



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 NORTH STREET, HARRISBURG, PENNSYLVANIA 17120

IN REPLY PLEASE
REFER TO OUR FILE
R-2017-2624240

July 12, 2018

COMMISSION ISSUE SHEETS

BINDING POLL

TO WHOM IT MAY CONCERN:

Re: R-2017-2624240 *et al.*; Pennsylvania Public Utility Commission, Office of Consumer Advocate v. Newtown Artesian Water Company

The attached issue sheets are designed solely to provide a mechanism for the Commission to discuss the outstanding issues of an investigation in an orderly manner. The brief descriptions of the recommendations of the Administrative Law Judge and the positions of the various parties are not intended to be complete characterizations of any recommendation or position. Also, the actual issue sheets used by the Commissioners in the conduct of the discussion may differ from the attached sheets.

Each individual Commissioner has based his or her findings on the record developed in this proceeding, the Recommended Decision of the Administrative Law Judge, on Remand and the briefs and exceptions submitted by the parties, and not the information presented on these issue sheets. Consequently, any omissions, misstatements, or errors contained in these issue sheets will not have an effect on the outcome of the final decision rendered in this case.

The issues contained in these sheets are selected at the discretion of the Commission and not every issue for which exceptions have been filed will necessarily be discussed. Nevertheless, the Commission considers and decides all issues raised in the proceeding.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gladys M. Brown".

Gladys M. Brown,
Chairman

Attachments

**Pennsylvania Public Utility Commission
Office of Consumer Advocate**

v.

Newtown Artesian Water Company

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Issue	Commissioner
1. Denial of Request to Increase DSIC Cap (R.D. on Remand at 30-33)	Commissioner Coleman
	Commissioner Sweet
	Commissioner Kennard
	Vice Chairman Place
	Chairman Brown
	Result
ALJ	<p>The ALJ provides that the record demonstrates, and both parties agree, that the DSIC of Newtown Artesian Water Company (NAWC or Company) has exceeded its 5% DSIC cap for two consecutive quarters and it is likely that the Company will continue to exceed the cap if the Company moves forward with its capital improvement program. But the ALJ reasons the Company is not automatically entitled to its requested DSIC cap increase to 7.5%. The ALJ posits that NAWC is seeking to further delay a base rate filing by increasing its DSIC. NAWC’s concerns regarding regulatory lag are unfounded, and filing a base rate increase request, which the Company has not done in seven years, is a viable alternative to the requested DSIC cap increase. The ALJ concluded that the Company has failed to present evidence to demonstrate that an increase to the DSIC cap is necessary and in the public interest. The ALJ recommends that NAWC’s request for an increase to the DSIC cap from 5% to 7.5% be denied. (R.D. on Remand at 30-33).</p>
Company	<p>With the DSIC capped at 5% and a current DSIC calculation greater than 5%, NAWC avers that it is not being permitted to collect legitimate costs related to its LTIP and it would not be permitted to recover these costs while a base rate case is pending.</p> <p>NAWC estimates the annual revenue shortfall as a result of not increasing the cap at \$137,500, based on the full cap increase of 2.5%. With the current DSIC calculation of 5.48%, the monthly under recovery is approximately \$2,250 per month.</p> <p>NAWC states that it is incurring capital expenditures in furtherance of its Commission-approved LTIP and it is just and reasonable that it be allowed to reflect these additional project costs in its DSIC calculation.</p> <p>NAWC notes that other water utilities have been approved for increased DSIC caps and NAWC’s request should be considered in a likewise manner. (NAWC Exc. on Remand at 4-10).</p>

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OCA	<p>OCA notes (1) that NAWC’s DSIC rates did not reach 5 percent for 6 years after its last new base rates; (2) increasing the DSIC cap could delay the Company’s next base rate filing by an additional two or three years (extending the 7-year interval to 10 years); and (3) NAWC has no plans to accelerate infrastructure replacement from that approved in its LTIIP.</p> <p>OCA provides that when calculated lawfully and in accordance with the Company’s tariff, NAWC’s DSIC rate effective February 1, 2018, is 5.25% and the DSIC rate effective April 1, 2018, is 5.48%.</p> <p>OCA submits that exceeding the DSIC cap alone is not a basis to waive the cap. NAWC’s situation is materially different from that of the other water utilities that were granted a higher DSIC cap. OCA notes that NAWC has not been filing frequent base rate cases and NAWC has not committed to further accelerate its infrastructure investment if its DSIC cap is increased. (OCA R. Exc. on Remand at 1-10; OCA M.B. on Remand at 12-13; OCA R.B. on Remand at 2, 4)</p>
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Issue	Commissioner
2. Statutory and Legislative Intent for DSIC Cap Increase (R.D. on Remand at 30-31)	Commissioner Coleman
	Commissioner Sweet
	Commissioner Kennard
	Vice Chairman Place
	Chairman Brown
	Result
ALJ	The ALJ states that the Company is not automatically entitled to its requested DSIC cap increase to 7.5%. The ALJ reasoned that if solely exceeding the cap constituted justification for a waive of the DSIC cap, then the cap would not serve any purpose. (R.D. on Remand at 30-31).
Company	NAWC argues that the ALJ erred as a matter of law by concluding that, although NAWC’s DSIC exceeds 5% and is likely to continue to exceed 5%, NAWC is still not automatically entitled to an increase in the cap and that it must show that a cap increase is in the public interest and “necessary.” NAWC states it would be an error of law to deny the proposed increase because it ignores the clear and unambiguous statutory language. Act 11 does not require a water utility with an approved LTIP to demonstrate that a DSIC cap of 7.5% is “necessary.” (NAWC Exc. on Remand at 11-12).
OCA	OCA states that waiver of the DSIC cap is not necessary or in the public interest. OCA argues that the ALJ applied the correct standard in considering the requested increase to the DSIC cap. (OCA R. Exc. on Remand at 10-14; OCA R.B. on Remand at 2).

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Issue	Commissioner
3. Purchased Water Adjustment Clause and Fully Projected Future Test Year Alternatives (R.D. on Remand at 7; Finding of Fact No. 18)	Commissioner Coleman
	Commissioner Sweet
	Commissioner Kennard
	Vice Chairman Place
	Chairman Brown
	Result
ALJ	The ALJ states in his Finding of Fact 18: <i>“The Company’s Purchased Water Adjustment Clause and the Fully Projected Future Test Year are alternates available to NAWC to address the potential regulatory lag in the financing of the LTIIP improvements.”</i> (R.D. on Remand at 7 (citing OCA St. 1 at 6; OCA St. 1SR at 7; 66 Pa. C.S. § 315(e)).
Company	NAWC avers that Finding of Fact 18 is not supported by law or fact and should be rejected. NAWC provides that LTIIP financing is not part of the PWAC calculation. NWAC states that the PWAC, in point of law and fact, has no bearing on capital cost recovery. NAWC reasons further that use of a FPFTY as a basis to deny the proposed increase to the cap is inconsistent with the incentives enacted by the General Assembly to encourage infrastructure replacement and contrary to Act 11. (NAWC Exc. on Remand at 12-14).
OCA	OCA argues that the ALJ correctly determined that NAWC has several options to address regulatory lag – the Purchased Water Adjustment Charge, the FPFTY, and a DSIC of up to 5 percent. (OCA R. Exc. on Remand at 14-16; OCA M.B. on Remand at 12-13).