

April 27, 2018

*Via Electronic Filing*

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

In re: Docket No. R-2017-2631441, *et al.*  
Pa. P.U.C. *et al.* v. Reynolds Water Company

Dear Secretary Chiavetta:

We are counsel to Reynolds Water Company in the above matter and are submitting, via electronic filing with this letter, the Company's Reply to the Objections/Comments of Customer Complainants. Copies of the Reply are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By



Thomas T. Niesen

Encl.

cc: Certificate of Service (w/encl.)  
Bradley R. Gosser, CPA (via email, w/encl.)  
Dennis Kalbarczyk (via email, w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2017-2631441
James Vessella	:	C-2017-2634797
Bea DeCiancio	:	C-2017-2635838
Office of Consumer Advocate	:	C-2017-2636654
John D’Urso	:	C-2017-2636679
Margaret Foust	:	C-2018-2644372
Plem Patterson	:	C-2018-2647045
Matthew Nestor	:	C-2018-2647060
Ryan Foust	:	C-2018-2647069
Brian Hills	:	C-2018-2647070
Laurel Litwiler	:	C-2018-2647272
Thomas Hanzes	:	C-2018-2647305
Clark Eberhart (VFW)	:	C-2018-2647318
Mildred J. Heile	:	C-2018-3000054
Helen Canady	:	C-2018-3000065
Lucas Shilling	:	C-2018-3000087
Diana Cole	:	C-2018-3000207
Gilbert and Marilyn Brant	:	C-2018-3000208
David Roeder, Sr.	:	C-2018-3000250
Natalie McCloskey	:	C-2018-3000419
Marie Potts	:	C-2018-3000505
Sean Belback	:	C-2018-3000566
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v.	:	
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Reynolds Water Company	:	

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**REPLY OF REYNOLDS WATER COMPANY  
TO OBJECTIONS/COMMENTS OF CUSTOMER COMPLAINANTS**

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**TO ADMINISTRATIVE LAW JUDGE KATRINA L. DUNDERDALE:**

AND NOW, comes Reynolds Water Company (“RWC” or “Company”), by its attorneys, and submits the following reply to Objections/Comments of the Customer Complainants to the Joint Petition for Settlement of Rate Investigation (“Joint Settlement Petition”) filed with the Public

Utility Commission (“Commission”) on April 6, 2018 by RWC, the Bureau of Investigation and Enforcement (“I&E”) and the Office of Consumer Advocate (“OCA”).

### **Introduction**

RWC is a Pennsylvania public utility that provides water service to 722 customers in Pymatuning, Delaware and Hempfield Townships, Mercer County, Pennsylvania.

RWC, I&E and the OCA (the “Settling Parties”) have proposed a resolution of the proceeding that they submit is in the public interest. Each of the Settling Parties filed a statement in support of the Joint Settlement Petition.

The Joint Settlement Petition replaces the annual revenue increase of \$236,829 originally proposed by the Company with a reduced annual increase of \$160,000, offset by a \$1,400 Accumulated Deferred Income Tax normalization credit – a net increase of \$158,600 in annual revenue. The increase is to be implemented in two Phases.

Objections/Comments to the Joint Settlement Petition have been filed by Complainants James Vessella, Bea DeCiancio, John D’Urso, Margaret Foust, Plem Patterson, Matthew Nestor, Ryan Foust, Brian Hills, Laurel Litwiler, Thomas Hanzes, Clark Eberhart (VFW), Mildred J. Heile, Helen Canady, Lucas Shilling, Diana Cole, Gilbert and Marilyn Brant, David Roeder, Sr., Natalie McCloskey, Marie Potts and Sean Belback.

Complainants have coalesced into an advocacy group called Reynolds Community Advocate Group and, with the exception of Complainants Margaret Foust and Ryan Foust, have submitted, individually, a common statement of objection to the Joint Settlement Petition and to any increase in rates. Although worded differently, Complainants Margaret Foust and Ryan Foust, likewise, object to the settlement and any increase in rates.

RWC replies herein to the Objections/Comments of the Complainants. In further response to the Objections/Comments of the Complainants, RWC also incorporates by reference its Statement in Support which was included as Appendix C to the Joint Settlement Petition. RWC's Statement in Support explains, with citation to past decisions of the Office of Administrative Law Judge, how the Joint Settlement Petition is consistent with the public interest and in furtherance of it.

### **Reply to Complainants' Objections/Comments**

Although Complainant's object to the settlement and any rate increase, we emphasize that the settlement is the result of Commission approved mediation. Ordering Paragraph 5 of the Order entered December 21, 2017, encouraged mediation and referred the rate filing for Alternative Dispute Resolution, if possible.

The participation of the Settling Parties in Commission encouraged mediation supports a conclusion that the Joint Settlement Petition furthers the public interest and is consistent with it. It does not support Complainants argument that the settlement and rate increase is unjust, outrageous and without logical reason. Complainants also seem to believe that this case involves increases to sewer and PennVest charges. This case does not involve increases in either of those charges.

The settlement is supported by the financial information submitted by the Company. I&E and the OCA, moreover, engaged in discovery none of which was challenged by RWC. The OCA's discovery included questions about water quality and quantity. In regard to water quality, the Company provides annual Consumer Confidence Reports to its customers. The OCA also conducted an on-site visit to review RWC's current and proposed water system facilities and related operations. Through their diligent efforts, the Settling Parties were able to resolve the proceeding.

We emphasize further that RWC's last rate increase was in mid-April 2010. Current rates, thus, have been in effect for more than eight years. It is unrealistic to expect current rates to continue

in effect forever. Over the past eight years, the Company's return has deteriorated to the point where it is presently experiencing a net operating loss and a negative return. A rate increase is unavoidable.

It is well established that RWC is legally entitled to the opportunity to earn a fair rate of return. *Bluefield Water Works and Improvement Co. v. Public Servicer Comm'n of West Virginia*, 262 U.S. 679 (1923). Present rates are legally insufficient as they do not provide RWC with an opportunity to earn a fair rate of return. As stated above, RWC has a net operating loss and a negative rate of return at present rates.

Complainants disagree with pages 3, 6, 7, 8 and 9 of the Joint Settlement Petition. Their disagreement, however, does not provide a factual or legal basis for rejecting the settlement. Complainants' disagreement is inconsistent with stated Commission policy encouraging parties in contested proceedings to enter into settlements.<sup>1</sup>

Complainants are not being intimidated, bullied, manipulated or threatened. Settlements, rather, lessen the time and expense of litigating a case<sup>2</sup> and, at the same time, conserve administrative hearing resources. This directly benefits all parties concerned.<sup>3</sup> Complainants' characterization of the mediation process and the settlement outcome is inappropriate.

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<sup>1</sup> 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement or stipulation in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

<sup>2</sup> The substantial cost of litigation avoided through settlement includes the cost of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the cost of preparing and serving briefs, reply briefs, exceptions and replies to exceptions, together with the cost of briefs and reply briefs necessitated by any appeal of the Commission's decision.

<sup>3</sup> *Pa. P.U.C. v. Imperial Point Water Service Company*, Docket No. R-2012-2315536, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated June 25, 2013, mimeo at 11; *Pa. P.U.C. v. The Newtown Artesian Water Company*, Docket No. R-2011-2230259, Recommended Decision of Administrative Law Judge Elizabeth H. Barnes dated September 20, 2011 ("*Recommended Decision of ALJ Barnes*"), mimeo at 9; *Pa. P.U.C. v. Reynolds Disposal Company*, Docket No. R-2010-2171339, Recommended Decision of Administrative Law Judge Conrad A. Johnson dated January 11, 2011, mimeo at 12; *Pa. P.U.C. v. Lake Spangenberg Water Company*, Docket No. R-2009-2115743, Recommended Decision of Administrative Law Judge Ember S. Jandebour dated March 2, 2010, mimeo at 11; *Pa. P.U.C. v. Reynolds Water Company*, Docket No. R-2009-2102464, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated February 16, 2010, mimeo at 5.

Complainants state, incorrectly, that all fire hydrants are locked down. Contrary to the assertion, RWC works with the Transfer Fire Department to identify hydrants available for fire-fighting emergencies. Twenty-six hydrants are reflected in the proof of revenue included as Appendix B to the Joint Settlement Petition. A twenty-seventh hydrant, used by the Transfer Fire Department to fill its tanker truck, is also included in the proof of revenue. RWC is careful about allowing unnecessary and/or inappropriate access to hydrants in order to maintain system integrity and reliability. RWC provides and will continue to provide fire hydrant service consistent with its tariff. We note that the Transfer Fire Department did not find it necessary to participate in this proceeding.

Complainants also disagree with pages 2, 3 and 4 of RWC's Statement in Support. As with their disagreement with the Joint Settlement Petition, their disagreement with RWC's Statement in Support does not provide a factual or legal basis for rejecting the settlement.

Complainants characterize the avoidance of rate case expense as a threat and an intent to intimidate, bully or manipulate. Avoidance of litigation costs – rate case expense – is a recognized benefit of settlement and favored by the Commission. It is not a threat or intimidation tactic and Complainants' characterization is inappropriate. Rate case expense is, in fact, an accepted part of a utility's revenue requirement. *Butler Township Water Company v. Pa. P.U.C.*, 81 Pa. Comwlth. Ct. 40 (1984).


Complainants, as a final point, claim that they have surveyed rates within the Commonwealth. Utility rates are not based on surveys. Rates, rather, are based on financial information and cost of service. RWC complied with Commission filing requirements and engaged in an open and candid review and discovery process with all parties in a professional and respective manner. The end result of the process is the Joint Settlement Petition.

## Conclusion

The Joint Settlement Petition proposes the resolution of all issues in this rate proceeding. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest.<sup>4</sup> The Joint Settlement Petition is consistent with the public interest and in furtherance of it for all the reasons expressed above, in the Company's Statement in Support and in established Commission rate case precedent.

WHEREFORE, Reynolds Water Company submits that the Objections/Comments of the Customer Complainants should be denied and/or considered fully addressed in the Joint Petition for Settlement of Rate Investigation and further that Administrative Law Judge Dunderdale recommend approval of and the Public Utility Commission approve the Joint Petition for Settlement of Rate Investigation.

Respectfully submitted,

By  \_\_\_\_\_

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*Attorneys for  
Reynolds Water Company*

Dated: April 27, 2018

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<sup>4</sup> *Recommended Decision of ALJ Barnes*, mimeo at 9, citing *Pa. P.U.C. v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) and *Pa.P.U.C. v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

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	:	
Reynolds Water Company	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 27<sup>th</sup> day of April, 2018, served a true and correct copy of the foregoing Reply Of Reynolds Water Company To Objections/Comments Of Customer Complainants, upon the persons and in the manner indicated below:

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