

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held August 11, 2011

Commissioners Present:

Robert F. Powelson, Chairman, Statement
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

Pennsylvania Public Utility Commission, <i>et al.</i>	R-2011-2218562, U-2010-2213726, C-2011-2220143, C-2011-2225596, C-2011-2225851, C-2011-2225857, C-2011-2225871, C-2011-2226651, C-2011-2227677, C-2011-2228287, C-2011-2228396, C-2011-2228894, C-2011-2234516
v.	
CMV Sewage Company, Inc.	

Application of CMV Sewage Company, Inc. For Approval to Transfer to the North Codorus Township Sewer Authority All Assets Used and Useful in the Provision of Sewage Collection Service in North Codorus Township, York County, Pennsylvania and Application of CMV Sewage Company, Inc. for Approval to Abandon its Provision of Sewage Service to the Public in North Codorus Township, York County, Pennsylvania	A-2011-2247920
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OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: (1) the Joint Petition for Full Settlement of Rate

Proceeding and Application to Transfer Assets and Abandon Wastewater Service to the Public in Portions of North Codorus Township, York County, Pennsylvania (Settlement), and (2) the Joint Petition for Certification and Expedited Treatment of Settlement and Application for Abandonment by CMV Sewage Company, Inc. (Joint Petition). The Settlement and Joint Petition were filed on June 22, 2011, on behalf of CMV Sewage Company, Inc. (CMV), North Codorus Township (Township), the North Codorus Township Sewer Authority (Authority), the Commission's Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA), and the Pennsylvania Department of Environmental Protection (DEP) (collectively, Joint Petitioners). By Order dated July 6, 2011, Administrative Law Judge (ALJ) Elizabeth H. Barnes certified the record to the Commission.

I. Background

CMV is a public utility that provides wastewater service to the public in two non-contiguous residential communities in York County, Pennsylvania. The two communities are Chanceford Manor Village in Chanceford Township, and Colonial Crossing in North Codorus Township. CMV St. DMK-1 at 1-2. CMV's current rate structure is based on a single tariff approach, under which service is provided to both divisions under the same rate structure. CMV Ex. 1, Section A at A-1. CMV serves approximately 279 residential customers in Chanceford Manor, and approximately 174 residential customers and one apartment complex in Colonial Crossing. CMV Ex. 1, Schedule G-3. CMV, which was incorporated in 1987, has a separate treatment plant for each of its two divisions. *Id.* at A-16-18.

II. History of the Proceeding

On December 1, 2010, CMV filed, at Docket No. U-2010-2213726, a Sewage Service Agreement between CMV and the Authority (Service Agreement) for the Commission's approval under Section 507 of the Public Utility Code (Code),

66 Pa. C.S. § 507. Under the Service Agreement, which may be deemed withdrawn if the proposed Settlement is approved,¹ CMV would become a bulk service customer of the Authority, but would continue to provide sewage collection service to its customers. CMV's sewage treatment plant would be abandoned and its National Pollutant Discharge Elimination System (NPDES) permit terminated. CMV would pay the Authority a one-time Capacity Allocation Fee of \$211,200, an Annual Fixed Cost Payment based on CMV's reserved capacity, and Annual Treatment Service Charges based on CMV's use of the Authority's treatment facility.² Service Agreement at 6-9. The Service Agreement would become effective only if (1) all required regulatory approvals are obtained (including Commission approvals), and (2) CMV receives a base rate increase that it deems adequate to satisfy its obligations under the Service Agreement. Settlement at 5, n. 6. On December 8, 2010, the Commission issued a Secretarial Letter extending the period for considering the Service Agreement until "further action of the Commission."

On December 30, 2010, CMV filed Supplement No. 14 to Tariff Sewer – Pa.P.U.C. No. 1 at Docket No. R-2011-2218562, proposing a rate increase of \$10,782 (6.8 percent) for its Chanceford Manor Division and \$259,756 (225.71 percent) for its Colonial Crossing Division. CMV Ex. 1, Section A at A-5. The proposed residential rates for the Colonial Crossing Division included a flat rate of \$333.75 per quarter plus a quarterly surcharge of \$41.50 to repay the one-time fee of \$211,200 to connect to the Authority's treatment plant. The apartment complex customer agreed to pay its capacity fee in full, and thus would not have paid a quarterly surcharge. The proposed rate increase of 6.8 percent for the Chanceford Manor Division was based simply on the

¹ Settlement at 6, n. 7.

² The Service Agreement provides that CMV will pay the Authority an Annual Fixed Cost Payment equal to 20.36% of the Authority's Net Capital Cost, based on the parties' agreement that the Authority's sewage system was designed for flows of 550,000 gallons per day (gpd) and 112,000 gpd of that capacity was intended to serve CMV's present and future customers in Colonial Crossing.

increased cost of service and revenue requirements associated with CMV's current wastewater treatment process. CMV also proposed the elimination of its current single tariff rate design, and the establishment of separate rates for the Chanceford Manor and Colonial Crossing Divisions. CMV proposed the separation of its two divisions in response to DEP's enforcement of a permit condition that requires CMV to remove its Colonial Crossing treatment plant from service, and the resulting Service Agreement with the Authority. *Id.* at A-1.

CMV's two filings were prompted by a condition in its NPDES permit, issued by DEP in 1998, which requires CMV to remove the treatment plant serving Colonial Crossing from service and connect to the Authority's system when the Authority makes its system available. The Authority's new regional sewage treatment plant became operational in 2006. Settlement at 5. To satisfy the condition in its NPDES permit, CMV filed an application with the Commission on September 25, 2007, seeking approval to transfer its wastewater collection system in the Township to the Authority, and to abandon service to the public in the Colonial Crossing Division. The Commission denied CMV's application on December 23, 2008.³ To resolve ongoing litigation related to the Commission's denial of CMV's request to abandon service to the Colonial Crossing Division, and DEP's refusal to renew CMV's operating permit, CMV and the

³ *Application of CMV Sewage Company, Inc. for Approval to Transfer to North Codorus Township Sewer Authority All Assets Used and Useful in the Provision of Sewage Collection Service in North Codorus Township, and Application of CMV Sewage Company, Inc. for Approval to Abandon its Provision of Sewage Service to the Public in North Codorus Township*, Docket No. A-230056F2002 (Order entered December 23, 2008). Litigation among CMV, DEP, the Township and the Authority before the York County Court of Common Pleas and the Environmental Hearing Board (EHB), concerning DEP's rejection of CMV's request to renew the NPDES permit for its treatment plant, ensued. On November 30, 2010, the parties entered into a settlement pursuant to which CMV filed the Service Agreement and base rate case with the Commission on December 1 and 30, 2010, respectively. The litigation before the Court of Common Pleas and the EHB has been stayed, and DEP extended the permit expiration date to September 30, 2011, to provide the Commission with sufficient time to consider the proposed Service Agreement and rate increase request. Settlement at 6.

Authority entered into the Service Agreement, under which the Authority would provide bulk treatment service at prescribed costs plus a one-time capacity reservation fee of \$1,200 per equivalent dwelling unit (EDU). Settlement at 7.

The OCA filed a Formal Complaint at Docket No. C-2011-2220143 on January 12, 2011, which was consolidated with this proceeding. The OTS filed a Notice of Appearance on January 21, 2011. Nine formal Complaints were filed by individuals residing in Chanceford or North Codorus Townships, including Stephanie and Darren Acton, Edward and Victoria Desort, Antonio and Furena Wilmer, Edward J. Hayes, William J. Sibole, Lauren Ford, Andrew Matts, Kahla Markey and Ryan Loper, and Rupert Hill.

On January 5, 2011, CMV filed a Petition for Expedited Review and Decision, requesting that the Commission decide its base rate case on an expedited basis. The OTS and the OCA filed Answers. By Order entered on January 27, 2011, the Commission suspended the proposed tariff supplement until October 1, 2011, consolidated the proposed tariff supplement at Docket No. R-2011-2218562 with the proposed Service Agreement at Docket No. U-2010-2213726, and ordered an investigation into CMV's filings. The matter was assigned to the Office of Administrative Law Judge.

On February 2, 2011, DEP petitioned to intervene, averring that the discharge from the CMV treatment facility is authorized by a permit issued by DEP, and that a condition of the permit requires CMV to abandon the use of its treatment facility and connect the Colonial Crossing development to the Authority's municipal sewage system. DEP extended CMV's permit from November 30, 2010, until September 30, 2011, in order to provide the Commission with sufficient time to act upon CMV's rate increase request. The Authority and the Township also jointly petitioned to intervene on February 7, 2011, averring that the Authority currently provides sewage

treatment service in North Codorus Township, which includes the area in which CMV currently provides service to customers, and that the Authority and Township have substantial interests in the consolidated proceeding that cannot be adequately represented by any other party. The ALJ granted the Petitions to Intervene on February 10, 2011.

A prehearing conference was held on February 8, 2011. Following the prehearing conference, two public input hearings were held in Chanceford Township and North Codorus Township, respectively, on March 7, 2011, at which approximately seventeen Colonial Crossing customers and two Chanceford Manor customers testified.

After discovering that CMV had overbilled its customers from 2006 to 2010, the OTS filed a formal Complaint on March 25, 2011, at Docket No. C-2011-2234516.⁴ On April 21, 2011, CMV filed an Answer and New Matter, admitting that seventeen quarterly billings for service provided between the third quarter of 2006 and the third quarter of 2010, inclusive, had been based on incorrect rates. CMV alleged that the incorrect billings were unintentional and that the Company intended to refund the overcharges through credits to future bills. This Complaint was consolidated with the base rate case for hearing and decision.

A settlement conference was held on April 7, 2011. The parties did not reach a settlement at that time and an evidentiary hearing was held on May 18, 2011. The ALJ issued a Protective Order on May 24, 2011, regarding proprietary discovery materials, testimony, and evidence admitted at the hearing.

⁴ In a base rate case at Docket No. R-00050677, CMV proposed a customer charge of \$12.37 and a volumetric charge of \$10.065 per 1,000 gallons. At the conclusion of the rate case, CMV filed a tariff supplement containing the Commission-approved customer charge of \$11.86 and volumetric rate of \$9.6459 per 1,000 gallons. However, the Company began charging the higher amounts that it had requested until it discovered its error in the fourth quarter of 2010. OTS St. 4 at 2.

On June 13, 2011, the Joint Petitioners advised ALJ Barnes that they had reached a settlement in principle, and on June 22, 2011, the Joint Petitioners filed the Settlement and Joint Petition with the Commission. The Joint Petition requests that the Commission direct the ALJ to certify the record to the Commission, and that the Commission issue a final Opinion and Order on or before August 26, 2011.

The Settlement includes the Application of CMV Sewage Company, Inc. for Approval to Transfer to the North Codorus Township Sewer Authority All Assets Used and Useful in the Provision of Sewage Collection Service in North Codorus Township, York County, Pennsylvania, and Application of CMV Sewage Company, Inc. for Approval to Abandon its Provision of Sewage Service to the Public in North Codorus Township, York County, Pennsylvania (Abandonment Application), which has been separately docketed at Docket No. A-2011-2247920. The Joint Petitioners each filed separate statements in support of the Settlement and the Abandonment Application. CMV Statement in Support; Authority/Township Statement in Support; OTS Statement in Support; OCA Statement in Support; DEP Statement in Support.

On June 21, 2011, the Commission sent a Secretarial Letter to counsel for CMV stating that the Commission would publish notice of the Abandonment Application in the July 2, 2011 *Pennsylvania Bulletin*. 41 Pa. B. 3654. CMV was directed to publish a separate notice of the Abandonment Application in a newspaper having a general circulation in the area involved. The notices required that any formal protests and petitions to intervene be filed on or before July 11, 2011. No protests or petitions to intervene have been filed.

On June 22, 2011, the OCA mailed letters to the nine formal individual Complainants advising them of the main terms of the Settlement, and advising the

Complainants of their options to: (1) agree with the terms of Settlement in writing; (2) not oppose the Settlement; or (3) oppose the Settlement in writing.⁵ On June 24, 2011, the ALJ mailed the nine individual Complainants a full copy of the Settlement, and advised the Complainants that, if approved by the Commission, the Settlement would resolve all issues in the rate case proceeding including their respective formal Complaints. The ALJ advised the Complainants that they had an opportunity to object to the Settlement by July 12, 2011. Two of the nine formal Complainants signed and filed the signature page provided by OCA, indicating that they either join in the proposed Settlement or do not oppose it. The remaining formal Complainants did not file an objection to the proposed Settlement on or before the July 12, 2011 deadline.

On July 5, 2011, the Commission issued a Secretarial Letter to all parties granting in part the Joint Petition. Specifically, the Commission directed the ALJ to prepare an order certifying the record on or before July 18, 2011. As stated above, the ALJ certified the record to the Commission on July 6, 2011.

III. Summary of the Settlement Terms and Conditions

The Joint Petitioners request that the Commission: (1) certify the record so that a final Opinion and Order can be entered no later than August 26, 2011;⁶ (2) approve the terms of the Settlement without modification; (3) approve CMV's request to transfer its assets used to provide service to Colonial Crossing customers to the Authority; (4) approve the transfer of Colonial Crossing customers to the Authority following the

⁵ The Complainants also were advised that doing nothing would be construed as not objecting.

⁶ The Joint Petitioners explain that Commission action is necessary by this date so that the thirty-day appeal period may run following entry of the Commission's Order in order that the activities necessary to interconnect the CMV and Authority sewage systems can be completed prior to the expiration of CMV's NPDES Permit on September 30, 2011. Settlement at 15.

interconnection of the sewage systems; and (5) approve CMV's request to abandon service to the public in North Codorus Township. The Joint Petitioners further request that the Commission find that all terms and conditions that are necessary to effectuate the Settlement and Abandonment are just and reasonable and in the public interest. Settlement at 2.

A. Customer Refunds and Chanceford Manor Rate Increase

The Settlement, *inter alia*, provides for changes in rates on one day's notice sufficient to generate \$2,000 in additional annual revenue from the customers in the Chanceford Manor Division, with a "stay-out" provision between eighteen and thirty-six months depending upon when refunds to be paid to Chanceford Manor customers are completed. Attached as Appendix B to the Settlement is a proposed Tariff Supplement that reflects a 1.261% increase in rates for the Chanceford Manor Division, including a customer charge of \$12.01 per quarter and a volumetric charge of \$9.7675 per 1,000 gallons of water.⁷ The Joint Petitioners agree that the rates established by the Tariff Supplement will be considered Commission-made rates. Settlement at 11-12.

Refunds will be paid to Chanceford Manor customers through quarterly bill credits over a three-year period from the effective date of the Commission's Order. These refunds, with 6% interest, will total \$30,721.68. Any customer who moves during the refund period will receive a refund of any remaining refund amount due. At the end of the refund period, CMV will pay an amount equal to any unpaid refund amount (due to prior customers who cannot be located) as a civil penalty. The Company will provide quarterly reports to the OTS, the OCA and the Commission showing the credits paid to each customer. Settlement at 13.

⁷ Based on the customer's metered water consumption, recorded by the Red Lion Municipal Authority.

Refunds will be paid to Colonial Crossing customers through the issuance of four quarterly checks over a one-year period following the effective date of the Commission's Order in this case. These refunds, with 6% interest, will total \$22,550.51. Of this amount, \$14,283.49 will be paid to residential customers and \$8,267.02 will be paid to the apartment complex customer. All residential customers will be paid before CMV begins to make refunds to the apartment complex customer. CMV will try to locate customers who have moved and provide them with a refund. At the end of the one-year period, CMV will pay an amount equal to any unpaid refunds in the form of a civil penalty. CMV will provide quarterly reports to the OTS, the OCA and the Commission showing the refund amount paid to each customer and a list of canceled checks. Settlement at 13-14.

B. Application to Transfer Assets and Abandon Service

The Settlement is conditioned upon the Commission's concurrent approval of the Abandonment Application, under which the Authority will accept dedication of CMV's Colonial Crossing collection system upon the payment of \$1.00 to CMV, with acceptance by the Authority to be made after the Commission Order approving the Abandonment Application is no longer appealable. Settlement at 15. There will be no Authority connection charge to Colonial Crossing residential customers, and the apartment complex customer will pay a one-time connection charge of \$50,000 to the Authority after the collection system is dedicated. No additional charge will be required to connect up to sixty additional apartment units if or when such units are constructed. *Id.* at 16. The Township will issue permits to construct additional apartment units only upon the entry of a final, non-appealable Commission Order and the initiation of sewage service by the Authority to Colonial Crossing customers. *Id.* at 18. Once CMV's Colonial Crossing customers are connected to the Authority's system, they shall become direct customers of the Authority and will be charged the same amount as other Authority customers, currently a flat rate of \$250 per quarter. *Id.* at 16.

Upon entry of a final, non-appealable Commission Order approving the Settlement and Abandonment Application, CMV will commence dismantling the Colonial Crossing treatment plant. Dedication of the collection system, payment of the \$50,000 fee by the apartment complex customer, physical disconnection of the discharge pipe from CMV's treatment plant, initiation of flows from Colonial Crossing to the Authority, and the withdrawal of all legal actions, with prejudice, must be completed no later than September 30, 2011. The decommissioning of the treatment plant must be completed within sixty days of the date that a Commission Order approving the Abandonment Application becomes non-appealable. After the treatment plant is decommissioned, the Township will release CMV's bond/letter of credit within seven days. CMV will be entitled to keep any salvage value that may exist for the sewage treatment plant components. *Id.* at 16-17.

CMV agrees that it will not seek future rate recovery of certain expenses and capital investment related to Colonial Crossing, including all operating and maintenance expenses, depreciation expense, rate case expense and taxes, and amortization claims such as legal expenses related to the 2007 abandonment application (\$75,475) and the subsequent litigation with the Authority and DEP (\$195,066). *Id.* at 18. The formal Complaints filed by the OTS and the OCA will be deemed satisfied under the terms of the Settlement. *Id.* at 19. The Settlement is conditioned upon and subject to the Commission's approval of the terms and conditions contained therein and the granting of the Abandonment, without modification. If the Commission withholds approval or alters any term of the Settlement, any Joint Petitioner may withdraw from the Settlement within five business days of the entry of such Commission Order. *Id.* at 20.

IV. Discussion

The Joint Petitioners aver that the proposed Settlement is in the public interest because: (1) it provides CMV an increase in annual revenues for operation of the Chanceford Manor Division facilities at a level that is just and reasonable, and that balances CMV's need for increased revenue with the customers' desire for reasonable rates; (2) the stay-out requirement in the Settlement assures that the rates established for the Chanceford Manor Division will remain in effect for at least eighteen months; (3) by resolving all issues associated with CMV's base rate proceeding, the Settlement allows all Joint Petitioners to avoid the uncertainties and expense associated with continued litigation; (4) the Settlement and Abandonment will allow CMV to comply with the condition in its NPDES permit that all customers in North Codorus Township be connected to the Authority's system, and that the Colonial Crossing treatment plant be dismantled, before September 30, 2011, when CMV's permit expires; (5) the Settlement will end all other litigation pending among CMV, DEP, the Authority and Township regarding DEP's denial of CMV's application to renew its NPDES permit; and (6) the Settlement promotes administrative efficiency for the Commission by conserving time and resources. Settlement at 21-23.

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (January 7, 2004); *Pa. PUC v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

A. Chanceford Manor Rate Increase

We first will address the Settlement's provisions governing the rate increase to CMV's Chanceford Manor customers. Customers in the Chanceford Manor Division will pay a 1.261% rate increase, rather than the 6.8% increase proposed in the Company's filing. CMV Statement in Support at 7. The Company has agreed to a stay-out provision under which it will not file another base rate case seeking a rate increase for at least eighteen months from the date of a Commission Order approving the Settlement. Settlement at 11-12. Under the 6.8% rate increase that originally was proposed, the quarterly bills for an average customer consuming 13,506 gallons of water per quarter would have increased from the current charge of \$142.14 to \$151.81, an increase of \$9.67 per quarter. CMV St. DMK-1 at 3. According to the Company, the increase would have resulted in an overall rate of return of 8.51% over the pro forma rate base value of \$233,146. Rather than the annual revenue increase of \$10,782⁸ that originally was requested, the Settlement provides for a rate increase of \$2,000 for Chanceford Manor customers. The average quarterly bill will increase from \$142.14 to \$144.98, rather than to \$151.81. OCA Statement of Support at 5.

The OTS avers that it analyzed the Company's ratemaking claims, including operating and maintenance expense, rate base, cost of common equity, and capital structure. Based on this review, the OTS maintains that the proposed \$2,000 increase will result in just and reasonable rates, and that the rate increase is in the public interest because customers will continue to receive safe and reliable service at reasonable rates while allowing sufficient additional revenues to meet CMV's operating expenses and provide a reasonable rate of return. OTS Statement of Support at 15. In addition, the OTS points to the stay-out provision as providing extensive rate stability for CMV's Chanceford Manor customers. It ensures that they will not experience a rate increase

⁸ The amount of the original Chanceford Manor rate increase request is listed as \$10,872 in several filings. See, *e.g.*, CMV Statement of Support at 7.

before they receive their refunds. *Id.* at 16. Finally, the OTS points to the Settlement provision prohibiting CMV from seeking future rate recovery of expenses, amortization claims and investment in utility plant related to Colonial Crossing, including expenses related to the extensive litigation pertaining to the Colonial Crossing Division. *Id.*

The OCA similarly avers that the Settlement rates for Chanceford Manor are within the range of likely outcomes in the event of full litigation of the rate issues. According to the OCA, the combination of the lower rates and the stay-out provision provides benefits that would not be available if the case had been litigated. OCA Statement of Support at 5.

We agree with the OTS and the OCA that the Settlement rates for the Chanceford Manor Division appear to be just and reasonable and should be approved. As noted above, the rates for Chanceford Manor customers will increase by 1.261%, and the average customer bill will increase by \$2.84 per quarter. CMV's last rate increase was approved over five years ago. *Pa. PUC v. CMV Sewage Company, Inc.*, Docket No. R-00050677 (Order entered June 23, 2006) (*2005 Rate Case*). The current Settlement includes a stay-out provision of a minimum of eighteen months. In addition, the Settlement anticipates and resolves issues that could have arisen in future rate filings by CMV from amortization claims related to Colonial Crossing. As the OCA points out, the benefits under the Settlement may not have been available to customers had the case been fully litigated. Based on the foregoing, we conclude that the Settlement rates for the Chanceford Manor Division are just and reasonable and in the public interest.

B. Customer Refunds

The Settlement resolves the formal Complaint filed by the OTS, at Docket No. C-2011-2234516, regarding the overbilling of approximately \$50, 256 that occurred between 2006 and 2010, and ensures that customers will receive refunds with

interest in both the Chanceford Manor and Colonial Crossing Divisions. Under the Settlement, customers in both Divisions will receive full refunds of their overpayments, plus six percent interest. Colonial Crossing customers will receive their refunds over four quarters, and Chanceford Manor customers will receive their refunds over no more than twelve quarters. The OTS submits that this is appropriate because, under the separate Abandonment Application, customers in Colonial Crossing no longer will be CMV customers. Of particular importance to the OTS is the provision of refunds to customers who have moved, or who are planning to move. The Settlement resolves this issue by providing full refunds to all customers who move during the refund period, and by requiring the Company to attempt to locate those customers who already have moved. If the Company is unable to locate these customers, their share of the refund amount will be treated as a civil penalty and paid to the General Fund. OTS Statement of Support at 14. The OCA also submits that the provisions in the Settlement are a reasonable resolution of the refund issues that were litigated in the proceeding. Customers will receive full refunds with interest. The period of time over which the refunds will be paid is reasonable given the time frame over which the overbilling occurred. OCA Statement of Support at 4, 6.

The Settlement provisions governing refunds are consistent with Section 1312 of the Code, 66 Pa. C.S. § 1312, under which the Commission has the authority to require a utility to refund over-collected amounts at the legal rate of interest. Under Section 1312, the Commission has the authority to order refunds of excess amounts paid by customers within four years prior to the date of the filing of a complaint. Here, the OTS filed its formal Complaint on March 25, 2011, and the Commission would have had the authority to order refunds of excess amounts paid from March 25, 2007, forward. The Settlement goes further, and provides for the refund of amounts collected beginning in the third quarter of 2006. In essence, the Company voluntarily has agreed to refund the full amount that it overcollected without regard to the limitation on the Commission's authority under Section 1312. This provision of the Settlement will ensure

that customers will be made whole, notwithstanding the limit on the Commission's authority that otherwise would apply.

The final issue to be considered is whether the Settlement's refund provisions are in the public interest notwithstanding the absence of a known and certain civil penalty. The relief requested by the OTS in its formal Complaint included the imposition of a civil penalty of no less than \$1.00 per incorrect bill. OTS Complaint at 6. The proposed Settlement provides for full refunds to customers, plus interest, and the payment by CMV of a "contingent" civil penalty equal to overcharges that cannot be refunded because some customers have moved and cannot be located.

CMV averred that the incorrect billings were unintentional and due to a miscommunication with counsel at the conclusion of the *2005 Rate Case*, and that the billing error had been discovered and corrected in the fourth quarter of 2010, before the OTS filed its formal Complaint. CMV Answer and New Matter at 3. CMV further averred that it intended to refund all overcharges through the application of credits to future quarterly bills, and that a letter would be mailed to each customer to explain the overcharges and the refunds to be issued.

The Commission has promulgated a Policy Statement that sets forth ten factors that may be considered in evaluating a proposed settlement. *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations (Policy Statement)*, 52 Pa. Code § 69.1201. When applied to settled cases, the factors will not be applied as strictly as in a litigated proceeding. The parties in settled cases are afforded flexibility in reaching amicable resolutions of complaints and other matters, as long as the settlement is in the public interest. In the instant proceeding, we conclude that the refund provisions of the Settlement are in the public interest and should be approved.

The first factor listed in the *Policy Statement* is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id.* Charging rates higher than those approved by the Commission is a serious matter.

The second factor we may consider is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* The consequences to consumers, when a utility charges rates higher than those approved by this Commission, can be serious, but the payment of refunds, with interest, can mitigate these consequences.

The third factor as to whether the conduct at issue was intentional or negligent pertains to litigated cases only. 52 Pa. Code § 69.1201(c)(3).

The fourth factor we may consider is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). In this case, CMV discovered and corrected its mistake in the fourth quarter of 2010, before the OTS filed its Complaint. The Settlement provides for full refunds to customers, with interest, including amounts paid prior to March 2007, which the Commission would be without authority to refund absent the Settlement.

The fifth factor we may consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). All of CMV's customers were affected by the violation for a period of seventeen quarters.

An additional factor we may consider is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Because the refund provisions in the Settlement are not the result of an investigation by the Commission's Prosecutory Staff, this factor does not directly apply. Nevertheless, based on our review of the record, we conclude that CMV cooperated with the resolution of the formal Complaint filed by the OTS.

Another factor we may consider is the compliance history of the regulated entity that committed the violation. 52 Pa. Code § 69.1201(c)(6). Other than the instant proceeding, our review of the Commission's records located no complaints filed against CMV during the last ten years.

In addition, we may consider the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8) and (c)(9). The refund and civil penalty provisions of the Settlement ensure that the utility has not been unjustly enriched by its over-collection of rates. This certainly helps deter future violations.

The tenth factor we may consider is other relevant factors. 52 Pa. Code § 69.1201(c)(10). No other relevant factors are present in this case.

In our view, the full restitution to customers who have been overcharged should be our primary concern. Under the circumstances, including the comprehensive nature of the Settlement of other contentious issues, we find that the refund and penalty provisions of the proposed Settlement are in the public interest.

C. Application to Transfer Assets and Abandon Service

The Settlement provides that CMV will transfer some of its assets in Colonial Crossing to the Authority. A list of these facilities is set forth in Appendix H to the Application. All other facilities that are used and useful in CMV's provision of wastewater service to Colonial Crossing will be decommissioned and dismantled in compliance with DEP's rules and regulations. Settlement at 29. In addition, the Settlement provides that CMV will transfer its customers in Colonial Crossing to the Authority and abandon service in Colonial Crossing. We note that no customers, or any other entities, have filed an objection to the proposed transfer of assets and abandonment of service.

Following the Commission's approval of the Settlement, the interconnection between the Authority's system and CMV's system will be activated, portions of CMV's system in the Township will be dedicated to the Authority, and the Authority will commence service to customers. Settlement at 29. As a result, CMV's current customers in Colonial Crossing will have continuous and uninterrupted sewage service.

The Authority has been in existence for eight years and its treatment plant has been operational since 2006. When the treatment plant was designed, 112,000 gallons per day, or 20.36% of its capacity, was reserved for treatment of sewage effluent to be received from the CMV customers in Colonial Crossing. Settlement at 27.

The transfer and abandonment would enable CMV to comply with the condition in its NPDES permit, which requires the dismantling and removal of the sewage plant at such time as municipal sewage facilities are available. The NPDES permit is attached as Appendix A to the Application.

The consideration for the transfer of assets is \$1.00, but we agree with the Parties that “[g]iven the other compromises and concessions agreed to as part of the Settlement, . . . such consideration is adequate and reasonable.” Settlement at 29-30. The bond/line of credit that the Township has been holding will be released to CMV, and CMV will be entitled to keep any salvage value that may exist for the sewage treatment plant components. *Id.* at 17. In future base rate cases, CMV will not seek recovery of operating expenses, amortization, or investment in utility plant, related to Colonial Crossing sewage service. *Id.* at 18.

The proposed transfer of Colonial Crossing customers to the Authority results in substantially lower rates for Colonial Crossing customers than CMV’s proposed December 30, 2010 base rate filing. Implementation of the November 30, 2010, Service Agreement (now deemed withdrawn) between the Authority and CMV would have required the payment of a capacity reservation fee of \$1,200 for each residential unit to connect to the Authority’s system, plus annual amounts for CMV’s proportionate share of the Authority’s debt service and operational costs. CMV Statement of Support at 8. In the first year, these annual fees were estimated to be approximately \$254,000. *Id.* at 5. CMV’s proposed residential rates for the Colonial Crossing Division were \$333.75 per quarter, plus a quarterly surcharge of \$41.50 to repay the one-time fee of \$211,200 to connect to the Authority’s treatment plant. Settlement at 7. The total proposed quarterly rate for residential customers was \$375.25. CMV would have continued to provide collection service, while treatment services would have been provided by the Authority.

In lieu of this complicated and costly arrangement, the Settlement provides that a single entity, the Authority, will provide service to Colonial Crossing customers at the same rates that the Authority charges its other customers, without the payment of the \$1,200 capacity reservation fee. The Authority’s agreement to eliminate this up-front fee represents a substantial benefit to CMV’s Colonial Crossing residential customers. Similarly, the apartment complex customer will pay a \$50,000 connection charge in lieu

of the \$196,800 required by the Service Agreement. OTS Statement of Support at 7. The Authority's current rates of \$250 per quarter are 34% lower than those proposed by the Company's December 30, 2010 rate filing. CMV Statement of Support at 8.

The Settlement concludes the expensive and protracted litigation among DEP, CMV, the Authority and the Township to the satisfaction of all Joint Petitioners. CMV has agreed that it will not seek future rate recovery from its Chanceford Manor customers of the legal expenses related to its 2007 abandonment application before the Commission and the subsequent litigation before the Court of Common Pleas and the EHB. The expenses incurred by CMV for this litigation were \$75,475 and \$195,066, respectively. Settlement at 18.

Approval of the Settlement and Abandonment Application will bring finality to the long-standing and extensively litigated issue regarding what entity will provide sewage service to the customers in the Colonial Crossing Division. As the OTS notes, CMV customers will experience a sense of finality if the Settlement is approved. OTS Statement in Support at 9. CMV's Colonial Crossing customers received a rate increase in 2006, a notice of abandonment in 2007, a notice of a substantial rate increase under the Service Agreement with the Authority at the end of 2010, and now have received notice of a settlement of that rate increase combined with the current proposed abandonment. Going forward, the uncertainty and confusion will be resolved.

In our opinion, the Joint Petitioners have reached a satisfactory resolution of a very difficult set of circumstances occasioned by the "Catch 22" in which CMV found itself as a result of differing directives from DEP and the Commission. Given DEP's denial of CMV's application to extend its NPDES permit, the Company devised the convoluted and costly Service Agreement so as to comply with both the DEP's directive to abandon its treatment plant as well as the Commission's decision to deny its earlier abandonment application. The proposed Settlement resolves the conflict to the

satisfaction of all of the Joint Petitioners. Going forward, Colonial Crossing customers will receive service from the Authority at rates that are the same as those paid by the Authority's other customers. Under the circumstances, the proposed transfer of assets and abandonment of service by CMV to the Colonial Crossing Division is necessary or proper for the service, accommodation, convenience or safety of the public, and should be approved as being in the public interest.

V. Conclusion

For all of the foregoing reasons, we conclude that the proposed Settlement provides for just and reasonable rates as required by Section 1301 of the Code, 66 Pa. C.S. §1301; that the transfer and abandonment proposed in the Abandonment Application is necessary or proper for the service, accommodation, convenience or safety of the public, as required by Section 1103 of the Code, 66 Pa. C.S. § 1103; and that the terms and conditions of the Settlement and Abandonment Application are just and reasonable and in the public interest and should be approved; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition for Full Settlement of Rate Proceeding and Application to Transfer Assets and Abandon Wastewater Service to the Public in Portions of North Codorus Township, York County, Pennsylvania (Settlement) is approved.

2. That the Application of CMV Sewage Company, Inc. for Approval to Transfer to the North Codorus Township Sewer Authority All Assets Used and Useful in the Provision of Sewage Collection Service in North Codorus Township, York County, Pennsylvania, and Application of CMV Sewage Company, Inc. for Approval to Abandon its Provision of Sewage Service to the Public in North Codorus Township, York County, Pennsylvania (Abandonment Application) is approved.

3. That the request for approval of the Sewage Service Agreement between CMV Sewage Company, Inc. and North Codorus Township Sewer Authority (Authority) filed on December 1, 2010, at Docket No. U-2010-2213726 is deemed withdrawn.

4. That CMV Sewage Company, Inc. shall not place into effect the rates contained in Supplement No.14 to Tariff Sewer – Pa. P.U.C. No. 1, which were based on the Sewage Service Agreement between CMV Sewage Company, Inc. and the North Codorus Township Sewer Authority that was filed on December 1, 2010, at Docket No. U-2010-2213726.

5. That CMV Sewage Company, Inc. is authorized to file a tariff supplement upon one day's notice designed to produce an increase in annual operating revenues of \$2,000 for the Chanceford Manor Division as set forth in the proposed tariff supplement attached as Appendix B to the Settlement.

6. That CMV Sewage Company, Inc. shall file a notice with the Commission's Secretary, and serve a copy of the notice on the other parties to this proceeding, when the Settlement conditions pertaining to the transfer of assets and the abandonment of service to the Colonial Crossing Division have been satisfied.

7. That upon the filing of the notice required by Ordering Paragraph No. 6, certificates of public convenience be issued authorizing the transfer of assets and the abandonment of service by CMV Sewage Company, Inc. to the Colonial Crossing Division.

8. That CMV Sewage Company, Inc. shall comply with the terms of the Settlement and Abandonment Application, including but not limited to the provisions

9. That CMV Sewage Company, Inc. shall file quarterly refund reports with the Commission's Secretary, and shall serve copies of these reports on the Office of Trial Staff and the Office of Consumer Advocate, as required by the Settlement at 13-14.

10. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within three years of the entry date of this Opinion and Order, or when all refunds to Chanceford Manor Division residents have been paid, CMV Sewage Company, Inc. shall pay any remaining refund amounts in the form of a civil penalty. Similarly, within one year of the entry date of this Opinion and Order, or when all refunds to Colonial Crossing Division residents have been paid, CMV Sewage Company, Inc. shall pay any remaining refund amounts in the form of a civil penalty. Said payments shall be made by check or money order made payable to:

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

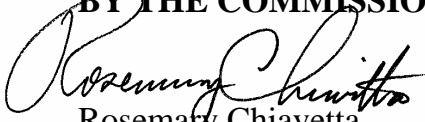
11. That a copy of this Opinion and Order be served upon the Financial and Assessment Chief, Office of Administrative Services.

12. That the Office of Administrative Services will notify CMV Sewage Company, Inc., all other Parties to these proceedings, and the Secretary's Bureau, that it approves of the payments made pursuant to Ordering Paragraph 10.

13. That the Formal Complaints at Docket Nos. C-2011-2220143, C-2011-2225596, C-2011-2225851, C-2011-2225857, C-2011-2225871, C-2011-2226651, C-2011-2227677, C-2011-2228287, C-2011-2228396,

C-2011-2228894, and C-2011-2234516 are deemed satisfied by the Settlement and Abandonment Application and are hereby dismissed with prejudice.

14. That upon receipt of the notice from the Office of Administrative Services, referenced in Ordering Paragraph 12, the record at Docket Nos. R-2011-2218562 and A-2011-2247920 shall be closed.

BY THE COMMISSION

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 11, 2011

ORDER ENTERED: August 11, 2011