residential usage rate for wastewater customers in the Company's next rate case. OCA Statement in Support at 12-13. According to the OCA, because some wastewater customers currently have fixed (flat) rates and some have metered usage rates, an advantage in delaying implementation of a pilot low-income wastewater program is that CUPA-Wastewater will also be proposing that all wastewater rates be based on metered usage in its next case, and this will simplify the development of the low-income wastewater rate. In addition, the Company will have the benefit of

experience and data related to its low-income program for water customers, including the level of participation in the program. *Id.*

Based on the negotiations of the differing positions of the Parties, the settling Parties ultimately agreed to accept I&E's and the OCA's suggested modifications to CUPA-Water's originally proposed low-income residential water service rate program: (1) a residential low-income water rate based on usage using a discount of 35% in lieu of the 65.4% discount proposed by the Company to lessen the bill impact on CUPA-Water customers paying full tariff rates while also providing low-income customers with bill relief through the 35% volumetric rate discount; (2) the residential low-income water rate will be established as a pilot program until CUPA-Water's next rate base proceeding; (3) the Company will record a regulatory asset or liability for the amounts included in rates, which will be recovered from or refunded to customers in the next base rate case proceeding; (4) the Company will provide (a) the amount of water revenue included in the regulatory asset or liability (*i.e.*, the difference between the projected and the actual residential low-income gallonage multiplied by the difference between the low-income rate and the regular residential rate) and (b) quarterly reports that track and record the total low-income water service customer participation, total gallons used by enrolled customers, and the associated water revenue shortfall or surplus resulting from the reduced volumetric rates for enrolled customers; and (5) CUPA-Wastewater will propose a low-income residential wastewater service rate pilot program in its next base rate proceeding. The proposed terms and conditions of the low-income water service rate pilot program are reflected in Paragraph Nos. 14-16 of the Settlement as follows:

14. CUPA's proposed Low-Income Rate for residential water service will be approved as a pilot program until the next base rate proceeding, with the following modifications: after scaleback for the reduction in revenue requirement provided in this settlement, the low-income rates for each system will provide a 35% discount rather than 65% as originally proposed

(pinned to 35% of the regular residential rate), from the regular residential volumetric rates. In the next base rate case, all parties reserve their rights to address continuation or modification of the program.

15. During the period that the residential low-income rate for water service is considered a pilot program, the Company will record a regulatory asset or liability for amounts over or under the amount included in rates for recovery or refund in the next base rate case. The amount of revenue included in rates is the projected CUPA residential low-income gallonage of 15,066.541 kilogallons multiplied by the low-income rate of \$8.784, plus the projected Tamiment low-income gallonage of 2,590.588 kilogallons multiplied by the low-income rate of \$7.444. The amount of water revenue to be included in the regulatory asset or liability is the difference between the projected and the actual residential low-income gallonage multiplied by the difference between the low-income rate and the regular residential rate. The Company will provide quarterly updates detailing total customer participation, total gallons used by enrolled customers, and the associated water revenue shortfall or surplus resulting from the reduced volumetric rates for enrolled customers. The regulatory asset/liability provision and quarterly update requirements will be subject to review and modification in the next base rate case.
16. In its next base rate proceeding, CUPA will propose a Low-Income Rate for residential wastewater service, as a pilot program. All parties reserve the right to challenge the proposal.

The second low-income component of the Settlement provides that CUPA-Water has committed to participate, and promote registration by eligible customers, in the new Low Income Household Water Assistance Program (LIHWAP)

when it becomes available in Pennsylvania.<sup>29</sup> CUPA St. No. 8-R at 7; Joint Petition at ¶ II.E.17. This program will provide monetary assistance to water and wastewater ratepayers who meet the income thresholds to help pay their bills and avoid service termination. Specifically, the Company has committed to provide information to customers on how to register for the program, through a bill insert, when the program opens and when CUPA-Water contacts customers about disconnection or arrearages. *Id.*; OCA Statement in Support at 13-14. The terms and conditions in the Settlement associated with the Company's commitment to participate in LIHWAP when it becomes available are provided below:

17. The Company will participate in the Low Income Household Water Assistance Program (LIHWAP) providing a bill insert to all customers once the program is available with information on how to register for the program,<sup>5</sup> providing that information when contacting customers about disconnection or arrearages, and utilizing LIHWAP funds for its water and wastewater customers consistent with the final PA Department of Human Services requirements. Funds received by CUPA from PA LIHWAP will be included in the quarterly reports in Paragraph 7 above. In the next base rate case, all parties reserve the right to review and address whether any of the PA LIHWAP funding received by CUPA should be included in the regulatory asset or liability.

Joint Petition at ¶ II.E.17 at 11.

---

<sup>29</sup> LIHWAP is an emergency water assistance program created by the federal government due to the COVID-19 pandemic to assist families experiencing hardship with their water bills. LIHWAP will assist Pennsylvanian families who are behind on their drinking water and wastewater bills to ensure their service remains active. LIHWAP is still in the development phase.  
<https://www.dhs.pa.gov/Services/Assistance/Pages/LIHWAP.aspx>.

In rejecting the Settlement, the ALJ opined that “the contention [by CUPA in its Statement in Support at 2] that the low-income programs referenced in the proposed Joint Settlement ‘helps mitigate the effect of the rate increase on consumers,’ is without merit.” The ALJ expanded on his position as follows:

This is merely cost shifting to the remaining customer base laboring under the previous non-gradual rate increases who are now faced with a second round of increases to be followed in all likelihood in 2023 by a third [rate increase]. Similarly, the contention that, “There are no increases to residential customer charges, only to volumetric charges,” and that, “This promotes conservation and allows customers more control over their bills,” is specious. CUPA Statement in Support at 3. As stated above, the principle of gradualism (which the parties incorrectly claim to have applied) is meant to deal with the *inelasticity* of demand inherent in the provision of basic utility service. One of the facts made clear at the Public Input hearing on June 29, 2021, is that customers have already cut their volumetric consumption from CUPA due to the necessity to buy bottled water and to make other arrangements for such activities as washing clothes or even their persons. [Footnotes omitted].

*November Order* at 32.

Notwithstanding the ALJ’s opinion that the low-income programs in this proceeding will mitigate the effect of the rate increase on consumers, the Company replies in its Brief on the Material Question that the low-income components in the Settlement are in the public interest because they resolve various concerns of the Parties on low-income programs for both water and wastewater customers, which was a contested issue in this proceeding. CUPA Brief at 11. According to the Company, for low-income customers who will be most impacted by any rate increase, the Settlement will provide an immediate low-income pilot program for water customers upon approval of the settlement to qualifying low-income customers and a proposal for a wastewater low-income pilot program for qualified customers who meet the income threshold when

CUPA-Wastewater files its next base rate case. *Id.* Under the proposed Settlement, the Company avers that the rates for water service will increase more than wastewater rates, by percentage, and these programs will help to offset those increases for those most impacted at this time. Furthermore, the Company notes that it has committed to participate in the new LIHWAP, which provides monetary assistance to ratepayers who meet the income threshold to help pay their bills and avoid service termination. *Id.*

In response to the ALJ's concern that the low-income programs will not help mitigate the effect of the rate increases on consumers because they will shift costs to the remaining customer base, the OCA responds in its Brief to the Material Question that the *November Order* does not recognize that CUPA-Water's low-income water customers will benefit from a water usage rate that is discounted by 35% under the Settlement and that approximately 12% of the households it serves will be eligible for the program. OCA Brief at 6 (citing CUPA W St. 4 at 6-7). In addition, the Company submits that the Order also does not recognize that CUPA did not propose any rate discount for its low-income wastewater customers as part of its rate filing. *Id.* (citing OCA St. 3 at 14). However, under the Settlement, CUPA-Wastewater is committed to proposing a low-income discount for wastewater customers in its next base rate proceeding. OCA Brief at 6-7 (citing Joint Petition ¶¶ II.E.16). According to the OCA, these measures, together, will provide a significant benefit because, currently, CUPA has no low-income programs available to its water and wastewater customers. OCA Brief at 7.

The OCA agrees with the ALJ that, by design, the revenue associated with the discount for low-income customers will be recovered from other customers. OCA Brief at 7 (citing Joint Petition ¶¶ II.E.14-15; CUPA W St. 4 at 6). However, the OCA submits that the Settlement responds to the concern about the impact of the discount on other customers by reducing the discount from 65% (originally proposed by CUPA-Water) to 35% of the regular residential water usage rates. OCA Brief at 7 (citing OCA St. 3 at 14). The OCA explains that the Settlement also protects customers by requiring

CUPA-Water to return any surplus to customers if enrollment in the program or volumes used by participants are less than expected during the pilot phase. OCA Brief at 7 (citing Settlement ¶ II.E.15). Furthermore, the OCA notes that CUPA-Water's uncollectible rate increased 473 percent in 2020 compared to the average from the previous four years (2016-2019). OCA Brief at 7 (citing OCA St. 1 at 7). The OCA asserts that to the extent that the low-income programs assist customers to pay their bills, rather than being disconnected and not contributing any revenue, all CUPA-Water customers will benefit. OCA Brief at 7.

We agree with the positions of the Company and the OCA in their Briefs in response to the Material Question that the low-income programs addressed in the Settlement will help to mitigate the impact of the rate increase on those who can least afford it and contribute to making the Settlement, as a whole, in the public interest.

The Settlement will provide an immediate low-income usage rate for water service and a proposal to expand the program to wastewater service in the next base rate case. Although the proposed discount on the usage rate will be less than the 65.4% discount that CUPA originally proposed, as noted by the OCA, it will still provide a meaningful 35% discount, but will reduce the revenue burden on residential customers who must pay the regular usage rates. Also, we note that I&E testified that participation in CUPA-Water's discount rate "may not be robust given that the approximate \$250,000 median property value in the Company's Penn Estates and Tamiment territories likely exceeds the values that could be owned by persons within the 2021 federal poverty guidelines, which is \$12,880 per year for an individual and \$21,960 per year for a family of three."<sup>30</sup> Nevertheless, I&E indicated, and we agree, that permitting the discount rate on a pilot basis will provide valuable information that will allow parties to make better

---

<sup>30</sup> I&E Statement in Support at 15; I&E Statement No. 3-R at 26.

informed recommendations concerning the design of the program or continuation of the discount rate going forward.

In light of the above, we disagree with the ALJ's opinion that the low-income programs referenced in the Settlement are without merit with regard to mitigating the effect of the rate increase on CUPA's customers. Overall, we believe that the provisions of the proposed Settlement relating to low-income relief are in the public interest and represent a fair and reasonable resolution of the differing positions of the Joint Petitioners.

#### **J. Public Interest Evaluation of Settlement**

As described in detail, *supra*, through extensive discovery, submission of testimony and exhaustive settlement negotiations, the compromise revenue increases in the Settlement balance the interests of CUPA and their customers. In this way, CUPA will receive sufficient operating funds to provide safe and adequate water and wastewater service while addressing the need for gradualism in rate changes, particularly given the hardships faced by customers in the present economic environment. Furthermore, the negotiated agreements embodied in the Settlement reflect a difficult but reasonable compromise in the context of the extraordinary circumstances of the COVID-19 pandemic.

The Joint Petitioners all detailed the months of efforts undertaken to reach a comprehensive agreement in these complex base rate cases. The result is a settlement that produces just and reasonable rates that will not produce rate shock for any customer class while ratepayers will benefit from a reduction in the initial rate increase requests. The compromise rate and revenue levels outlined in the Settlement will produce an adequate return on invested capital to ensure CUPA's ability to deliver safe and reliable water and wastewater service to its customers; provide sufficient operating revenues to

meet operating expenses, taxes and other charges, while also providing a reasonable rate of return on its investment in water and wastewater property; and adequately address operational issues. The beneficial stay-out provision, along with the low-income program terms and reporting requirements all serve to drive the improvement of customer service and affordability.

In summary, the Settlement as a whole achieves rates which are just and reasonable and necessary for CUPA to provide safe and adequate water and wastewater service, and therefore, is in the public interest. *See* Joint Petition at 31-37, ¶¶ 61-66; CUPA Statement in Support at 2-11; I&E Statement in Support at 4-22; OCA Statement in Support at 4-18; OSBA Statement in Support at 2-5. These positions were bolstered in the Briefs submitted in response to the *November Order*. *See* CUPA Brief at 1-3, 10-14; I&E Brief at 4-16; OCA Brief at 2-10; OSBA Brief at 5-15.

Viewed in its entirety, the Settlement fairly and equitably resolves the issues impacting residential consumers, business customers, and the public interest at large and represents a fair balance of the interests of CUPA and its customers. We note that the Settlement enjoyed the full support of the OCA, the OSBA, I&E and CUPA.

The Settlement, which comprehensively addressed all issues, served to focus the proceedings, and eliminate the need for litigation before the ALJ. In this way, we find that the Settlement will result in significant savings of time and expenses for all Parties involved by reducing or avoiding the necessity of further administrative proceedings, as well as reducing or avoiding the need for possible appellate court proceedings, thereby conserving precious administrative resources. Further, the Settlement provides regulatory certainty with respect to the disposition of issues which benefits all Parties.

For the reasons stated herein, in the Joint Petitioners' Statements in Support, and in the Stipulations of Fact agreed to by all active Parties, we find that Settlement is supported by substantial evidence and is in the public interest. Accordingly, we shall approve the Settlement in its entirety without modification.

## VII. Conclusion

For all of the foregoing reasons, we shall answer the Material Question certified by ALJ Buckley in the *November Order* in the negative, grant the Joint Petition, and, thus, approve the Settlement in its entirety, and without modification, consistent with this Opinion and Order; **THEREFORE,**

### IT IS ORDERED:

1. That the Material Question that was certified to the Commission based on the November 10, 2021 Order of Administrative Law Judge Dennis J. Buckley:

Whether the action of the presiding Administrative Law Judge rejecting the proposed Joint Settlement filed by the parties in the consolidated proceeding at Docket Nos. R-2021-3025206 and R-2021-3025207 was proper?

is answered in the negative, pursuant to 52 Pa. Code § 5.305(e)(3).

2. That the Joint Petition for Settlement filed October 12, 2021 by Community Utilities of Pennsylvania, Inc., the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate is granted, and the Settlement is hereby adopted, in full, without modification or correction.

3. That Community Utilities of Pennsylvania, Inc. is authorized to file tariffs, tariff supplements or tariff revisions containing rates, rules and regulations, consistent with the Joint Petition for Settlement, to produce a total increase in annual operating revenues of \$630,000 for its water customers and \$830,000 in annual operating revenues for its wastewater customers, consistent with the rates, rules and regulations set forth in the illustrative tariff supplements included in Appendices B (Water) and C (Wastewater) of the Joint Petition for Settlement.

4. That Community Utilities of Pennsylvania, Inc. shall be permitted to file tariffs in the form set forth in Appendices B (Water) and C (Wastewater) to the Joint Petition for Settlement, to become effective upon at least one day's notice, for service rendered on and after January 12, 2022, so as to produce annual operating revenue increases consistent with this Opinion and Order.

5. That Community Utilities of Pennsylvania, Inc. shall be entitled to recoup the revenue increase not billed from the effective date of January 12, 2022, through the date of the Commission's approval of new rates in the manner set forth in this Order. The revenue increases not billed from the effective date of January 12, 2022, through the date of Commission approval of new rates will be recovered over a six-month period that shall be applied proportionately to all customer classes via a surcharge on each monthly bill during the six-month recovery period. The Company shall include tariff page in each of the tariffs filed pursuant to Ordering Paragraph 4, in the form attached to the Joint Petition for Settlement as Appendix D, to implement the surcharge.

6. That the Formal Complaints of the Office of Consumer Advocate at Docket Nos. C-2021-3025777 (Water) and C-2021-3025778 (Wastewater) are deemed satisfied and marked closed.

7. That the Formal Complaints of the Office of Small Business Advocate Docket Nos. C-2021-3025263 (Water) and C-2021-3025260 (Wastewater) are deemed satisfied and marked closed.

8. That the three Objections filed in response to the Settlement be denied and dismissed.

9. That the following formal complaints at the respective docket numbers be dismissed and marked closed by the Commission’s Secretary’s Bureau:

<u>Complainant(s)</u>	<u>Docket Number</u>	<u>(Water)</u>
Kerren Ricketts		C-2021-3026119
John & Jane Hoopingarner		C-2021-3026160
Rafail Kovalenko		C-2021-3026188
Philip Villone		C-2021-3026264
Bryan Donnelly		C-2021-3026269
Vincent & Janine Marino		C-2021-3026278
Doritha Palmer		C-2021-3026317
Kathleen & Gerald Raphael		C-2021-3026368
Richard & Susan Di Piazza		C-2021-3026425
Sharon Tunstall		C-2021-3026431
Colville Oswald Browne		C-2021-3026433
Ronald & Janice Fraioli		C-2021-3026438
Christ Nielsen		C-2021-3026440
Mona Annicaro		C-2021-3026441
Severo Barza		C-2021-3026444
Barbara Ann Mirkovic		C-2021-3026449
Gustavo Espinal		C-2021-3026452
David Fuchs		C-2021-3026454
Rose Cocklin		C-2021-3026456
Dominick & Cindy Toscano		C-2021-3026459
Douglas Beckworth		C-2021-3026463
Marcus & Bernalyn Clarke		C-2021-3026465
Katherine Cassidy		C-2021-3026468
David Touma		C-2021-3026475
William & Dahlia Merritt		C-2021-3026546
Ronald Pocoro		C-2021-3026561

**ATTACHMENT A**

Christina Boers	C-2021-3026570
John Kis	C-2021-3026576
Bonnie Rudeski	C-2021-3026586
David Squilliciotti	C-2021-3026619
Louis Romano	C-2021-3026629
Kathleen & Gerald Raphael	C-2021-3026633
Vanessa Durcan	C-2021-3026634
Barry Tremper	C-2021-3026656
Anna Paryzki	C-2021-3026657
Grazyna Paryzka	C-2021-3026658
Peter Salomone	C-2021-3026741
Arnold Reyes-Portilla	C-2021-3026745
Susan Nikolaou	C-2021-3026747
William Sullivan	C-2021-3026805
Clark Sutton	C-2021-3026834
Christine Thomson	C-2021-3026840
George Kelly	C-2021-3026842
Maritza Rivera	C-2021-3026843
Joseph Torregrossa	C-2021-3026846
Peter Mauro	C-2021-3026847
Rene Bressant	C-2021-3026849
Daniel McKoy	C-2021-3026853
Thomas Hemeleski	C-2021-3026881
Jean Souders	C-2021-3026883
Mario Carlino	C-2021-3026886
Asment Benjamin	C-2021-3026888
Charles Breitweiser	C-2021-3026899
Aldona Bastek	C-2021-3026901
Larisa Shin	C-2021-3026903
Francis & Mayra Sullivan	C-2021-3026908
David Shook	C-2021-3026911
Wesley & Mildred Mann	C-2021-3026913
Romulo Babaan	C-2021-3026915
Walker Cambrelen	C-2021-3026920
Catherine Gilchrist	C-2021-3026923
Gwendolyn Beckford Wilson & Mark Lillery	C-2021-3026925
Sheila Hunt	C-2021-3026930
Daniel & Suzie Napolitano	C-2021-3026932
Troy Coleman	C-2021-3026937
Moshe Mitchel	C-2021-3026943
Ivan & Theresa Ayala	C-2021-3026945
Michael Kotowski	C-2021-3026948

Janine Brown	C-2021-3026949
Henry Kotowski	C-2021-3026950
Richard Rice	C-2021-3026952
Thomas & Patricia Parillo	C-2021-3026955
Ovidio & Aixa Martinez	C-2021-3026957
Grace Moro	C-2021-3026966
Connie Friedfel	C-2021-3026968
Amos & Kathelen Lawson	C-2021-3026971
Dorothy & Feisal Khan	C-2021-3026973
Sharon Lloyd	C-2021-3026975
Usha Parhar	C-2021-3026985
Patricia Merrill	C-2021-3026988
George Tirado	C-2021-3026989
Timothy Weaver	C-2021-3026991
John Murphy	C-2021-3026993
Stilianos & Susan Nikolaou	C-2021-3026995
Yajaida Rodriguez	C-2021-3026998
Gaurav Parhar	C-2021-3027062
Robert Mohr	C-2021-3027065
Roger Fredericks	C-2021-3027066
Rosalie Capitelli	C-2021-3027068
Charles Wright	C-2021-3027070
Brian & Taryn Merrill	C-2021-3027073
Nicholas Corforte	C-2021-3027075
Craig Lowe	C-2021-3027077
Stephen & Kathleen Conrad	C-2021-3027079
Clifford & Cindy McNeil	C-2021-3027083
Maryann Bouco	C-2021-3027085
Thomas & Maxine Shepard	C-2021-3027143
Marcia Mathura	C-2021-3027251

<u>Complainant(s)</u>	<u>Docket Number</u>	<u>Wastewater)</u>
Kerren Ricketts	C-2021-3026118	
John & Jane Hoopingarner	C-2021-3026161	
Rafail Kovalenko	C-2021-3026190	
Philip Villone	C-2021-3026261	
Bryan Donnelly	C-2021-3026275	
Vincent & Janine Marino	C-2021-3026280	
Doritha Palmer	C-2021-3026319	
Kathleen & Gerald Raphael	C-2021-3026402	
Richard & Susan Di Piazza	C-2021-3026443	

Sharon Tunstall	C-2021-3026432
Colville Oswald Browne	C-2021-3026434
Ronald & Janice Fraioli	C-2021-3026429
Mona Annicaro	C-2021-3026442
Severo Barza	C-2021-3026445
Barbara Ann Mirkovic	C-2021-3026450
Gustavo Espinal	C-2021-3026453
David Fuchs	C-2021-3026455
Rose Cocklin	C-2021-3026457
Dominick & Cindy Toscano	C-2021-3026460
Douglas Beckworth	C-2021-3026464
Marcus & Bernalyn Clarke	C-2021-3026466
Katherine Cassidy	C-2021-3026469
David Touma	C-2021-3026476
William & Dahlia Merritt	C-2021-3026547
Ronald Pocoro	C-2021-3026559
Christina Boers	C-2021-3026571
Bonnie Rudeski	C-2021-3026587
David Squilliciotti	C-2021-3026588
Kathleen & Gerald Raphael	C-2021-3026624
Louis Romano	C-2021-3026631
Vanessa Durcan	C-2021-3026635
Barry Tremper	C-2021-3026655
Grazyna Paryzka	C-2021-3026659
Michael Miller	C-2021-3026713
Anna Paryzki	C-2021-3026748
Peter Salomone	C-2021-3026740
Susan Nikolaou	C-2021-3026746
Christ Nelson	C-2021-3026749
Clark Sutton	C-2021-3026764
Arnold Reyes-Portilla	C-2021-3026766
William Sullivan	C-2021-3026806
Christine Thomson	C-2021-3026838
Maritza Rivera	C-2021-3026844
Joseph Torregrossa	C-2021-3026845
Peter Mauro	C-2021-3026848
Rene Bressant	C-2021-3026850
Daniel McKoy	C-2021-3026851
Thomas Hemeleski	C-2021-3026882
Jean Souders	C-2021-3026884
Ivan & Theresa Ayala	C-2021-3026885
Mario Carlino	C-2021-3026887
Asment Benjamin	C-2021-3026889

**ATTACHMENT A**

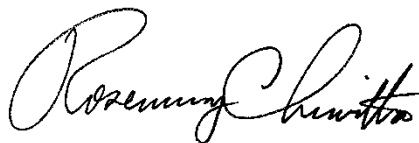
Charles Breitweiser	C-2021-3026892
Aldona Bastek	C-2021-3026902
Larisa Shin	C-2021-3026904
Francis & Mayra Sullivan	C-2021-3026909
David Shook	C-2021-3026912
Wesley & Mildred Mann	C-2021-3026914
Romulo Babaan	C-2021-3026919
Walker Cambren	C-2021-3026921
Catherine Gilchrist-Yanluis	C-2021-3026924
Gwendolyn Beckford Wilson & Mark Lillery	C-2021-3026926
Sheila Hunt	C-2021-3026931
Daniel & Suzie Napolitano	C-2021-3026933
Troy Coleman	C-2021-3026942
Moshe Mitchel	C-2021-3026944
Clifford & Cindy McNeil	C-2021-3026946
Michael Kotowski	C-2021-3026947
Ovidio & Aixa Martinez	C-2021-3026958
Henry Kotowski	C-2021-3026951
Richard Rice	C-2021-3026953
Thomas & Patricia Parillo	C-2021-3026956
Grace Moro	C-2021-3026967
Connie Friedfel	C-2021-3026969
Amos & Kathelen Lawson	C-2021-3026972
Dorothy & Feisal Khan	C-2021-3026974
Sharon Lloyd	C-2021-3026976
Usha Parhar	C-2021-3026986
George Tirado	C-2021-3026990
Timothy Weaver	C-2021-3026991
John Murphy	C-2021-3026994
Yajaida Rodriguez	C-2021-3026999
Roger Fredericks	C-2021-3027063
Stilianos & Susan Nikolaou	C-2021-3027064
Rosalie Capitelli	C-2021-3027069
Charles Wright	C-2021-3027071
Brian & Taryn Merrill	C-2021-3027074
Nicholas Corforte	C-2021-3027076
Craig Lowe	C-2021-3027078
Stephen & Kathleen Conrad	C-2021-3027080
Janine Brown	C-2021-3027081
Robert Mohr	C-2021-3027082
George Kelly	C-2021-3027084
Maryann Bouco	C-2021-3027088

Patricia Merrill  
Thomas & Maxine Shepard  
Marcia J Mathura

C-2021-3027135  
C-2021-3027144  
C-2021-3027252

10. That upon acceptance and approval by the Commission of the tariff supplements and allocation of the proposed Settlement rate increases filed by Community Utilities of Pennsylvania, Inc. in accordance with this Opinion and Order, the consolidated general rate increase investigation proceedings at Docket No. R-2021-3025206 (Water) and Docket No. R-2021-3025207 (Wastewater) be terminated and marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: January 13, 2022

ORDER ENTERED: January 13, 2022

# **ATTACHMENT B**

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held August 1, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman, Statement  
Kimberly Barrow, Vice Chair  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Pennsylvania Public Utility Commission	R-2023-3042804 (Water)
Office of Consumer Advocate	C-2023-3044737
Office of Small Business Advocate	C-2023-3044494
Oleg Chuchin	C-2023-3044483
John Hoopingarner	C-2023-3044502
Rose Cocklin	C-2023-3044507
Michael Sanfilippo	C-2023-3044480
Rafail Kovalenko	C-2023-3044599
Jenny Howard	C-2023-3044711
Christine Corbissero	C-2023-3044834
Scott and Vicky Furey	C-2023-3044882
Christina Boers	C-2023-3044944
George and Miriam Lingg	C-2023-3044979
Gregory Leone	C-2023-3045126
Cassandra Kramer	C-2024-3045350
Monica Wagner	C-2024-3045352
Nanette De Bartolo	C-2024-3045504
Susan J. Nikolaou	C-2024-3045546
Denise Cooper	C-2024-3045511
Ryan Ellison	C-2024-3045529
Craig Morris	C-2024-3045534
Anna Majewski	C-2024-3045535
Richard and Susan DiPiazza	C-2024-3045541
Brian Morrison	C-2024-3045560

## ATTACHMENT B

Joseph Bellatoni	C-2024-3045068
Joseph Albanese	C-2024-3045828
Gail Bechtold and Thomas Romano	C-2024-3045846
Mario Carlino	C-2024-3045937
Nicholas Corforte	C-2024-3045975
Linda DiGregorio	C-2024-3045856
Rich Franzen	C-2024-3045982
Catherine Gilchrist	C-2024-3045943
Steven and Carol Krauss	C-2024-3045910
Patricia Lathrop	C-2024-3045944
Susan Maeri	C-2024-3045978
Kristen Martin	C-2024-3045976
Peter Mauro	C-2024-3045861
Patricia Merrill	C-2024-3046298
Grace Moro	C-2024-3045802
Suzie Napolitano	C-2024-3045876
Christ and Carol Nielsen	C-2024-3045553
Thomas and Patricia Parillo	C-2024-3045969
Penn Estates POA, Inc	C-2024-3045863
Antonia and Ramon Rivas	C-2024-3045986
Mary Rossetti	C-2023-3044561
Larisa Shin	C-2024-3045549
Tom Chladny	C-2024-3046401
Margaret Creo	C-2024-3046735
Ernesha Holloway	C-2024-3045359
David Lambie	C-2024-3045801
Natalie Ortiz	C-2023-3045148
Anna Paryzki	C-2024-3045533
Grazyna Parzyka	C-2024-3045542
Petricia Perville-Davy	C-2024-3045389
Raju Shah	C-2024-3047313
Angela Tam	C-2024-3045333

v.

Community Utilities of Pennsylvania, Inc.

Pennsylvania Public Utility Commission	R-2023-3042805
	(Wastewater)
Office of Consumer Advocate	C-2023-3044738
Office of Small Business Advocate	C-2023-3044528
Oleg Chuchin	C-2023-3044508

## ATTACHMENT B

John Hoopingarner	C-2023-3044503
Rose Cocklin	C-2023-3044508
Michael Sanfilippo	C-2023-3044481
Rafail Kovalenko	C-2023-3044649
Jenny Howard	C-2023-3044712
Christine Corbissero	C-2023-3044835
Scott and Vicky Furey	C-2023-3044887
Christina Boers	C-2023-3044945
George and Miriam Lingg	C-2023-3044993
Gregory Leone	C-2023-3045127
Cassandra Kramer	C-2024-3045356
Monica Wagner	C-2024-3045357
Nanette De Bartolo	C-2024-3045510
Susan J. Nikolaou	C-2024-3045557
Denise Cooper	C-2024-3045515
Ryan Ellison	C-2024-3045531
Craig Morris	C-2024-3045782
Anna Majewski	C-2024-3045547
Richard and Susan DiPiazza	C-2024-3045556
Brian Morrison	C-2024-3045564
Joseph Bellatoni	C-2024-3045149
Joseph Albanese	C-2024-3045837
Gail Bechtold and Thomas Romano	C-2024-3045847
Mario Carlino	C-2024-3045973
Nicholas Corforte	C-2024-3045974
Linda DiGregorio	C-2024-3045857
Rich Franzen	C-2024-3046077
Catherine Gilchrist	C-2024-3045972
Steven and Carol Krauss	C-2024-3045911
Patricia Lathrop	C-2024-3045970
Susan Maeri	C-2024-3045979
Kristen Martin	C-2024-3045977
Peter Mauro	C-2024-3045862
Patricia Merrill	C-2024-3046299
Grace Moro	C-2024-3045803
Suzie Napolitano	C-2024-3045877
Christ and Carol Nielsen	C-2024-3045563
Thomas and Patricia Parillo	C-2024-3045557
Penn Estates POA, Inc	C-2024-3045830
Antonia and Ramon Rivas	C-2024-3045981
Mary Rossetti	C-2023-3044538
Larisa Shin	C-2024-3045561
Tigron Petrosian	C-2024-3045833

Laura Brennan	C-2024-3044709
Brian Fenimore	C-2023-3044383
Robert Zwahlen	C-2024-3045808
Ernesha Bolden	C-2024-3045716
David Fardig	C-2024-3045355
Lynn Buckingham	C-2024-3045354
Daniel McKoy	C-2024-3045480
Rene Bressant	C-2024-3045559
Christopher Williams	C-2024-3045661

v.

Community Utilities of Pennsylvania, Inc.

### **OPINION AND ORDER**

#### **BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Steven K. Haas and Alphonso Arnold III, issued on May 28, 2024, relative to the above-captioned general rate increase proceeding, and the Exceptions filed with respect thereto. The Recommended Decision of ALJs Haas and Arnold recommended that the Commission approve the Joint Petition for Full Settlement of Rate Proceedings (Joint Petition or Settlement), filed by Community Utilities of Pennsylvania, Inc. (CUPA or the Company), the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA) (collectively, the Joint Petitioners), on April 26, 2024.

Richard and Susan DiPiazza (the DiPiazzas) filed an Objection to the Settlement<sup>1</sup> on May 30, 2024.<sup>2</sup> On June 3, 2024, CUPA, I&E, and the OCA each filed a Letter stating that they would not be filing Exceptions to the Recommended Decision. On June 4, 2024, Joseph Albanese (Mr. Albanese) filed Exceptions to the Recommended Decision, which included a Certificate of Service upon the Parties of record in this proceeding.<sup>3</sup> On June 7, 2024, CUPA filed Replies to the Exceptions of Mr. Albanese. Also, on June 7, 2024, I&E and the OCA each filed a Letter stating that they would not be filing Replies to Exceptions. No replies to the DiPiazzas' Exceptions were filed.

As noted in our determinations herein, we shall adopt the ALJs' Recommended Decision, consistent with this Opinion and Order, and, thereby, approve the Settlement without modification.

---

<sup>1</sup> Under 52 Pa. Code § 1.2, the Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties. Here, given that the Parties were provided notice of the opportunity to respond to the Recommended Decision, the substantive rights of the other Parties will not be affected by the treatment of the DiPiazza's filing on May 30, 2024, as Exceptions to the Recommended Decision. Therefore, pursuant to 52 Pa. Code § 1.2, and in order to secure the just, speedy, and inexpensive determination in this proceeding, we shall consider the DiPiazza's filing on May 30, 2024, as Exceptions to the Recommended Decision.

<sup>2</sup> By Secretarial Letter issued June 24, 2024 (*June 2024 Secretarial Letter*), the Commission's Secretary: (1) notified the Parties that there was no Certificate of Service or other indication that the DiPiazza's filing was served on the Parties; and (2) enclosed the filing, in order to constitute service under 52 Pa. Code § 1.54. *See, June 2024 Secretarial Letter*. Therefore, pursuant to 52 Pa. Code § 5.535(a), the Parties were provided ten days to file Reply Exceptions. Given that July 4, 2024, was a holiday, Reply Exceptions were due July 5, 2024.

<sup>3</sup> Initially, Mr. Albanese filed Exceptions to the Recommend Decision on May 31, 2024, without a Certificate of Service.

**I. History of the Proceeding<sup>4</sup>**

On November 9, 2023, CUPA filed Supplement No. 13 to Tariff Water – Pa. P.U.C. No. 1 (Supplement No. 13), to become effective January 9, 2024. Supplement No. 13 would increase CUPA’s total annual operating income revenue for water service by approximately \$1,470,360, or 62.26%, over the Fully Projected Future Test Year (FPFTY) levels at present rates.<sup>5</sup> The Commission docketed this filing at Docket No. R-2023-3042804. R.D. at 2.

Also, on November 9, 2023, CUPA filed Supplement No. 11 to Tariff Wastewater – Pa. P.U.C. No. 1 (Supplement No. 11), to become effective January 9, 2024. Supplement No. 11 would increase CUPA’s total annual operating revenue for wastewater service by approximately \$1,738,944, or 50.83%, over FPFTY levels at present rates.<sup>6</sup> The Commission docketed this filing at Docket No. R-2023-3042805. R.D. at 2-3.

On November 13, 2023, I&E filed a Notice of Appearance in both proceedings. On November 29, 2023, the OSBA filed Formal Complaints, Public Statements, Verifications, and Notices of Appearances in both proceedings. On December 8, 2023, the OCA filed Formal Complaints, Public Statements, Verifications, and Notices of Appearances in both proceedings. R.D. at 3.

---

<sup>4</sup> For a complete history of the proceeding, please refer to pages 2-6 of the Recommended Decision.

<sup>5</sup> Although Supplement No. 13 states a proposed water revenue increase of \$1,449,638, CUPA’s testimony and schedules state \$1,470,360. R.D. at 2 (citing CUPA St. 1 at 9; CUPA St. 2 at 3; Filing Schedule B at 1-2).

<sup>6</sup> Although Supplement No. 11 states a proposed wastewater revenue increase of \$1,720,070, CUPA’s testimony and schedules state \$1,738,944. R.D. at 3 (citing CUPA St. 1 at 9; CUPA St. 2 at 3; Filing Schedule B at 1, 3).

Formal Complaints were filed by several customers against both Tariff Supplement No. 13 and Supplement No. 11. R.D. at 3-4. Among others, on December 20, 2023, the DiPiazas, customers of CUPA, filed a Formal Complaint against the requested increase. The Complaint was docketed at both R-2023-3042804 and R-2023-3042805. Additionally, on January 5, 2024, Mr. Albanese, a customer of CUPA, filed a Formal Complaint against the requested increase (Albanese Rate Complaint). That Complaint was docketed at both R-2023-3042804 and R-2023-3042805.

On December 21, 2023, pursuant to 66 Pa.C.S. § 1308(d), the Commission suspended both rate filings by operation of law until August 9, 2024, unless permitted by Commission Order to become effective at an earlier date (Suspension Order). The matters were assigned to ALJs Haas and Arnold. R.D. at 4.

On December 27, 2023, the Commission issued a Call-In Telephone Prehearing Conference Notice, which scheduled an initial telephonic prehearing conference for both proceedings for January 11, 2024. Subsequently, on December 29, 2023, the ALJs issued a Prehearing Conference Order, which set forth rules that would govern the prehearing conference and directed the Parties to file prehearing conference memoranda by noon on January 9, 2024. R.D. at 4.

On December 28, 2023, in compliance with the Commission's Suspension Order, CUPA filed Supplement No. 15 to Tariff Water – Pa. P.U.C. No. 1 (at Docket No. R-2023-3042804), and Supplement No. 13 to Tariff Wastewater – Pa. P.U.C. No. 1 (at Docket No. R-2023-3042805).

On January 11, 2024, a telephonic prehearing conference was held as scheduled, with the following Parties present: CUPA; I&E; the OCA; and the OSBA. No consumer Complainants appeared at the prehearing conference. On January 25, 2024,

the ALJs issued a Scheduling Order which: (1) consolidated the two proceedings; (2) granted CUPA's voluntary offer to extend the suspension period from August 9, 2024, to August 22, 2024, contingent upon the Company being permitted to recover approved rates from the original suspension deadline date through the effective date of Commission-approved rates; (3) modified the Commission's discovery regulations; (4) established a litigation schedule; and (5) scheduled public input hearings. R.D. at 4.

On January 31, 2024, the Company filed a Motion for Protective Order seeking to protect against non-authorized disclosure of proprietary information that is filed in the consolidated proceedings. On February 2, 2024, the ALJs issued an Order Granting Motion for Protective Order. R.D. at 4-5.

On February 2, 2024, CUPA filed Supplement No. 16 to Tariff Water – Pa. P.U.C. No. 1 and Supplement No. 14 to Tariff Wastewater – Pa. P.U.C. No. 1, suspending the effective date of rates at issue in these proceedings until August 22, 2024. R.D. at 5.

Public input hearings were held on: (1) January 30, 2024; (2) January 31, 2024; and (3) February 1, 2024. In total, forty-nine witnesses provided testimony at the public input hearings. R.D. at 5.

On February 6, 2024, I&E, the OCA, and the OSBA each pre-served Direct Testimony. On March 5, 2024, CUPA, I&E, the OCA, and the OSBA each pre-served Rebuttal Testimony. On March 19, 2024, CUPA, I&E, the OCA, and the OSBA each pre-served Surrebuttal Testimony. On March 25, 2024, CUPA pre-served its written Rejoinder Testimony. R.D. at 5.

On March 26, 2024, CUPA's counsel e-mailed the ALJs stating that CUPA, I&E, the OCA, and the OSBA had all agreed to waive cross examination of all witnesses and requested that the ALJs excuse all witnesses, cancel the hearings, and allow for the submission of all pre-served testimony and exhibits into the record by way of a Joint Stipulation for Admission of Evidence. On March 26, 2024, the ALJs granted the Parties' request cancelling the evidentiary hearings and directed the Parties to file a Joint Stipulation for Admission of Evidence. Consequently, on April 1, 2024, CUPA, I&E, the OCA, and the OSBA filed their Joint Stipulation for Admission of Pre-Served Testimony and Exhibits into the Evidentiary Record, seeking to admit into the evidentiary record the previously served written testimony and exhibits prepared by CUPA, I&E, the OCA, and the OSBA. On April 2, 2024, the ALJs issued an Order Granting Joint Stipulation and Admitting Evidence. Subsequently, on April 18, 2024, the ALJs issued a Revised Order Granting Joint Stipulation and Admitting Evidence. R.D. at 5-6.

As noted, *supra*, on April 26, 2024, the Joint Petitioners filed the Settlement, which proposed to resolve all issues raised in the proceeding, with accompanying statements in support from each Party to the Settlement. The Settlement provides for, *inter alia*, an increase in the Company's annual revenue for water service and wastewater service, in the amounts of \$1,227,538 and \$1,447,621, respectively. R.D. at 2, 6.

Attached to the Joint Petition are Appendices A through J, which contain the following: Appendix A – Procedural History, Proposed Findings of Fact, Proposed Conclusions of Law, Proposed Ordering Paragraphs; Appendix B – Water Tariff Supplement; Appendix C – Wastewater Tariff Supplement; Appendix D – Water Proof of Revenue; Appendix E – Wastewater Proof of Revenue; Appendix F – Customer Bill Impacts; Appendix G – Statement of CUPA in Support of the Joint Petition (CUPA Statement in Support); Appendix H – Statement of the OCA in Support of the Joint Petition (OCA Statement in Support); Appendix I – I&E Statement in Support of

Joint Petition (I&E Statement in Support); and Appendix J – Statement in Support of the Settlement of the OSBA (OSBA Statement in Support).<sup>7</sup> *See*, Settlement Appendices A-J.

The Joint Petition provided that the Settlement will be provided to all Formal Complainants. Further, the Joint Petition set a deadline of May 15, 2024, for the submission of comments either in support of, or opposition to, the Settlement. On May 8, 2024, Christ Nielsen filed an Objection to the Joint Petition. No other Complainants filed an objection or comment to the Settlement. R.D. at 6.

On May 16, 2024, upon expiration of the deadline for the filing of comments to the Settlement, the record in this proceeding was closed. R.D. at 6.

As previously noted, the ALJs' Recommended Decision was issued on May 28, 2024.<sup>8</sup> In their Recommended Decision, the ALJs found, *inter alia*, that the Settlement submitted by the Joint Petitioners is: (1) just and reasonable; (2) supported by substantial evidence; (3) in the public interest; and (4) consistent with the requirements of 66 Pa.C.S. § 1308. Accordingly, the ALJs recommended that the Commission approve the proposed rate settlement without modification, and that the Company file tariff supplements reflecting the rates set forth in its proposed compliance tariffs attached to the Joint Petition as Appendices B and C (for Water and Wastewater, respectively), to become effective for service rendered on and after August 9, 2024. R.D. at 2, 24, 64, 66.

---

<sup>7</sup> We note that according to the Commission's case management system, CUPA filed corrected versions of Appendices B and C on May 7, 2024.

<sup>8</sup> On May 29, 2024, an Errata Notice was issued to advise all the Parties of record that the first page of the Recommended Decision contained an incorrect docket number for a Wastewater complaint. We note that the correct docket number is reflected herein.

As noted, *supra*, the DiPiazzas and Mr. Albanese filed Exceptions to the Recommended Decision on May 30, 2024, and on June 4, 2024, respectively. On June 3, 2024, CUPA, I&E, and the OCA each filed a Letter stating that they would not be filing Exceptions to the Recommended Decision. No Replies to the Exceptions of the DiPiazzas were filed. CUPA filed Replies to the Exceptions of Mr. Albanese on June 7, 2024. Also, on June 7, 2024, I&E and the OCA each filed a Letter stating that they would not be filing Replies to Exceptions.

## **II. Description of CUPA**

CUPA is a certificated public utility that provides water service to approximately 3,257 customers, and wastewater service to approximately 3,832 customers, in the following three service territories in Pennsylvania: Penn Estates Utilities, Inc. (Penn Estates); Utilities, Inc. – Westgate (Westgate); and Pennsylvania Utility Company (Tamiment). R.D. at 10 (citing CUPA St. 1 at 4, St. 2 at 12-13).

## **III. Discussion**

### **A. Terms of the Settlement**

The Joint Petitioners agreed upon the following terms of settlement, which are set forth in Section V.A through V.K of the proposed Settlement, and are reprinted verbatim below:

1. The Company, I&E, the OCA, and OSBA engaged in a series of long, detailed, and productive communications to determine if, consistent with the Commission’s policy to “encourage settlements,” stated at 52 Pa. Code § 5.231(a), a settlement was possible. After extensive discovery and testimonial presentation by the Joint Petitioners, the Joint Petitioners engaged in an even more

extensive series of settlement negotiations. The Settlement is the product of those comprehensive negotiations, representing give-and-take by all Joint Petitioners, which resulted in a settlement that is in the public interest. The Settlement balances the need for significant investment to modernize facilities in CUPA's territories and the need for cost-based rates and measures to further enhance service and future performance with the principle of gradualism in rate changes and recognition of potential financial hardships for some customers. Moreover, the Settlement comprehensively addresses the quality of service issues raised in this proceeding by requiring the Company to, among other things, submit information on lost and unaccounted for water [(UFW)], update the Joint Petitioners on the implementation of virtual District Metering Areas in its Penn Estates service territory, provide certain information on isolation valve exercising as part of its next base rate case, and develop a hydraulic model to evaluate fire suppression flows in the Company's Tamiment system

2. The Settlement is a typical "black box" settlement;<sup>9</sup> that is, without admission on any particular issue. The terms agreed to are enforceable upon approval by the Commission. The Joint Petitioners agree that this Settlement is a reasonable resolution of competing positions and interests in a way that meets and promotes the public interest. It also avoids additional significant time and expense of all involved and avoids further expense including expensive briefing,

---

<sup>9</sup> *Pa. PUC et al v. Peoples TWP LLC*, 2013 WL 6835105, at \*16 (Order entered Dec. 19, 2013) ("We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. See, *Pa. PUC v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. PUC v. Citizens' Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). 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. For these reasons, we support the use of a "black box" settlement in this proceeding and, accordingly, deny this Exception.").

exceptions, replies, and potential appeals, which costs, under prevailing Pennsylvania law, would have ultimately been borne by the ratepayers.

3. The Joint Petitioners support approving CUPA's base rate filing at the above-captioned dockets as modified by the terms and conditions that follow:

A. Revenue Requirement Increase – Water

4. Upon Commission approval of this Settlement, the Company will be permitted to change rates for water service as set forth in the proposed Water Tariff Supplement attached hereto as **Appendix B** ("Water Settlement Rates"), to become effective upon one day's notice. Instead of the \$1,470,360 increase requested in the filing, the Water Supplement rates are designed to produce an increase of annual water revenue of \$1,227,538 as shown in greater detail on the Proof of Revenues attached hereto as **Appendix D**.

B. Revenue Requirement Increase – Wastewater

5. Upon Commission approval of this Settlement, the Company will be permitted to charge rates for wastewater service as set forth in the proposed Wastewater Tariff Supplement attached hereto as **Appendix C** ("Wastewater Settlement Rates"), to become effective upon one day's notice. Instead of the \$1,738,944 increase requested in the filing, the Wastewater Settlement Rates are designed to produce an increase of annual wastewater revenue of \$1,447,621 as shown in greater detail on the Proof of Revenues attached hereto as **Appendix E**.

C. Stay Out

6. The Company agrees that it will not file for a general rate increase pursuant to 66 Pa. C.S. § 1308(d) to water or wastewater base rates earlier than February 9, 2026. This paragraph does not apply to extraordinary or emergency rate relief pursuant to 66 Pa. C.S. § 1308(e) (or upon a petition for emergency rate increase), tariff changes required by Commission order or industry-wide changes in regulatory policy which affect CUPA's rates.

D. Effective Date

7. Upon the entry of a Commission order approving this Joint Petition, the Company will be permitted to file a tariff for water service, in the form attached hereto as **Appendix B**, and a tariff for wastewater service, in the form attached hereto as **Appendix C**, reflecting the agreed-upon additional operating revenue. The Joint Petitioners agree to the implementation of the Water Settlement Rates and Wastewater Settlement Rates on August 9, 2024, when the original statutory suspension period was to expire, if the Commission enters an Order approving the Joint Petition prior to or on that date.<sup>10</sup>

8. If the Commission approval of this Settlement occurs after August 9, 2024, the Joint Petitioners agree that CUPA shall be entitled to recoup the revenue increase not billed from the effective date of August 9, 2024, through the date of any PUC approval of new rates in the manner set forth in the Commission's final Order in this proceeding. The revenue increases not billed from the effective date of August 9, 2024, through the date of PUC approval of new rates will be recovered over a six-month period that shall be applied proportionately to all customer classes via a surcharge on each monthly bill during the six-month recovery period. The Company will be permitted to file revised water and wastewater tariff pages to implement the surcharge, as set forth in Appendices B and C, respectively.

E. COVID-19 Regulatory Asset

9. CUPA shall recover the COVID-19 Regulatory Asset balance of \$114,185 amortized over 5 years.

10. CUPA shall remove the deferred charges related to the COVID-19 pandemic from rate base.

11. The above revenue requirement includes recovery of the COVID-19 Regulatory Asset as modified by the Paragraphs 9 and 10, but to the extent CUPA files another rate case prior to the end of 5-year amortization period, CUPA may recover any remaining balance in future rates.

---

<sup>10</sup> By Scheduling order entered January 25, 2024, the procedural suspension date was extended from August 9, 2024, to August 22, 2024.

12. CUPA agrees to no longer continue recording a regulatory asset for ongoing COVID-19 related incremental bad debt (other than reductions to bad debt in the regulatory asset associated with late recovery of such related bad debt) and other COVID-19 related expenses after the effective date of new rates for the instant proceeding.

F. Low-Income Program

13. The Company will expand the eligibility of its Low-Income Program from income up to 100% to income up to 200% of the [Federal Poverty Level (FPL)].

14. Regarding changes to the Company's website:

a. The Company will make the low-income section of its website a permanent news item that is visible as soon as the customer enters the website.

b. The separate, low-income page will include a link to the application form, as well as all information about the sign-up process and eligibility qualification requirements.

c. The Company will change the existing "URL" link to the application page to say "Application" or "Click here to apply".

d. The Company will use its existing customer notification infrastructure to drive customers to the website to explore the Low-Income Program and their possible eligibility. Specifically, the Company will use its Voice Reach system – which sends information directly to customers via email, phone, and text messages – to provide quarterly updates to customers about the existence of the program. This outreach will be modified to both English and a Spanish language.

e. The Company will provide print copies of their low-income handouts to customers in English or Spanish. These mailers will be provided quarterly through bill inserts.

15. The Company will continue to provide quarterly report updates detailing participation, usage, and revenue shortfalls/surpluses.

16. The Company will track all costs associated with the administration of its Low-Income Program, if those costs are dedicated to administering the Program. Such costs include the Company's payments to Dollar Energy Fund [(DEF)] for income verification and costs associated with outreach activities. The Company will report these costs on a quarterly basis in its Low-Income reporting. In its next base rate proceeding, the Company shall identify those costs it seeks to recover as part of its ongoing administration of the Low-Income Program.

17. Until the Commission issues an order in CUPA's next base rate case, the Company will hold annual customer meetings in each of its service territories where topics including the Low-Income Program will be discussed.

G. Rate Design and Structure

18. The parties agree to the rate design reflected in Appendix D and Appendix E, which reflects the following rate design principles:

a. The Company will apply a 45% discount to both the volumetric and customer charge for all participants in the Low-Income Program, regardless of their income relative to the FPL.

b. The [C]ompany will implement a 6.3% water and a 1% wastewater differential between the commercial and residential volume charges.

c. For the purposes of establishing the revenue requirement in this case, CUPA shall utilize a consumption decline of 1.16% from the Historical Test Year ("HTY") consumption levels to the Future Test Year ("FTY") consumption levels and an additional decline of 1.16% from the FTY to the [FPFTY] consumption levels.

19. In its next base rate filing, CUPA will present a tiered discount income-based plan with tiers at 50% and 75%

of the [FPL]. This tiered income-based plan will only be applied to and recovered from residential customers.

H. Arrearage Management Program (AMP)

20. Customers approved for CUPA's low-income rate and with a past-due balance greater than \$400 can participate in CUPA's AMP.

21. The AMP will be comprised of the total past due balance for all services – water and/or wastewater. The past due balance threshold of \$400 for participation in the AMP will be based upon this combined balance.

22. AMP customers will be enrolled in a multi-month Deferred Payment Arrangement ("DPA"). A DPA allows a customer to take their past-due balance and split their past-due balance over equal monthly installments.

23. The default AMP period for low-income customers will be 12 months. While these terms may be default periods, CUPA will allow good faith flexibility by including consideration of ability of the customer to pay, length of time over which the past due balance accumulated, payment history, and size of unpaid balance.

24. AMP customers who make timely payments and stay current with their monthly water/wastewater bill, including the DPA portion of their bill, for half of the months of the AMP term will have the remaining monthly DPA payments forgiven. In the next base rate case, the [C]ompany will present an analysis and costs to implement changes to its billing system that would allow customers on an active AMP to select an alternate billing due date. Should such AMP feature be approved by the Commission, and the costs to implement the changes are deemed reasonable, such costs would be recoverable as a component of the Company's cost of service.

25. If the customer defaults on the DPA, normal collections processes apply. The customer may request to establish a new DPA (not an AMP DPA) for any then-current past due balance. The customer may be eligible for an AMP

DPA to be implemented 12 months after default of a previous AMP DPA.

26. If the customer defaults on the DPA, then all payments made by the customer to satisfy the customer's obligations under the DPA will contribute towards satisfying the customer's overall arrearage (*e.g.*, if a customer makes monthly payments totaling \$250 of their \$500 requirement under the AMP with a \$1,000 overall arrearage balance, then the customer's arrearage balance upon default would be \$750.)

27. The AMP will be indifferent as to how or who makes payments on the balance.

28. Customers who apply for or are approved for the Low-Income Program will be informed of the AMP and offered an opportunity to participate in the AMP in conjunction with the Low-Income Program outreach.

29. If a CUPA customer contacts CUPA or [DEF] regarding an issue with paying their bill or signing up for either the AMP or the low-income program, the customer shall be informed of both programs, including eligibility requirements.

I. Integration Customer Protection Deferral Mechanism

30. CUPA shall set up a deferral account, "Integration Customer Protection Deferral Mechanism," which will capture accrued costs and benefits of integration that occur for five years after the closing date. All parties reserve their rights to challenge recovery of any deferred amounts in future rate proceedings.

J. Water Quality & Service Issues

31. Regarding [UFW] mitigation and reporting:

a. For all systems, the Company will perform annually system wide leak detection and any associated repairs unless the individual system has an average UFW that is below 20% for the previous 6 months.

b. For Penn Estates, the [C]ompany is currently working with GHD, an engineering firm, to design

and implement virtual district metering areas (“vDMA”) at Penn Estates utilizing the existing hydraulic model. The vDMAs serve to split the system into smaller zones, which will allow for ongoing monitoring and quicker response times to locate and repair leaks. Before the next rate case, CUPA will provide OCA, I&E, and OSBA with an update on the implementation of the vDMA project.

c. CUPA will submit PUC Form 500 method using gallons/year units instead of gallons/day.

d. CUPA will submit an individual Form 500 for each of its systems.

e. In future rate cases, CUPA will continue to provide a breakdown of lost and [UFW] by system detailing all identified causes as per the previous base rate case settlement.

f. CUPA shall provide quarterly updates regarding their UFW by system to the OCA and the Commission until CUPA files its next base rate case.

32. Before the next rate case, CUPA will provide an update to [the] OCA, I&E, and [the] OSBA on the implementation of the recommendations from the engineering study and hydraulic analysis to address low and high pressure in Penn Estates.

33. CUPA will submit with its next rate case documentation that identifies the isolation valves that need to be located, uncovered, repaired and/or replaced in the following year.

34. The Company will have GHD develop a hydraulic model utilizing existing data for its Tamiment system. The hydraulic model will then be used to evaluate the fire suppression flows available throughout the Tamiment system before the next base rate case. Monthly unmetered public fire protection rates will not be decreased.

35. The Company will present a no-fee payment option for online payments in the next base rate case. Under

this methodology, customers would not be directly charged an additional fee at the time of payment. Instead, these expenses will be recovered by CUPA directly under the O&M expenses in the cost of service.

K. Capital Reporting Requirements

36. CUPA will file and serve upon I&E, the OCA, and [the] OSBA an updated CUPA Schedule A-1, Columns A-G, lines 1-50 (water) and 51-119 (wastewater) no later than November 1, 2024, that will include the actual capital expenditures, plant additions, and retirements by month for the twelve months ending July 31, 2024.

37. CUPA will provide an additional update for the 12 months ending July 31, 2025, no later than November 1, 2025.

L. Standard Terms

38. The Commission's approval of the Settlement Terms shall not be construed as approval of any Joint Petitioner's position on any issue but rather as an agreed-to compromise of the Joint Petitioners' competing positions. It is understood and agreed among the Joint Petitioners that the Settlement Terms are the result of compromise and do not necessarily represent the position(s) that would be advanced by any Joint Petitioner in this or any other proceeding, if it were fully litigated. Accordingly, the Settlement Terms may not be cited as precedent in any future proceeding, except to the extent required to implement or enforce any Settlement Term herein.

39. This Settlement is presented without prejudice to the position any of the Joint Petitioners may advance in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to by the Joint Petitioners in this Settlement.

40. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. In reaching this Settlement, the Joint Petitioners thoroughly considered all issues and give and take of positions. As a result of that consideration, the Joint Petitioners believe that the settlement agreement

meaningfully addresses all such issues raised and therefore should be approved without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within five (5) business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Joint Petitioner elects to withdraw the Settlement as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

41. If the ALJ, in the Recommended Decision, recommends that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions. However, to the extent any terms and conditions of the Settlement are modified, or additional matters are proposed by the ALJ in the Recommended Decision, the Joint Petitioners do not waive their rights to file Exceptions in support of the Settlement. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed provided such Replies support the Settlement.

42. The Joint Petitioners recognize that this Joint Petition is a settlement of, and binding upon, only the parties signing this document. The OCA represents it will, on the date of the signing of this [S]ettlement petition, send a letter providing instructions concerning the Complainants' opportunity to address the proposed Settlement. The OCA also represents that the letter will explain that the Complainant has until May 15, 2024, to join, disagree but not actively oppose, or object to the Settlement and provides contact information for the Presiding Officers and the OCA.

43. The Joint Petitioners agree that this document may be signed or executed in separate counterparts or signature pages that shall be binding upon the Joint

Petitioners and such counterparts shall be considered as one document.

44. The Joint Petitioners agree and request that if the Settlement is approved, the OCA and [the] OSBA's respective Formal Complaints in this matter should be marked satisfied and closed due to the Settlement.

Settlement at 2-12 (emphasis in original).

## **B. Applicable Law**

The purpose of this investigation is to establish rates for CUPA's customers that are "just and reasonable," pursuant to Section 1301 of the Code, 66 Pa.C.S. § 1301. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pennsylvania Gas and Water Company v. Pa. PUC*, 341 A.2d 239 (Pa. Cmwlth. 1975). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923) (*Bluefield*) and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield*, the United States Supreme 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 too high or too low by changes

affecting opportunities for investment, the money market and business conditions generally.

*Bluefield*, 262 U.S. at 692-3.

Commission policy promotes settlements. 52 Pa. Code §§ 5.231, 69.401. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. Rate cases are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant savings for the company's customers. This is one reason why settlements are encouraged by long-standing Commission policy.

In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC, et al. v. The York Water Company*, Docket No. R-00049165 (Opinion and Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991).

Section 315(a) of the Code reads as follows:

**§ 315. Burden of proof.**

**(a) Reasonableness of rates.**-- In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon

complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

66 Pa.C.S. § 315(a). Consequently, in this proceeding, CUPA has the burden to prove that the rate increase it has proposed through the Settlement is just and reasonable. The Joint Petitioners have reached an accord on the issues and claims that arose in this proceeding and submitted their Settlement for Commission review. In reviewing the Settlement, the question which must be answered is whether it is in the public interest. The Joint Petitioners have the burden to prove that the Settlement is in the public interest.

### **C. Statements of the Parties in Support of the Settlement**

#### **1. Positions of the Parties**

CUPA provided that the proposed Settlement is in the public interest and establishes rates which: (1) are just and reasonable; (2) incorporate the principles of rate gradualism through a voluntary rate case stay-out provision; and (3) economically benefit the Company's customers by setting lower rates than originally requested. CUPA averred that the Settlement will benefit customers because it will: (1) provide the Company with additional revenues that will continue to enhance its ability to modernize its water and wastewater systems and provide high quality customer service; and (2) save on rate case litigation costs – which are borne by ratepayers under Pennsylvania law – over the next two years. CUPA Statement in Support at 1-2. As support that the Settlement will mitigate the effects of the rate increase on low-income customers, CUPA noted, *inter alia*, that the Settlement will establish an AMP which will provide a direction for qualifying customers to receive arrearage forgiveness. *Id.* at 2-3. CUPA also noted that the Settlement mitigates the impacts to customers by, *inter alia*, assigning a larger

amount of the increase to volumetric charges rather than fixed customer charges, thereby ensuring that customers have more control over their monthly bills. *Id.* at 3. CUPA also highlighted that the Settlement provides for further resolution of the service issues raised at the public input hearings, which reflects the Company's agreement to several requests made by I&E and the OCA in their testimony to address those issues. *Id.* at 3-4.

I&E submitted that the proposed Settlement: (1) balances the interests of CUPA, its customers, and the Joint Petitioners in a fair and equitable manner; (2) proffers a resolution for the Commission's adoption that best serves the public interest; and (3) demonstrates the compromises of the Joint Petitioners. I&E Statement in Support at 6-7. I&E noted that the overall revenue levels are within the levels advanced on the evidentiary record and reflect the compromise of all revenue-related issues raised by the Parties. Therefore, I&E submitted that it fully supports the negotiated level of overall base rate revenue increase as a full and fair compromise that provides the Company, the Joint Petitioners, affected ratepayers, and the Commission with resolution of the overall revenue increase, all of which is in the public interest. *Id.* at 8. I&E also highlighted *inter alia*, that: (1) it does not oppose the stay-out provision, or the agreed-upon terms regarding CUPA's low-income program and its AMP; and (2) it fully supports the Settlement terms pertaining to the revenue allocation and rate design, the Integration Customer Protection Deferral Mechanism, and the water quality and service issues. *Id.* at 9, 11, 13-16. I&E also noted that this Settlement not only eliminates the need for evidentiary hearings and post-hearing litigation, but also provides regulatory certainty with respect to the disposition of issues and resolution of this case, which all Parties agree benefits their discrete interests. Therefore, I&E represented that it supports the Settlement as being in the public interest and requested that the ALJs and the Commission approve it without modification. *Id.* at 18-19.

The OCA submitted that the proposed Settlement: (1) achieves a reasonable resolution of the several issues presented in this proceeding; (2) is in the

public interest and the interest of the Company's customers; and (3) should be approved without modification. OCA Statement in Support at 3-4. The OCA highlighted, *inter alia*, that the Settlement provides or will provide: (1) a total revenue increase less than 3% higher than the OCA's litigated position, which would be within the range of likely outcomes in the event of full litigation of the case; (2) a stay out provision that ensures stability in the newly-established rates, such that the Company will not file a rate request until at least February 9, 2026; (3) a rate design that is in the public interest because it balances the Company's interest in maximizing fixed rate recovery with the Commission's policies, which favor rate designs that incentivize conservation and move gradually toward cost of service; (4) more affordable bills to the Company's low-income customers; (5) an improvement in the Company's low-income programs and progresses CUPA towards offering a more comprehensive and overall robust low-income program; and (6) provisions that address water quality and service issues. *Id.* at 5, 10-11, 13, 18-19, 26. Overall, the OCA submitted that the terms and conditions of the Settlement represent a fair and reasonable resolution of the issues raised by the OCA in this proceeding. Therefore, the OCA submitted that the Settlement should be approved by the ALJs and the Commission without modification. *Id.* at 27.

The OSBA, as with I&E and the OCA, noted the benefits of the proposed Settlement. The OSBA highlighted, *inter alia*, that the Settlement provides or will provide: (1) a reduction in the overall revenue increase; (2) a stay out provision, which will provide assurance to small business customers that CUPA will not seek to increase rates for a significant period of time; and (3) a resolution without the need for costly litigation procedures, which are borne by the Joint Petitioners and the Company's customers. Accordingly, the OSBA submitted its support for the Settlement and requested that the ALJs and the Commission approve the Settlement in its entirety. OSBA Statement in Support at 2-3, 5.

## 2. ALJs' Recommendation

In their Recommended Decision, ALJs Haas and Arnold made ten Findings of Fact (FOF) and reached twelve Conclusions of Law (COL). I.D. at 10-16, 65-66. The FOF and COL are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJs concluded that the terms of the Joint Petition are just, reasonable, and necessary for the Company to provide safe and adequate water and wastewater service to its customers and, therefore, are in the public interest.<sup>11</sup> R.D. at 2, 24. The ALJs considered the terms and conditions of the Settlement and found that it produces just and reasonable rates and addresses several other issues raised by the Parties during the course of this proceeding. R.D. at 64. Of particular note, the ALJs reasoned that because the agreed-upon revenue increase represents a reduction from CUPA's initial proposal, Company customers will benefit from a reduction in their economic burden and CUPA being afforded with revenue sufficient to cover its expenses and continue investing in its facilities necessary to provide safe, effective, and reliable water and wastewater service. R.D. at 27. The ALJs further reasoned that the active Parties: (1) presented expert testimony in support of the various elements of the rate filing; (2) engaged in discovery and reviewed and evaluated the filing; and (3) participated in extensive settlement negotiations and made compromises, which the Commission has stated "fosters and promotes the public interest." R.D. at 64 (citing *Pa. PUC v. C. S. Water & Sewer Associates*, 74 Pa. P.U.C. 767, 771 (1991)). Moreover, the ALJs found that the unanimous agreement of the Joint Petitioners resulted in lower rate increases than originally proposed by the Company. R.D. at 64.

---

<sup>11</sup> The ALJs' findings with regard to the terms of the Settlement are detailed in their Recommended Decision under Section VI. *See*, R.D. at 26-29, 31, 33-34, 37-38, 40-44, 46-48, 50-55, 57, 59-60.

The ALJs found that the Settlement is supported by substantial evidence, is in the public interest, and is consistent with the requirements of 66 Pa.C.S. § 1308. R.D. at 64. Accordingly, the ALJs recommended that the Commission approve the proposed Settlement without modification and that CUPA file tariff supplements reflecting the rates set forth in its proposed compliance tariffs attached to the Joint Petition as Appendices B (water) and C (wastewater), to become effective August 9, 2023. R.D. at 64.

### **3. Disposition**

Based upon our review of the record, we concur with the ALJs' finding that the proposed Settlement should be approved, in full, without modification. We are of the opinion that the terms of the Settlement produce just and reasonable rates that balance the concerns of all Parties involved and is in the public interest. We also concur with the ALJs that the associated Complaints filed by the OCA and by the OSBA be deemed satisfied. Finally, we concur with the ALJs that the Formal Complaints identified in Ordering Paragraph No. 7 of the Recommended Decision at their respective Docket Nos., including, as discussed, *infra*, the Complaints of the DiPiazas and Mr. Albanese, be dismissed. *See*, R.D. at 67-70.

#### **D. Pro se Complainants**

As noted, *supra*, the following *pro se* Complainants filed Exceptions to the Recommended Decision: the DiPiazas and Mr. Albanese. We note at the outset that neither the DiPiazas' Exceptions nor those filed by Mr. Albanese are in strict

compliance with Section 5.533(b) of our Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.533(b), which provides that:

(b) Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.

52 Pa. Code § 5.533(b). We recognize, however, that the DiPiazas and Mr. Albanese are *pro se* Complainants in this proceeding. Traditionally, we have been hesitant to rule unfavorably against *pro se* litigants based on technical grounds. *See, e.g., Destefano v. Peoples Natural Gas Company*, 56 Pa. P.U.C. 489 (1982); *Halpern v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00923950 (October 19, 1992); *William Schlinder v. The Bell Telephone Company of Pennsylvania*, Docket No. F-00161252 (March 26, 1993). In our view, it is in the public interest that all litigants, particularly *pro se* litigants, be afforded a meaningful opportunity to be heard. Therefore, we will consider the merits of the DiPiazas' Exceptions and Mr. Albanese's Exceptions.

### **1. Exceptions of the DiPiazas<sup>12</sup>**

In their Exceptions, the DiPiazas express their disagreement with the proposed Settlement. Specifically, the DiPiazas note that two years earlier, the Commission approved CUPA's requested increase, which ultimately resulted in the Tamiment water consumption charge increasing from \$5.13 per thousand gallons to \$11.45 per thousand gallons, or 123%. The DiPiazas continue that here, under the terms of the Settlement, the water consumption rate will increase from \$11.45 per thousand gallons to \$21.12 per thousand gallons, or 84%. The DiPiazas strongly disagree with this increase given, *inter alia*, the current rate of inflation and the fixed incomes of the

---

<sup>12</sup> As previously noted, no Replies to the Exceptions of the DiPiazas were filed.

residents of Tamiment. The DiPiazzas also point out that under the Settlement, the base rate for wastewater will increase from \$26.15 to \$39.90, or 53%, and the wastewater consumption charge will increase from \$13.98 to \$18.00, or 29%. Further, the DiPiazzas contend that the expansion of eligibility for CUPA's low-income program will only impact a limited number of residents. The DiPiazzas close their Exceptions by arguing that, essentially, the Settlement should be rejected in its entirety as not being in the public interest. DiPiazza Exc. at 1.

## 2. Exceptions of Mr. Albanese and Replies

In his Exceptions, Mr. Albanese expresses his disagreement with the ALJs allowing CUPA to increase the water and wastewater bills in Tamiment by 69.05% and 58.65%, respectively. Mr. Albanese argues that given, *inter alia*, the rate of inflation and cost of living increases over the past several years, CUPA should limit such increases and all future proposed rate increases to reasonable and "sane" percentage amounts. Albanese Exc. at 1.

In its Replies to Exceptions, CUPA counters that although the Settlement, consistent with the Commission's Regulations, required that any party objecting to the Settlement submit objections to the Settlement, Mr. Albanese failed to object to the Settlement. Specifically, CUPA contends that where a party fails to raise objections to the Settlement, that Party cannot raise issues, via exceptions, issues that could have been addressed in an objection because that prevents an opportunity for the parties to respond and for the ALJ(s) to address issues. CUPA R. Exc. at 3-4 (citing *Pa. PUC v. City of Lancaster*, Docket Nos. R-00049862 & R-00049862C0001 (Tentative Opinion and Order entered January 31, 2007), 2007 WL 517134 at \*15 (citing *Application of Apollo Gas Company*, 1994 Pa PUC LEXIS 45 (1994))). CUPA continues that here, because Mr. Albanese failed to file an objection to the Settlement and raise the arguments he

made in his Exceptions, the Exceptions are, therefore, waived and the Commission should deny his Exceptions. CUPA R. Exc. at 4.

CUPA also disagrees with Mr. Albanese's argument that the rate increases do not account for inflation or cost of living increases over the last several years, arguing that utility base rates are not based on such factors. CUPA counters that a public utility's rates must be developed 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. CUPA R. Exc. at 4-5 (citing *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)). Further, CUPA argues that when determining whether the Settlement is in the public interest, the revenue increases cannot be considered in a vacuum apart from the commitments the Company has made as part of the Settlement, including: (1) the "stay out" provision, which 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 1.5 years; and (2) the enhancements to the Company's Low-Income Program. CUPA R. Exc. at 5 (citing Settlement at ¶¶6, 13, 15-16). Moreover, CUPA notes that the Settlement provides a lower rate increase than what was proposed in its initial filing. Furthermore, CUPA argues that Mr. Albanese's Exceptions provide no rational argument or basis for the Commission to reject the Settlement. Accordingly, CUPA submits that absent any evidence that the Settlement is not in the public interest and results in rates that are not just and reasonable, and given the benefits provided by the Settlement, the Commission should approve the Settlement and reject Mr. Albanese's Exceptions. CUPA R. Exc. at 5-6.

### 3. Disposition of Exceptions

We find no merit in the DiPiazzas' Exceptions. We note that the DiPiazzas had the opportunity to file comments with respect to the Settlement and had the option to join the Settlement, to object to the Settlement, or to take no action. The record shows that the DiPiazzas opted not to file any objections or comments to the Settlement. Nevertheless, the DiPiazzas now contend that the Settlement, including CUPA's agreement to expand its low-income program, is not in the public interest. However, even if we were to consider the DiPiazzas' arguments, they fail to make a convincing argument that the ALJs erred in recommending that the Settlement be approved in full, without modification. Accordingly, we conclude that the DiPiazzas were afforded every opportunity to participate in the process and to have their concerns addressed. Therefore, for the above reasons, the DiPiazzas' Exceptions are denied.

Similarly, we find no merit in Mr. Albanese's Exceptions. As CUPA points out, Mr. Albanese did not present any of his arguments or objections to the Settlement until he filed Exceptions to the ALJs' Recommended Decision. *See*, CUPA R. Exc. at 4. Furthermore, Mr. Albanese never specifically addresses the Settlement in his Exceptions. Instead, Mr. Albanese's Exceptions simply restate the assertions he made in his original Formal Complaint that was filed in this proceeding, in opposition to CUPA's proposed rate increase. *See*, Albanese Rate Complaint at 2. Notwithstanding, it is important to note that even if we considered the arguments Mr. Albanese set forth in his Exceptions, we find that similar to the DiPiazzas, Mr. Albanese fails to make a convincing argument that the ALJs erred in recommending that the Settlement be approved in full, without modification. As such, we shall deny Mr. Albanese's Exceptions.

To the extent that the DiPiazzas and Mr. Albanese argue that the Settlement is not in the public interest, we are persuaded by CUPA's averment that when

determining whether the Settlement is in the public interest, the revenue increases cannot be considered separate from the Company's commitments as part of the Settlement. *See*, CUPA R. Exc. at 5. Indeed, as noted by the ALJs, the Joint Petitioners negotiated the Settlement, including the agreed-upon revenue requirement increase that represents a reduction from CUPA's initial proposal, which they assert to be in the public interest and of benefit to the Company's customers. R.D. at 26-27. Moreover, when each of the statutory advocates (I&E, the OCA and the OSBA) fully support a settlement, it is a good indicator that the terms and conditions of the settlement are just and reasonable. *See, Pa. PUC, et al. v. Aqua Pennsylvania, Inc.*, Docket No. R-2018-3003558, et al. (Opinion and Order entered May 9, 2019) (citing *Pa. PUC v. T.W. Phillips Gas and Oil Co.*, Docket No. R-2010-2167797 (Order entered November 4, 2010)). Here, we find it significant that the statutory advocates fully support the proposed Settlement. We, therefore, conclude that the principle of gradualism was properly considered by the Joint Petitioners and the ALJs when they developed their consensus position embodied in the proposed rates.

In summary, we find that Mr. Albanese and the DiPiazzas have not presented a valid basis for us to reverse the ALJs' recommendation that the Settlement be approved in full, without modification. Rather, we find the Settlement rates to be fully supported by the record evidence in this proceeding and in the public interest. Accordingly, both Mr. Albanese's Exceptions and the DiPiazzas' Exceptions are denied.

#### IV. Conclusion

Based on our review, evaluation, and analysis of the record in this proceeding, we conclude that the Settlement is in the public interest. Consequently, we shall deny both the DiPiazzas' Exceptions and Mr. Albanese's Exceptions, and adopt the ALJs' recommendation that: (1) grants the Joint Petition and adopts the proposed Settlement, in full, without modification; and (2) authorizes CUPA to file tariff supplements reflecting the

rates set forth in its proposed compliance tariffs attached to the Joint Petition as Appendix B (for water) and Appendix C (for wastewater), consistent with this Opinion and Order;

**THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by Richard and Susan DiPiazza on May 30, 2024, to the Recommended Decision of Administrative Law Judges Steven K. Haas and Alphonso Arnold III, are denied.

2. That the Exceptions filed by Joseph Albanese on June 4, 2024, to the Recommended Decision of Administrative Law Judges Steven K. Haas and Alphonso Arnold III, are denied.

3. That the Recommended Decision of Administrative Law Judges Steven K. Haas and Alphonso Arnold III, issued on May 28, 2024, is adopted.

4. That the Joint Petition for Full Settlement of Rate Proceedings, filed by Community Utilities of Pennsylvania, Inc., the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate, on April 26, 2024, at Docket Nos. R-2023-3042804 and R-2023-3042805, is granted, and the proposed Settlement is adopted, in full, without modification.

5. That Community Utilities of Pennsylvania, Inc. shall not place into effect the rates contained in Supplement No. 13 to Tariff Water – Pa. P.U.C. No. 1, as filed.

6. That Community Utilities of Pennsylvania, Inc. shall not place into effect the rates contained in Supplement No. 11 to Tariff Wastewater – Pa. P.U.C. No. 1, as filed.

7. That Community Utilities of Pennsylvania, Inc. shall file tariff supplements or tariff revisions incorporating rates, rules, and regulations, consistent with the Joint Petition for Full Settlement of Rate Proceedings, to produce a total increase of \$1,227,538 for its water operations, and \$1,447,621 for its wastewater operations, consistent with the rates, rules, and regulations set forth in the tariff supplements included in the Joint Petition for Full Settlement of Rate Proceedings as Appendices B (Water) and C (Wastewater).

8. That Community Utilities of Pennsylvania, Inc. shall be permitted to file tariffs in the form set forth in Appendices B (Water) and C (Wastewater) to the Joint Petition for Full Settlement of Rate Proceedings, to become effective upon at least one day's notice, for service rendered on and after August 9, 2024, so as to produce an annual increase in revenues, consistent with this Opinion and Order.

9. That Community Utilities of Pennsylvania, Inc., the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate shall comply with the terms of the Joint Petition for Full Settlement of Rate Proceedings submitted in this proceeding, as though each term and condition stated therein had been the subject of an individual ordering paragraph.

10. That the Formal Complaints of the Office of Consumer Advocate at Docket Nos. C-2023-3044737 (Water) and C-2023-3044738 (Wastewater) are deemed satisfied and marked closed.

11. That the Formal Complaints of the Office of Small Business Advocate at Docket Nos. C-2023-3044494 (Water) and C-2023-3044528 (Wastewater) are deemed satisfied and marked closed.

12. That the following Formal Complaints at the respective docket numbers be dismissed and marked closed by the Commission’s Secretary’s Bureau:

<u>Complainant(s)</u>	<u>R-2023-3042804</u>
Oleg Chuchin	C-2023-3044483
John Hoopingarner	C-2023-3044502
Rose Cocklin	C-2023-3044507
Michael Sanfilippo	C-2023-3044480
Rafail Kovalenko	C-2023-3044599
Jenny Howard	C-2023-3044711
Christine Corbissero	C-2023-3044834
Scott and Vicky Furey	C-2023-3044882
Christina Boers	C-2023-3044944
George and Miriam Lingg	C-2023-3044979
Gregory Leone	C-2023-3045126
Cassandra Kramer	C-2024-3045350
Monica Wagner	C-2024-3045352
Nanette De Bartolo	C-2024-3045504
Susan J. Nikolaou	C-2024-3045546
Denise Cooper	C-2024-3045511
Ryan Ellison	C-2024-3045529
Craig Morris	C-2024-3045534
Anna Majewski	C-2024-3045535
Richard and Susan DiPiazza	C-2024-3045541
Brian Morrison	C-2024-3045560
Joseph Bellatoni	C-2024-3045068
Joseph Albanese	C-2024-3045828
Gail Bechtold and Thomas Romano	C-2024-3045846
Mario Carlino	C-2024-3045937
Nicholas Corforte	C-2024-3045975
Linda DiGregorio	C-2024-3045856
Rich Franzen	C-2024-3045982
Catherine Gilchrist	C-2024-3045943
Steven and Carol Krauss	C-2024-3045910
Patricia Lathrop	C-2024-3045944

**ATTACHMENT B**

Susan Maeri	C-2024-3045978
Kristen Martin	C-2024-3045976
Peter Mauro	C-2024-3045861
Patricia Merrill	C-2024-3046298
Grace Moro	C-2024-3045802
Suzie Napolitano	C-2024-3045876
Christ and Carol Nielsen	C-2024-3045553
Thomas and Patricia Parillo	C-2024-3045969
Penn Estates POA, Inc	C-2024-3045863
Antonia and Ramon Rivas	C-2024-3045986
Mary Rossetti	C-2023-3044561
Larisa Shin	C-2024-3045549
Tom Chladny	C-2024-3046401
Margaret Creo	C-2024-3046735
Ernesha Halloway	C-2024-3045359
David Lambie	C-2024-3045801
Natalie Ortiz	C-2023-3045148
Anna Paryzki	C-2024-3045533
Grazyna Parzyka	C-2024-3045542
Petricia Perville-Davy	C-2024-3045389
Raju Shah	C-2024-3047313
Angela Tam	C-2024-3045333

---

<u>Complainant(s)</u>	<u>R-2023-3042805</u>
-----------------------	-----------------------

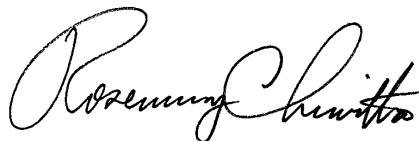
Oleg Chuchin	C-2023-3044508
John Hoopingarner	C-2023-3044503
Rose Cocklin	C-2023-3044508
Michael Sanfilippo	C-2023-3044481
Rafail Kovalenko	C-2023-3044649
Jenny Howard	C-2023-3044712
Christine Corbissero	C-2023-3044835
Scott and Vicky Furey	C-2023-3044887
Christina Boers	C-2023-3044945
George and Miriam Lingg	C-2023-3044993
Gregory Leone	C-2023-3045127
Cassandra Kramer	C-2024-3045356
Monica Wagner	C-2024-3045357
Nanette De Bartolo	C-2024-3045510
Susan J. Nikolaou	C-2024-3045557
Denise Cooper	C-2024-3045515
Ryan Ellison	C-2024-3045531
Craig Morris	C-2024-3045782

## ATTACHMENT B

Anna Majewski	C-2024-3045547
Richard and Susan DiPiazza	C-2024-3045556
Brian Morrison	C-2024-3045564
Joseph Bellatoni	C-2024-3045149
Joseph Albanese	C-2024-3045837
Gail Bechtold and Thomas Romano	C-2024-3045847
Mario Carlino	C-2024-3045973
Nicholas Corforte	C-2024-3045974
Linda DiGregorio	C-2024-3045857
Rich Franzen	C-2024-3046077
Catherine Gilchrist	C-2024-3045972
Steven and Carol Krauss	C-2024-3045911
Patricia Lathrop	C-2024-3045970
Susan Maeri	C-2024-3045979
Kristen Martin	C-2024-3045977
Peter Mauro	C-2024-3045862
Patricia Merrill	C-2024-3046299
Grace Moro	C-2024-3045803
Suzie Napolitano	C-2024-3045877
Christ and Carol Nielsen	C-2024-3045563
Thomas and Patricia Parillo	C-2024-3045557
Penn Estates POA, Inc	C-2024-3045830
Antonia and Ramon Rivas	C-2024-3045981
Mary Rossetti	C-2023-3044538
Larisa Shin	C-2024-3045561
Tigron Petrosian	C-2024-3045833
Laura Brennan	C-2024-3044709
Brian Fenimore	C-2023-3044383
Robert Zwahlen	C-2024-3045808
Ernesha Bolden	C-2024-3045716
David Fardig	C-2024-3045355
Lynn Buckingham	C-2024-3045354
Daniel McKoy	C-2024-3045480
Rene Bressant	C-2024-3045559
Christopher Williams	C-2024-3045661

13. That, upon acceptance and approval by the Commission of the tariffs and allocation of proposed settlement rate increase filed by Community Utilities of Pennsylvania, Inc., consistent with this Order, the Commission's investigation, at Docket Nos. R-2023-3042804 and R-2023-3042805, shall be terminated and these dockets marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta", written in a cursive style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: August 1, 2024

ORDER ENTERED: August 1, 2024

# **ATTACHMENT C**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**JOINT PETITION FOR FULL SETTLEMENT OF RATE PROCEEDINGS**

---

**DATED:** April 26, 2024

**APPENDIX E**

**WASTEWATER PROOF OF REVENUE**

# ATTACHMENT C

## COMMUNITY UTILITIES OF PENNSYLVANIA, INC. CONSOLIDATED WASTEWATER SERVICES

### PRO FORMA ANNUAL OPERATING REVENUE AT ADJUSTED RATES AND CHARGES BASED UPON ALLOCATED COST OF SERVICE

	<u>Pro Forma Flow (1)</u>	<u>Number of Bills</u>	<u>Proposed Rate</u>	<u>Pro Forma Revenue Under Proposed Rates</u>
<u>Consolidated Service:</u>				
Residential		37,908	\$ 39.90 /mo.	\$1,512,347
Commercial		84	39.90 /mo.	3,351
Low-Income		1,440	21.94 /mo.	31,594
Residential Flow	162,734,000		18.00 /1,000 gals.	2,929,212
Commercial Flow	991,700		17.82 /1,000 gals.	17,672
Low-Income Flow	5,235,000		9.90 /1,000 gals.	51,827
School (unmetered)		24	771.45 /mo.	18,515
Availability Fee (unmetered)		528	22.30 /mo.	11,774
<u>Tamiment:</u>				
Residential		5,868	39.90 /mo.	234,105
Commercial		48	39.90 /mo.	1,915
Low-Income			21.94 /mo.	0
All Other Flow			18.00 /1,000 gals.	0
Low-Income Flow			9.90 /1,000 gals.	0
Availability Fee (unmetered)		3,240	22.30 /mo.	72,252
Totals	<u>168,960,700</u>	<u>49,140</u>		<u>\$4,884,564</u>
Control				<u>\$4,884,592</u>
Variance				<u>(\$28)</u>
Percent Variance				<u>0.00%</u>

(1) Based on the assumption of a decline of 1.16% from the Historical Test Year consumption levels to the Future Test Year ("FTY") consumption levels and an additional decline of 1.16% from the FTY to the Fully Projected Future Test Year consumption levels.

**APPENDIX F**

**CUSTOMER BILL IMPACTS**

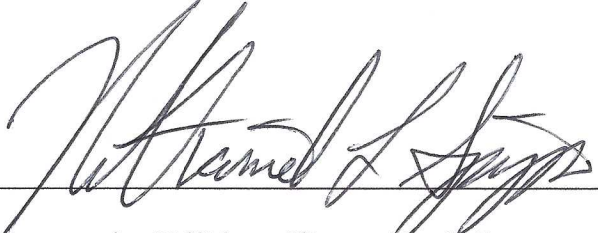
**COMMUNITY UTILITIES OF PENNSYLVANIA, INC.  
CONSOLIDATED WASTEWATER SERVICES**

**CUSTOMER BILL IMPACT**

	Test Year Count	Current Rates	Filed Rates	Settlement Rates	Increase/(Decrease)		Increase/(Decrease)	
					Filed (%)	Settlement (%)	Filed (\$)	Settlement (\$)
<u>Consolidated Service:</u>								
1,000 Gallons	4,987	\$74.73	\$69.55	\$57.90	-6.93%	-22.52%	(\$5.18)	(\$16.83)
2,000 Gallons	5,714	74.73	87.45	75.90	17.02%	1.57%	12.72	1.17
3,000 Gallons	7,423	74.73	105.35	93.90	40.97%	25.65%	30.62	19.17
4,000 Gallons	7,061	74.73	123.25	111.90	64.93%	49.74%	48.52	37.17
5,000 Gallons	5,732	74.73	141.15	129.90	88.88%	73.83%	66.42	55.17
10,000 Gallons	9,149	74.73	230.65	219.90	208.64%	194.26%	155.92	145.17
20,000 Gallons	1,123	74.73	409.65	399.90	448.17%	435.13%	334.92	325.17
30,000 Gallons	145	74.73	588.65	579.90	687.70%	675.99%	513.92	505.17
40,000 Gallons	33	74.73	767.65	759.90	927.23%	916.86%	692.92	685.17
50,000 Gallons	12	74.73	946.65	939.90	1166.76%	1157.73%	871.92	865.17
60,000 Gallons	8	74.73	1,125.65	1,119.90	1406.29%	1398.59%	1,050.92	1,045.17
70,000 Gallons	8	74.73	1,304.65	1,299.90	1645.82%	1639.46%	1,229.92	1,225.17
80,000 Gallons	6	74.73	1,483.65	1,479.90	1885.35%	1880.33%	1,408.92	1,405.17
90,000 Gallons	6	74.73	1,662.65	1,659.90	2124.88%	2121.20%	1,587.92	1,585.17
100,000 Gallons	4	74.73	1,841.65	1,839.90	2364.41%	2362.06%	1,766.92	1,765.17
<u>Tamiment:</u>								
1,000 Gallons	2,432	\$40.13	\$69.55	\$57.90	73.31%	44.28%	\$29.42	\$17.77
2,000 Gallons	1,337	54.11	87.45	75.90	61.62%	40.27%	33.34	21.79
3,000 Gallons	1,118	68.09	105.35	93.90	54.72%	37.91%	37.26	25.81
4,000 Gallons	762	82.07	123.25	111.90	50.18%	36.35%	41.18	29.83
5,000 Gallons	486	96.05	141.15	129.90	46.95%	35.24%	45.10	33.85
10,000 Gallons	586	165.95	230.65	219.90	38.99%	32.51%	64.70	53.95
20,000 Gallons	106	305.75	409.65	399.90	33.98%	30.79%	103.90	94.15
30,000 Gallons	17	445.55	588.65	579.90	32.12%	30.15%	143.10	134.35
40,000 Gallons	5	585.35	767.65	759.90	31.14%	29.82%	182.30	174.55
50,000 Gallons	6	725.15	946.65	939.90	30.55%	29.61%	221.50	214.75
60,000 Gallons	3	864.95	1,125.65	1,119.90	30.14%	29.48%	260.70	254.95
70,000 Gallons	2	1,004.75	1,304.65	1,299.90	29.85%	29.38%	299.90	295.15
80,000 Gallons	3	1,144.55	1,483.65	1,479.90	29.63%	29.30%	339.10	335.35
90,000 Gallons	2	1,284.35	1,662.65	1,659.90	29.45%	29.24%	378.30	375.55
100,000 Gallons	8	1,424.15	1,841.65	1,839.90	29.32%	29.19%	417.50	415.75

**VERIFICATION**

I, Nathaniel L. Spriggs, on behalf of Community Utilities of Pennsylvania Inc., hereby state that the facts set forth in the foregoing documents 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 in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Community Utilities of Pennsylvania Inc.

Dated: February 3, 2025

**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).

**VIA E-MAIL ONLY**

David P. Lewis  
Downingtown, PA 19335  
Davelewis27@verizon.net

*/s/ Whitney E. Snyder*

\_\_\_\_\_  
Whitney E. Snyder  
Erich W. Struble

Dated this 3<sup>rd</sup> day of February, 2025