

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|--|---|----------------|
| Pennsylvania Public Utility Commission | : | R-2017-2603026 |
| Office of Consumer Advocate            | : | C-2017-2608643 |
|  | : |                |
| v.                                     | : |                |
|  | : |                |
| The Manwalamink Water Company          | : |                |

|  |   |                |
|--|---|----------------|
| Pennsylvania Public Utility Commission | : | R-2017-2603038 |
| Office of Consumer Advocate            | : | C-2017-2608641 |
|  | : |                |
| v.                                     | : |                |
|  | : |                |
| Manwalamink Sewer Company              | : |                |

**RECOMMENDED DECISION**

Before  
Joel H. Cheskis  
Administrative Law Judge  
and  
Andrew M. Calvelli  
Administrative Law Judge

**INTRODUCTION**

This Decision recommends that the Joint Petition for Settlement (Petition or Settlement) submitted by the Office of Consumer Advocate and the Manwalamink Water Company be approved in its entirety without modification because it is in the public interest and is supported by substantial evidence. In general, in lieu of the overall revenue increase of \$82,445, or 20% over present revenues, sought by the Manwalamink Water Company, the company will receive an increase of \$62,000, or 15% over present revenues.

This Decision also recommends that the Petition to Withdraw filed by the Manwalamink Sewer Company be approved by the Commission. In lieu of the overall revenue increase of \$29,007, or 5% over present revenues, sought by Manwalamink Sewer Company, the company will receive no increase because it has elected to withdraw its request for a rate increase rather than face ongoing litigation costs and other costs relating to the requested rate increase. The Petition is in the public interest and there is no objection to it.

This Decision finds that the Settlement and Petition to Withdraw comply with the relevant Sections of the Public Utility Code regarding rate filings and rate increases and are consistent with Commission regulations promoting settlements.

A decision in this case must be rendered by the Commission no later than February 1, 2018.

#### HISTORY OF THE PROCEEDING

On April 28, 2017, the Manwalamink Water Company (Manwalamink), Utility Code 211810, filed Supplement No. 22 To Water – PA P.U.C. No. 5 to become effective July 1, 2017. The subject tariff would increase Manwalamink’s total annual operating revenues by approximately \$82,445, or 20%, above the level of pro forma revenues for the historic test year ending December 31, 2016.

On April 28, 2017, Manwalamink Sewer Company (Manwalamink Sewer), Utility Code 230245, filed Supplement No. 21 To Sewer – PA P.U.C. No. 1 to become effective July 1, 2017. The subject tariff will increase Manwalamink Sewer’s total annual operating revenues by approximately \$29,007, or 5%, above the level of pro forma revenues for the historic test year ending December 31, 2016.

On June 8, 2017, the Office of Consumer Advocate (OCA) filed Formal Complaints at Docket Nos. C-2017-2608643 and C-2017-2608641, respectively.

Pursuant to 66 Pa. C.S. §1308(d), these filings were suspended by Commission Orders dated June 14, 2016, until February 1, 2018, unless permitted by Commission order to become effective at an earlier date. In the Orders, the Commission concluded that investigation and analysis of the proposed tariff filings and the supporting data indicate that the proposed changes in rates, rules, and regulations may be unlawful, unjust, unreasonable, and contrary to the public interest. The Commission also ordered that this matter be assigned to the Office of Administrative Law Judge for the prompt scheduling of such hearings as may be necessary to issue a Recommended Decision to the Commission, considering the reasonableness of the Respondents' existing rates, rules, and regulations.

The parties held discussions and consented to mediation in the above-captioned matters. By Notice date July 10, 2017, a Joint Mediation Session was scheduled for Wednesday, July 19, 2017 at the Commonwealth Keystone Building in Harrisburg, Pennsylvania.

The parties were advised that Administrative Law Judges Joel H. Cheskis and Andrew M. Calvelli had been assigned as the Presiding Officers in the above-captioned matters, and that if the parties failed to reach an agreement via the mediation process, it would be necessary to conduct hearings including a prehearing conference and an evidentiary hearing. The parties were advised that the Initial Prehearing Conference was scheduled for Monday, August 7, 2017.

In the weeks prior to the scheduled prehearing conference date, the parties had various discussions concerning possible settlement of the case. In various email exchanges between the parties and the Office of Administrative Law Judge, the parties advised that a settlement of all issues had been achieved. The Presiding Officers then scheduled a phone conference for Friday, July 28, 2017 to discuss the settlement with the parties. During that phone conference, the parties advised that they had prepared: 1) a Joint Petition for Settlement – The Manwalamink Water Company (with statements in support of the joint petition, attached to the joint petition); 2) a Petition to Withdraw – Manwalamink Sewer Company; and 3) various revised tariff supplements.

Also during the phone conference, the parties orally made a Joint Motion to Admit Documents into the evidentiary record in these proceedings, including the documents specified above. The Presiding Officers agreed to accept the documents into the record once they were received at the Office of Administrative Law Judge. The documents were received at the Office of Administrative Law Judge later in the day on July 28, 2017. This Decision formally grants the oral motion and admits those documents into the record of this proceeding and closes the record.

The record in this case consists of the following:

- Joint Petition for Settlement – The Manwalamink Water Company (with statements in support of the joint petition, attached to the joint petition).
- Petition to Withdraw – Manwalamink Sewer Company
- Supplement No. 22 to Water – PA P.U.C. No. 5
- Supplement No. 24 to Water – PA P.U.C. No. 5
- Supplement No. 21 to Sewer – PA P.U.C. No 1; and
- Supplement No. 23 to Sewer – PA P.U.C. No 1.

For the reasons set forth below, the Settlement and Petition to Withdraw will be recommended for approval in their entirety without modification.

#### FINDINGS OF FACT

1. The Manwalamink Water Company (Manwalamink or the Company) is a jurisdictional public utility subject to regulation by the Pennsylvania Public Utility Commission. Joint Petition at Paragraph 1.

2. The Company provides water service to approximately 1,257 customers in the Village of Shawnee-on-Delaware and adjoining territory, all in the Townships of Smithfield and Middle Smithfield in Monroe County, Pennsylvania. Joint Petition at Paragraph 1.

3. On April 28, 2017, the Company filed Supplement No. 22 to Tariff Water – PA P.U.C. No. 5 with the Commission, to become effective July 1, 2017. Joint Petition at Paragraph 2.

4. The Company sought Commission approval of an annual base rate revenue increase in the amount of \$82,445, or approximately 20 percent. Joint Petition at Paragraph 2.

5. Under the Company's rate increase request, a Company customer using 3,129 gallons of water per month would see a bill increase from \$23.53 to \$28.24. Joint Petition at Paragraph 7.

6. The Company was seeking an increase in the current rates to cover the increased cost of providing water service which the Company has incurred while simultaneously suffering a reduction in revenues. Supplement No. 22 To Water – PA P.U.C. No. 5.

7. In recent years, the Company's metered sales have declined because of an economic decline in the region, as occupancy rates have fallen because homeowners who previously stayed for a full week now tend to spend shorter periods in their second homes in the service area. Supplement No. 22 To Water – PA P.U.C. No. 5.

8. The Company's overall water usage in 2010 was 67,308,000 as compared with overall usage of 58,952,000 in 2016, an average annual decline of 12.4% for the seven-year period or roughly 2.07% annually. Supplement No. 22 To Water – PA P.U.C. No. 5.

9. The Company's downward trend in water usage has continued for the first three months of 2017 with a decrease of 0.82% comparing January, February and March of 2016. Supplement No. 22 To Water – PA P.U.C. No. 5.

10. The Company's Well #1 was shut down due to damages caused by significant flooding of the Delaware River between October 2004 and June 2006, following

which the Company spent \$158,683 in search for a replacement water source at other locations. Supplement No. 22 To Water – PA P.U.C. No. 5.

11. Following the search for a replacement water source, the Company revisited Well #1 and spent \$76,980 in rehabilitation cost for the Well. Supplement No. 22 To Water – PA P.U.C. No. 5.

12. The Well is back in service as of August 2016 and has increased the Company's annual operating cost in electricity by \$8,911 and chemicals (caustic potash) by \$27,890. Supplement No. 22 To Water – PA P.U.C. No. 5.

13. The Company's Supplement No. 22 To Water – PA P.U.C. No. 5 would have resulted in a return of \$27,156 on its claimed rate base of \$723,414, resulting in a rate of return of 3.75 percent. Supplement No. 22 To Water – PA P.U.C. No. 5.

14. As agreed to by the parties in the Settlement, the annual base rate revenue increase is being reduced from \$82,445, or approximately 20 percent, to \$62,000, or approximately 15 percent. Joint Petition at Paragraph 6.

15. As agreed to by the parties in the Settlement, the Company will not file a general base rate increase within 12 months after the entry date of the Commission Order approving the Joint Petition for Settlement. Joint Petition at Paragraph 7.

16. The Manwalamink Sewer Company (Manwalamink Sewer) is a jurisdictional public utility subject to regulation by the Pennsylvania Public Utility Commission. Petition to Withdraw at Paragraph 1.

17. As of December 31, 2016, Manwalamink Sewer rendered sewer service to 1,248 residential and commercial customers in the Village of Shawnee-on-Delaware and adjoining territory and to Shawnee Inn, all in the Township of Smithfield and Middle Smithfield in Monroe County. Petition to Withdraw at Paragraph 1.

18. On April 28, 2017, Manwalamink Sewer, Utility Code 230245, filed Supplement No. 21 To Sewer – PA P.U.C. No. 1 to become effective July 1, 2017. Petition to Withdraw at Paragraph 2.

19. The Manwalamink Sewer sought an increase in its total annual operating revenues by approximately \$29,007, or 5%, above the level of pro forma revenues for the historic test year ending December 31, 2016. Petition to Withdraw at Paragraph 2.

20. On June 8, 2017, the OCA filed a Formal Complaint opposing Manwalamink Sewer's requested rate increase at Docket No. C-2017-2608641. Petition to Withdraw at Paragraph 3.

21. Given the small amount of the requested increase, and to avoid costly litigation and additional expenses relating to the rate case proceedings, on July 28, 2017, Manwalamink Sewer elected to file its Petition to Withdraw. Petition to Withdraw at Paragraphs 2 and 5.

22. On July 31, 2017, the OCA submitted a letter indicating that it does not oppose the Sewer Company's Petition to Withdraw.

## DISCUSSION

### A. The Manwalamink Water Company Settlement

#### 1) Legal standard – the Company's requested rate increase

Any decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "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. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment

Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

The Commission applies certain principles in deciding any general rate increase case brought pursuant to 66 Pa. C.S. § 1308(d). 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 Co. v. Pennsylvania Pub. Util. Comm'n, 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) 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 Water Works and Improvement Co. v. Public Service Comm'n of West Virginia, 262 U.S. 679, 692-3 (1923).

The public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request pursuant to 66 Pa. C.S. § 1308(d). The statute at 66 Pa. C.S. § 315(a) sets forth the standard to be met by the public utility:



**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 proceeding 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 a general rate increase proceeding, the burden of proof does not shift to parties challenging a requested rate increase. The utility has the burden of establishing the justness and reasonableness of every component of its rate request throughout the rate proceeding. Other parties to the proceeding do not have the burden of proof to justify an adjustment to the public utility's filing. Berner v. Pennsylvania Pub. Util. Comm'n, 116 A.2d 738, 744 (Pa. 1955).

However, a public utility, in proving that its proposed rates are just and reasonable, does not have the burden to affirmatively defend claims it has made in its filing that no other party has questioned. In Allegheny Center Assocs. v. Pennsylvania Pub. Util. Comm'n, 570 A.2d 149 (Pa. Cmwlth. 1990), the Pennsylvania Commonwealth Court stated: "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."

In analyzing a proposed general rate increase, the Commission determines a rate of return to be applied to a rate base measured by the aggregate value of all the utility's property used and useful in the public service. In determining a proper rate of return, the Commission calculates the utility's capital structure and the cost of the different types of capital during the period in issue. The Commission has wide discretion, because of its administrative expertise, in determining the cost of capital. Equitable Gas Co. v. Pennsylvania Pub. Util. Comm'n, 405 A.2d 1055 (Pa. Cmwlth. 1979).

In this case, the parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved after a

fully litigated proceeding. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n., et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.*, (Opinion and Order entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Id.; *citing*, Warner v. GTE North, Inc., Docket No. C-00902815, (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n. v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

2) Terms of the Settlement between OCA and the Company

In the Settlement submitted on July 28, 2017, the Parties agreed to resolve all outstanding issues and to seek Commission approval for the matters settled. The relevant terms of the Settlements follow below – paragraph numbers are listed as they appear in the original Settlement which was filed with the Commission:

6. The Company’s originally proposed \$82,445 increase to customers will be reduced by \$20,445 to reflect an annual increase of \$62,000 over its pro forma annual revenues of \$412,225 resulting in total allowed annual revenue from rates of \$474,224, an increase of 15% in lieu of its original 20% rate increase.
7. a. The Company will be authorized to implement the attached tariff rates for customers on one (1) days’ notice upon entry of a Commission Order approving this settlement agreement.  
  
b. The Company will not file a general base rate increase, as that term is defined by Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d) within twelve (12) months after the entry date of the Commission Order approving this Joint Petition for Settlement. This stay-out provision has no application to rate changes proposed as a result of changes in fundamental regulatory policies affecting the Company’s base rates or potential surcharge(s) or proposed as a result of emergency circumstances in the Company’s service territory, pursuant to Section 1308(e) of the Public Utility Code, 66 Pa.C.S. § 1308(e).

c. Typical monthly rates for a residential meter usage customer using 3,130 gallons of water under current, proposed and settlement rates are as follows:

Current Rates     \$23.53

Proposed Rates    \$28.24 an increase of \$4.71 or 20%

Settlement Rates \$27.07 an increase of \$3.54 or 15%

8. The Joint Petitioners submit that this instant settlement is in the public interest because it: (i) provides the Company with immediate additional financial relief; (ii) provides for the maintenance of safe and adequate service; (iii) avoids the additional cost associated with litigation and the administrative burdens of continuing this proceeding; and (iv) reduces the amount of the rate increase requested by the Company, to approximately seventy-five (75) percent of the original request.

The Settlement is conditioned on the general terms found in most settlements submitted to the Commission. That is, the Settlement is conditioned upon approval of the terms and conditions without modification and the parties may withdraw from the Settlement and proceed with litigation if the terms are modified. The Settlement is also made without any admission against, or prejudice to, any position that any party may adopt during any subsequent litigation of this or any other proceeding. The parties also waived their right to file exceptions if the Settlement is adopted without modification.

3)     Public Interest – Analysis of the Settlement between OCA and the Company

As noted above, it is the policy of the Commission to promote settlements. 52 Pa. Code §5.231(a). The benchmark for determining whether a settlement should be approved is whether the proposed terms and conditions are in the public interest. *See, Lancaster, Warner, supra.* As discussed below, the Settlement is determined to be in the public interest and is therefore recommended for approval by the Commission without modification.

a) Revenue Requirements

As noted in the Settlement, the parties submit that the Settlement is in the public interest because it provides the Company with immediate additional financial relief in terms of additional annual revenue. Settlement at Paragraph 8. The financial relief in the form of additional revenue is needed because the Company's metered sales have declined because of an economic decline in the region, as occupancy rates have fallen because homeowners who previously stayed for a full week now tend to spend shorter periods in their second homes in the service area. Supplement No. 22 To Water – PA P.U.C. No. 5. This has caused the Company's overall water usage to decline from 67,308,000 gallons in 2010 to 58,952,000 gallons in 2016, an average annual decline of 12.4% for the seven-year period or roughly 2.07% annually. Supplement No. 22 To Water – PA P.U.C. No. 5. Moreover, the Company's downward trend in water usage has continued for the first three months of 2017 with a decrease of 0.82% comparing January, February and March of 2016. Supplement No. 22 To Water – PA P.U.C. No. 5.

The parties also agree that the Company needs immediate financial relief in the form of additional revenue due to expensive equipment upgrades made by the Company, along with an increase in the Company's ongoing maintenance costs. In that regard, the Company's Well #1 was shut down due to damages caused by significant flooding of the Delaware River between October 2004 and June 2006, following which the Company spent \$158,683 in search for a replacement water source at other locations. Supplement No. 22 To Water – PA P.U.C. No. 5. The Company then decided to revisit Well #1 and spent \$76,980 in rehabilitation cost for the Well. Supplement No. 22 To Water – PA P.U.C. No. 5. The Well is back in service as of August 2016 and has increased the Company's annual operating cost in electricity by \$8,911 and chemicals (caustic potash) by \$27,890. Supplement No. 22 To Water – PA P.U.C. No. 5. Thus, the parties submit that the Company needs additional annual revenues to offset these new costs, both fixed and ongoing. Settlement at Paragraph 8. The parties also submit that the additional annual revenue will allow the Company to continue to maintain safe and adequate service. Settlement at Paragraph 8.

b) Customer Protections

The parties submit that the Company's customers are protected by the Settlement because the Company has agreed to decrease its requested rate increase by 25 percent. Settlement at Paragraph 8; OCA Statement at Page 2; Manwalamink Water Company Statement at Page 1. The parties also submit that the Company's customers are protected by the stay-out provision of the Settlement, whereby the Company has agreed not to file another base rate increase request within 12 months after the entry date of the Commission's Order approving the Settlement. Settlement at Paragraph 7; OCA Statement at Page 3; Manwalamink Water Company Statement at Page 1.

The parties also note that approval of the Settlement would spare the Company from incurring the costly litigation expenses that would result from fully litigating this matter. Settlement at Paragraph 8; OCA Statement at Page 3; Manwalamink Water Company Statement at Page 1. These costs would necessarily and legally be passed on to the Company's customers as part of its base rate case. Finally, the OCA notes that the agreed upon increase of 15 percent in the Settlement would likely fall within the range of likely outcomes if the case was fully litigated. OCA Statement at Page 2.

c) Disposition

Having reviewed the various filings in the record in this case, we conclude that the Settlement should be approved by the Commission in its entirety without modification. The Settlement provides the Company with immediate financial relief in terms of increased annual base revenues. This financial relief is required by the Company to offset lost revenue from decreased demand over the seven-year period from 2010 through the present. Financial relief is also required by the company to offset necessary capital expenditures to Well #1 which will allow the Company to continue to supply its customers with safe and adequate water service. The increased revenue is also required by the Company to offset an increase in ongoing operating costs which stem from the repairs to Well #1 and the placement of Well #1 back into service to serve the Company's customers. In sum, the financial relief in the form of a revenue

increase is necessary so that the Company can continue to provide safe and adequate water service.

We also note that the Settlement will provide the Company with a reasonable rate of return. The Company's original rate request would have resulted in a rate of return of 3.5 percent. Under the terms of the Settlement, the Company has agreed to reduce its requested rate increase by 25 percent. This would reduce the rate of return correspondingly to 2.81 percent. We conclude that this is a reasonable rate of return and that the rate is not excessive.

Finally, we note that the Settlement provides adequate protections for the Company's customers. In the Settlement, the Company's customers are protected by the 25 percent decrease in the requested rate increase. The Settlement also provides the Company's customers with a 12 month stay-out provision which provides a time buffer against any subsequent rate increase requests by the Company.

As with most settlements, approving the settlement without modification is also in the public interest because doing so will avoid the substantial time and expense involved in further litigation. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. Pa. P.U.C., et al. v. PECO Energy Co., et al., Docket No. R-2010-2161575 (Recommended Decision issued November 2, 2010) (Opinion and Order entered Dec. 21, 2010). The Commission has indicated that settlement results are often preferable to those achieved after a fully litigated proceeding. 52 Pa. Code § 69.401. Rate cases, for example, 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 expense savings for the companies' customers.

For the above reasons, we recommend that the Commission approve the Settlement between OCA and the Company in its entirety without modification.

B. Manwalamink Sewer Company's Petition to Withdraw

On April 28, 2017, Manwalamink Sewer filed Supplement No. 21 To Sewer – PA P.U.C. No. 1 to become effective July 1, 2017. Petition to Withdraw at Paragraph 2.

Manwalamink Sewer sought an increase in its total annual operating revenues by approximately \$29,007, or 5%, above the level of pro forma revenues for the historic test year ending December 31, 2016. Petition to Withdraw at Paragraph 2. On June 8, 2017, the OCA filed a Formal Complaint opposing the Manwalamink Sewer's requested rate increase at Docket No. C-2017-2608641. Petition to Withdraw at Paragraph 3. On July 28, 2017, Manwalamink Sewer elected to file its Petition to Withdraw. Petition to Withdraw at Paragraphs 2 and 5. In its Petition, Manwalamink Sewer stated that, to avoid costly litigation and additional expenses relating to the rate case proceedings, it has decided to request that it be permitted to withdraw the proposed increase in sewer rates.

On July 31, 2017, the OCA filed a letter indicating that it does not oppose Manwalamink Sewer's Petition to Withdraw.

The withdrawal of pleadings in a contested proceeding is governed by Section 5.94 of the Commission's regulations. This Section provides:

(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 20 days of service. After considering the petition, any objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

52 Pa. Code § 5.94(a). In its Petition, Manwalamink Sewer seeks to withdraw its request for a rate increase, citing the cost of ongoing litigation versus the relatively small amount of the requested rate increase. The OCA, as the sole complaining party to the requested rate increase, does not oppose the Petition to Withdraw.

In this case, the Petition was served on the OCA and the OCA did not object to the Petition. As there are no other parties of record that objected to the original rate increase request or the Petition to Withdraw, the Petition to Withdraw is unopposed. As part of the Petition to Withdraw, Manwalamink Sewer has proposed to file tariff Supplement 23 to Sewer – PA P.U.C. No. 1, reflecting the fact that Manwalamink Sewer is withdrawing its rate increase. The parties deemed this procedural step necessary because the Commission had originally suspended Manwalamink Sewer’s original tariff Supplement 21 to Sewer – PA P.U.C. No. 21 in which the rate increase had been requested.

We conclude that the Petition to Withdraw is in the public interest and should be approved by the Commission. No public interest would be served by litigating this case under these circumstances. Approving the Petition to Withdraw will terminate the litigation, saving the parties costs in terms of the time and money that they would otherwise spend litigating the case. Approving the request to withdraw will not adversely impact the public interest and will conserve administrative hearing resources. We also note that approving the Petition will save Manwalamink Sewer’s customers money by keeping their current rates in effect, at least for the time being.

Having reviewed the Petition to Withdraw, OCA’s statement that it has no objections to the Petition, and the public interest, we conclude that the Petition to Withdraw should be approved by the Commission.

#### CONCLUSION

For the reasons noted above, the Joint Petition for Settlement filed by the OCA and the Company should be approved in its entirety without modification. The Joint Petition is



in the public interest and complies with the relevant provisions of the Public Utility Code as well as applicable precedent on the issues addressed in the Joint Petition. The Joint Petition is also supported by substantial record evidence in this proceeding. Therefore, it is recommended for approval in its entirety without modification, consistent with established Commission policy promoting settlements.

Also for the reasons noted above, the Petition to Withdraw filed by Manwalamink Sewer should be approved in its entirety without modification. The Petition to Withdraw complies with the relevant provisions of the Public Utility Code as well as applicable Commission Regulations. The Petition to Withdraw is in the public interest and will benefit Manwalamink Sewer's customers in the short term. Therefore, it is recommended for approval in its entirety without modification, consistent with established Commission Regulations.

Finally, this Decision grants the oral motion to admit testimony into the record of this proceeding. The parties are directed to file two copies of the relevant documents to the Commission's Secretary's Bureau for inclusion in the Commission's official file for this matter.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. §§ 501, 1301, 1308(d).

2. Decisions of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

3. "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. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and

Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

4. 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 Co. v. Pennsylvania Pub. Util. Comm'n, 341 A.2d 239 (Pa. Cmwlth. 1975).

5. The public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request pursuant to 66 Pa. C.S. § 1308(d).

6. A public utility, in proving that its proposed rates are just and reasonable, does not have the burden to affirmatively defend claims it has made in its filing that no other party has questioned. In Allegheny Center Assocs. v. Pennsylvania Pub. Util. Comm'n, 570 A.2d 149, (Pa. Cmwlth. 1990)

7. The Commission has expressed a policy of encouraging settlements and has indicated that settlement results are often preferable to those achieved after a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401.

8. The Joint Petitioners, as the parties seeking a rule or order from the Commission in this proceeding, have the burden of proving that the terms and conditions of the settlement are just, reasonable, and in the public interest. 66 Pa.C.S. §332(a).

9. The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. Warner v. GTE North, Inc., Docket No. C-00902815, (Opinion and Order entered April 1, 1996); Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

10. The Joint Petitioners have met their burden of proof to demonstrate that the Joint Petition for Settlement is just, reasonable, and in the public interest. 66 Pa.C.S. § 332(a).

11. The Joint Petition for Settlement filed on July 28, 2017 at Docket Number R-2017-2603026 is in the public interest and should be approved in its entirety without modification.

12. The Commission's regulations permit parties to withdraw pleadings in a contested proceeding by permission of the presiding officer or Commission. 52 Pa. Code § 5.94.

13. In determining whether to permit withdrawal of a pleading, the presiding officer or Commission must consider the petition, any objections thereto and the public interest. 52 Pa. Code §5.94(a).

14. The Petition to Withdraw filed by Manwalamink Sewer is in the public interest and should be approved in its entirety without modification.

### ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Manwalamink Water Company shall not place into effect the rates contained in Supplement No. 22 to Water – PA. P.U.C. No. 5 which was submitted on April 28, 2017 at Docket Number R-2017-2603026.

2. That the Joint Petition for Settlement filed on July 28, 2017 at Docket Number R-2017-2603026 is approved in its entirety without modification because it is in the public interest and is supported by substantial evidence.

3. That the oral motion to admit documents into the record made by the parties on July 28, 2017 is hereby granted and the following documents are admitted into the record of this proceeding:

- Joint Petition for Settlement – The Manwalamink Water Company (with statements in support of the joint petition, attached to the joint petition).
- Petition to Withdraw – Manwalamink Sewer Company
- Supplement No. 22 to Water – PA P.U.C. No. 5
- Supplement No. 24 to Water – PA P.U.C. No. 5
- Supplement No. 21 to Sewer – PA P.U.C. No 1; and
- Supplement No. 23 to Sewer – PA P.U.C. No 1.

4. That the parties are directed to provide two copies of the relevant documents moved into the record to the Commission’s Secretary’s Bureau for inclusion in the Commission’s official records.

5. That the Manwalamink Water Company shall file a tariff supplement with the Commission, reflecting the rates set forth in its proposed compliance tariff attached to the Joint Petition for Settlement as Supplement No. 24 to Water – PA P.U.C. No. 5, to become effective on one day’s notice.

6. That after the Manwalamink Water Company files the required tariff supplement set forth in Paragraph 3 of this Order, the Commission’s investigation at Docket Number R-2017-2603026 shall be terminated and marked closed.

7. That after the Manwalamink Water Company files the required tariff supplement set forth in Paragraph 3 of this Order, the Complaint filed by the Office of Consumer

Advocate against the Manwalamink Water Company on June 8, 2017 at Docket Number C-2017-2608643 shall be terminated and marked closed.

8. That Manwalamink Sewer Company shall not place into effect the rates contained in Supplement No. 21 to Sewer – PA. P.U.C. No. 1 which was submitted on April 28, 2017 at Docket Number R-2017-2603038.

9. That the Petition to Withdraw filed by Manwalamink Sewer Company on July 28, 2017 at Docket Number R-2017-2603038 is approved in its entirety without modification because it is in the public interest and is supported by substantial evidence.

10. That Manwalamink Sewer Company shall file a tariff supplement with the Commission, reflecting the rates set forth in its proposed compliance tariff attached to the Petition to Withdraw as Supplement No. 23 to Sewer – PA P.U.C. No. 1, to become effective on one day’s notice.

11. That after Manwalamink Sewer Company files the required tariff supplement set forth in Paragraph 8 of this Order, the Commission’s investigation at Docket Number R-2017-2603038 shall be terminated and marked closed.

12. That after Manwalamink Sewer Company files the required tariff supplement set forth in Paragraph 8 of this Order, the Complaint filed by the Office of Consumer Advocate against Manwalamink Sewer Company on June 8, 2017 at Docket Number C-2017-2608641 shall be terminated and marked closed.

Date: August 21, 2017

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/s/  
Joel H. Cheskis  
Administrative Law Judge

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/s/  
Andrew M. Calvelli  
Administrative Law Judge