

**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	:	C-2018-2647318
Mildred J. Heile	:	C-2018-3000054
Helene Canady	:	C-2018-3000065
Lucas Schilling	:	C-2018-3000087
Diana Cole	:	C-2018-3000207
Gilbert V. and Marilyn A. Brant	:	C-2018-3000208
David R. Roeder, Sr.	:	C-2018-3000250
Natalie M. McCloskey	:	C-2018-3000419
Marie T. Potts	:	C-2018-3000505
Sean Belback	:	C-2018-3000566
	:	
v.	:	
	:	
Reynolds Water Company	:	

RECOMMENDED DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

This Decision recommends the Commission approve, with modifications, the Joint Petition for Settlement of Rate Investigation (Settlement) dated April 6, 2018, to be effective October 1, 2018. The Joint Petitioners agreed Reynolds Water Company should not

charge the rate base the utility proposed initially which would have increased annual revenues by \$236,829, or 45.4%, based on a future test year ending June 30, 2018. Instead, the Joint Petitioners request the Commission authorize Reynolds Water Company to earn a net increase in annual revenue of \$158,600, or 30.4%, over two phases. Under the Settlement, the average residential customer using 9,000 gallons per quarter will see their quarterly bill increase from \$92.76 to \$120.96, or 30.4%, over two phases.

HISTORY OF THE PROCEEDING

On October 30, 2017, Reynolds Water Company (Reynolds or Company) filed Supplement No. 5 To Tariff – Water Pa. P.U.C. No. 4 to become effective January 1, 2018. It proposed to increase Reynolds Water Company’s total annual operating revenues by approximately \$236,829 or 45.4% above the level of pro forma revenues for the future test year ending June 30, 2018.

Reynolds proposed to increase annual revenues by \$236,640, or 45.4%, which would become effective on or about January 1, 2018. Reynolds engages in the business of furnishing water services to approximately 722 total customers (551 residential customers) in portions of the Townships of Pymatuning, Hempfield, and Delaware in Mercer County. For the typical residential customer using 9,000 gallons per quarter, the average bill would increase by 45.4% from \$92.76 per quarter to \$134.87 per quarter.

On December 1, 2017, the Office of Consumer Advocate (OCA) filed a formal complaint against Reynolds at Docket No. C-2017-2636654. On December 5, 2017, the Commission’s Bureau of Investigation and Enforcement (BIE) filed its Notice of Appearance.

On December 21, 2017, the Pennsylvania Public Utility Commission (PUC or Commission) entered an order suspending the implementation of Supplement No. 5 by operation of law until August 1, 2018, pursuant to Title 66 of the Pennsylvania Statutes, at Section 1308(d), and opened an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Supplement No. 5. Further, the

matter was assigned to the Office of Administrative Law Judge (OALJ) to schedule such hearings as necessary to develop a record in this proceeding.

On December 21, 2017, the OALJ scheduled a call-in telephonic prehearing conference for December 29, 2017. Since October 30, 2017, formal complaints have been filed by twenty (20) individual customers and the Office of Consumer Advocate (OCA).

On December 28, 2017, Reynolds filed Supplement No. 6 to Reynolds's Tariff Water – Pa. P.U.C. No. 4, which suspended the effective date of Supplement No. 5 from January 1, 2018 until August 1, 2018.

On December 29, 2017, the presiding officer conducted a telephonic prehearing conference at which Reynolds, OCA, BIE, and James Vessella participated. Thereafter on January 2, 2018, the presiding officer issued the Prehearing Order which memorialized the discussions at the prehearing conference, and consolidated the formal complaints filed to date with the rate proceeding. The parties asserted a willingness to engage in the Commission's mediation process, and the presiding officer agreed not to establish a litigation schedule.

On January 11, 2018, the presiding officer issued a Protective Order in response to a Petition for Protective Order filed by Reynolds on January 2, 2018.

On February 2, 2018, the presiding officer issued the First Interim Order which consolidated the formal complaint of Margaret Foust at Docket No. C-2018-2644372 with the rate proceeding. On the same date, Reynolds filed Supplement No. 7 to suspend the application of the proposed rates until October 1, 2018 to provide time for the mediation process.

On February 14, 2018, the presiding officer issued the Second Interim Order which added an additional seven formal complaints to the rate proceeding. These seven formal complaints had been filed after the date of the First Interim Order.

On April 6, 2018, Reynolds filed a Joint Petition for Settlement of Rate Investigation (Settlement) on behalf of the joint petitioners: Reynolds, BIE and OCA.

On April 6, 2018, OCA provided a copy of the Settlement to the twenty Complainants and explained the presiding officer would provide instructions on how to consent or object to the Settlement.

On April 9, 2018, the presiding officer sent a letter to all parties which advised the individual formal Complainants that they had a right to indicate if they wished to join in the Settlement or object to the Settlement. The letter advised the individual Complainants that written comments must be received by Friday, April 20, 2018, and explained how to file the written comments with the Commission. The same letter outlined that the other parties would be granted leave to respond to any written comments by Friday, April 27, 2018, after which the presiding officer would close the hearing record and then issue a Recommended Decision for the Commission's review.

On April 12, 2018, the presiding officer issued the Third Interim Order which consolidated nine formal complaints with the rate proceeding. These nine formal complaints had been filed since the date of the Second Interim Order.

By Friday, April 20, 2018, the presiding officer received responses from the following individual Complainants: James Vessella, Bea DeCiancio, John D'Urso, Margaret Foust, Plem Patterson, Matthew Nestor, Ryan Foust, Brian Hills, Laurel Litwiler, Thomas Hanzes, Clark Eberhart (on behalf of the Reynolds Veterans of Foreign Wars), Mildred J. Heile, Helen Canady, Lucas Shilling, Diana Cole, Gilbert and Marilyn Brant, David Roeder, Sr., Natalie McCloskey, Marie Potts and Sean Belback. Many responses made use of a similar format to express the objections of the formal Complainants. These responses opposed Reynolds' claims in its filing and in the Settlement.

On April 27, 2018, Reynolds filed its reply to the objections from the formal Complainants. Reynolds emphasized the Settlement resulted out of the mediation, which

further the public interest, and is fully supported by the financial information in the original filing. Reynolds noted there was a 9-year period with stable rates, but its returns had deteriorated and Reynolds now experiences a negative return and a net operating loss. Reynolds disagreed with the contentions it bullied customers, or that all fire hydrants are locked down. Lastly, Reynolds contends the formal Complainants do not provide a factual or legal basis to reject the Settlement.

On May 1, 2018, the presiding officer issued the Fifth Interim Order Closing the Hearing Record.

TERMS OF THE SETTLEMENT

The Settlement is a nine (9) page document containing seventeen (17) numbered paragraphs. Appendix A to the Settlement contains the proposed tariff pages to be filed upon approval of the Settlement. Appendix B contains the Revenue Verification at Phase I and Phase II Settlement Rates. Appendices C, D and E to the Settlement are the respective statements of Reynolds, BIE and OCA in support of the Settlement.

The essential terms of the Settlement are contained in Paragraphs 10 and 11, which are quoted below:

Terms and Conditions of Settlement

10. Joint Petitioners agree that this rate proceeding can be settled without the need for further formal litigation. The terms and conditions comprising this Joint Petition, to which Joint Petitioners agree, are as follows:

(a) Revenue Increase and Phase In

Joint Petitioners respectfully request that the Commission act as soon as possible to approve this Joint Petition and grant [Reynolds] special permission to file a tariff supplement in the form attached hereto as Appendix A, to become effective for service on one day's notice, following the entry of a Commission Order approving this Settlement. The Settlement provides for a \$160,000 increase in annual revenue along with an offsetting \$1,400 Accumulated Deferred Income Tax normalization credit, as discussed in paragraph b, below. Thus, the

tariff supplement is designed to produce a net increase in annual revenue of \$158,600, or 30.4%, over two phases, in lieu of the proposed \$236,829 increase contained in Supplement No. 5. The Phase I rates, which will produce an annual increase of \$111,198, will become effective upon approval of this Joint Petition. The Phase II rates, which will produce an additional increase of \$47,402, will become effective upon written confirmation from [Reynolds] to the Commission, the OCA and [BIE] of the completion of the following three projects:

- i. Water proofing/sealing of the sedimentation walls. This project has an estimated cost of \$152,250;
- ii. Replacement of 500 feet of 8-inch water main under the Shenango River. This project has an estimated cost of \$125,000; and
- iii. Installation of a liner in the filtration plant clear well. This project has an estimated cost of \$50,000.

A proof of revenue for the Phase I and Phase II rate increases is attached [to the Settlement] as Appendix B.

(b) Federal Taxes:

The Tax Cuts and Jobs Act of 2017 (TCJA) reduces the Federal Income Tax Rate (FIT). The Settlement revenue requirement calculation reflects the reduced FIT rate of 21% in the TCJA starting with the effective date of new rates.

The TCJA also impacts reserves for deferred income tax liabilities. [Reynolds] calculated the impact of the TCJA on its deferred tax liability at December 31, 2017 to be \$20,784 (ADIT Adjustment). Reynolds also calculated a 15-year normalization period for returning the ADIT Adjustment. The amount of ADIT Adjustment to be amortized on an annual basis (approximately \$1,400) is incorporated into the Settlement revenue requirement calculation starting with the effective date of new rates.¹ Joint Petitioners agree that [Reynolds] will track the amortization of the ADIT Adjustment against the beginning balance of \$20,784 so that the remaining ADIT Adjustment balance can be determined in [Reynolds]'s next case.

The Commission's Temporary Rates Order entered March 15, 2018 at M-2018-2641242 directs the public utility and parties in pending rate proceedings to address the impact of the reduced FIT on the justness and reasonableness of consumer rates charged during the term of the suspension period. In this proceeding, there are two components to address. First, there is the calculation of any reduced expenses due to the reduction in the federal income tax rate.

¹ Joint Petitioners agreed on a revenue requirement increase of \$160,000. This amount was decreased to \$158,600 to address the ADIT Adjustment (\$160,000 - \$1,400).

Reynolds Water's filing reflects a net loss during the suspension period so there were no federal tax expenses during the suspension period and there are no federal tax expense savings reflected in the Settlement.

Second, there is the calculation of the ADIT adjustment during the suspension period. Joint Petitioners agree that the amortization of the ADIT adjustment that will be accrued from January 1, 2018 through June 30, 2018 with the estimated effective date of July 1, 2018 of the Settlement rates is \$700. This amount will be returned as a one-time bill credit to be reflected on the first billing cycle after Commission approval of the Settlement. The one-time bill credit will be refunded as an equal amount of \$1.00 per customer.

(c) Monthly Billing

[Reynolds] will prepare an analysis of the potential additional costs and benefits of moving to monthly billing. [Reynolds] will include the analysis in its next rate filing.

(d) Rate Design

[Reynolds] agrees to eliminate the minimum water allowance in its next rate case filing. Reynolds will provide a bill frequency analysis with that filing.

(e) Billing Format

[Reynolds] will update its bill format no later than the effective date of the Phase I revenue increase to show the PENNVEST surcharge is for Reynolds Disposal Company.

(f) Stay Out

[Reynolds] will not file a general rate increase, as that term is defined in Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), until 2 years following the effective date of the Phase II increase; provided, however, that this provision shall not prevent [Reynolds] from filing a tariff or tariff supplement proposing a general increase in base rates in compliance with Commission orders or in response to fundamental changes in regulatory policies or federal or state tax policies affecting [Reynolds]' rates.

Other Provisions

11. Under the presently suspended Supplement No. 5, the quarterly cost of water service to a typical residential customer using 9,000 gallons per quarter would have increased by approximately \$42.11, or 45.4%, from \$92.76 to \$134.87.

Under the Joint Petition, the quarterly cost of water service to such residential customer would increase by approximately \$28.20, or 30.4%, from \$92.76 to \$120.96 over the two phases. Under Phase I, the quarterly cost of water service to such residential customer would increase by approximately \$19.77, or 21.31%, from \$92.76 to \$112.53. Under Phase II, the quarterly cost of water service to such residential customer would increase by an additional \$8.43, or 7.49%, from \$112.53 to \$120.96.

Other specified terms of the Settlement include the following provisions: (1) the parties submit the Settlement without any admissions against prejudice to positions Reynolds, BIE or OCA might adopt in subsequent litigation, including litigation of the instant case, if necessary; (2) the Settlement may not be cited as precedent; (3) the Settlement is contingent upon the Commission's approval of all its terms and conditions; and (4) although the statutory parties do not agree to each claim and/or to each specific rate adjustment, the signatories do agree as to the amount of increase in the annual water revenue, coupled with other provisions included in the Settlement. In the event the Commission does not approve the Settlement, or modifies any of the terms and conditions, Reynolds, BIE and/or OCA may withdraw from the Settlement upon written notice (Settlement, ¶14). If the presiding officer recommends approval of the Settlement, then Reynolds, BIE and OCA waive the filing of Exceptions. They do not waive the filing of Exceptions to any recommended modifications, and reserve the right to file Reply Exceptions in the event any Exceptions are filed (Settlement, ¶15).

REYNOLDS' STATEMENT IN SUPPORT

Reynolds asserts it provides utility water service to 722 customers in Pymatuning, Delaware and Hempfield Townships, Mercer County, Pennsylvania. Reynolds contends the signatories agree this rate proceeding can be settled without further litigation under the terms set forth in the Settlement. The Settlement provides for a \$160,000 increase in annual revenue along with an offsetting \$1,400 Accumulated Deferred Income Tax normalization credit, for a net \$158,600 annual revenue increase. The signatories agreed, *inter alia*, Reynolds may file a tariff supplement increasing its annual revenue by \$158,600 in two phases, in lieu of the proposed \$236,829 annual increase contained in Supplement No. 5.

Reynolds contends the Settlement increase will provide it with additional and necessary cash flow to meet operating expenses plus the opportunity to earn a return on important capital projects, while addressing matters of interest to ratepayers and avoiding the cost and uncertainty of litigation. Reynolds submits the Settlement is reasonable, in the public interest and should be approved without modification. Furthermore, it asserts the Settlement proposes a resolution of all issues and, therefore, the principal issue for Commission consideration is whether the agreement reached is in the public interest.

Reynolds points out that the three signatories agree the Settlement is in the public interest because it (a) provides Reynolds with additional and necessary cash flow²; (b) addresses the Tax Cuts and Jobs Act of 2017 (TCJA); (c) addresses capital projects; and (d) recognizes ratepayers' concerns. Reynolds contends the Settlement minimizes cost-prohibitive litigation and administrative burden. Resolving these issues through mediation was achieved only after BIE and OCA conducted extensive discovery. The mediation and eventual settlement supports the conclusion the Settlement furthers the public interest and is consistent with the public interest. Furthermore, Reynolds contends avoiding litigation costs as a result of settlement is important to the signatories and to ratepayers because the cost of litigation ultimately may be reflected in higher rates for water service. Settlement of a small utility rate proceeding is a worthwhile use of the Commission's mediation process, and the avoidance of increased litigation expense is a recognized public interest benefit of settlement.

Additional and Necessary Cash Flow

Reynolds avers it must increase its base rate in order to ensure its operating income is at a reasonable level. Reynolds contends it will experience a *net income loss* of \$64,257 during the twelve months ending June 30, 2018 and a *negative return* of 4.49% at its present rate levels. Reynolds insists it needs immediate rate relief. Reynolds initially requested (in Supplement No. 5), the quarterly cost of water service to a typical residential customer using

² Joint Settlement Petition, paragraph 13.

9,000 gallons of water per quarter should be increased from \$92.76 to \$134.87, and calculated the pro forma net income to be \$112,195.76 with an overall return of 7.84%.

Under the Settlement, the quarterly cost of water service to a typical residential customer should increase only to \$120.96 over two phases. Under Phase I, the quarterly cost of water service would increase by approximately \$19.77 from \$92.76 to \$112.53. Under Phase II, the quarterly cost of water service to the same residential customer would increase by an additional \$8.43, or from \$112.53 to \$120.96.³ The Phase 1 increase will take effect upon Commission approval of the Settlement. Phase II will not become applicable until Reynolds completes the water proofing/sealing project, Shenango River main replacement project and the filtration plant liner project.⁴

Reynolds averred the financial data it submitted fully supports the substantially reduced increase of \$158,600 provided for in the Settlement and believes the increase should be sufficient to allow it to continue to provide reasonable and adequate service. Although Reynolds believes it could have supported a higher revenue requirement if it had proceeded to litigation, under the totality of the circumstances the cost avoidance by settling is in the interest of Reynolds and its customers.

Tax Cuts and Jobs Act of 2017

The Tax Cuts and Jobs Act of 2017 (TCJA) reduces the Federal Income Tax Rate (FIT) and also impacts the reserve for accumulated deferred income tax (ADIT) liabilities. The signatories address the impact of the TCJA in the settlement rates and the settlement revenue requirement calculation reflects the reduced FIT of 21%. Reynolds calculated the impact of the TCJA on its deferred tax liability at December 31, 2017 was \$20,784 (ADIT Adjustment). Reynolds calculated an annual ADIT adjustment based on a 15-year normalization period which

³ The Settlement herein is “black box,” meaning the signatories did not negotiate each and every revenue and expense line item but did agree upon a final revenue number based on each signatory’s individual revenue and expense analysis.

⁴ Reynolds anticipates completion of the projects during the Summer of 2018.

is reflected in the settlement revenue requirement as being \$1,400. In compliance with the Commission's Temporary Rates Order entered March 15, 2018 at M-2018-2641242, the signatories addressed the impact of the TCJA during the suspension period and provided, in settlement, for a one-time bill credit of \$1.00 per customer to address the suspension period ADIT amortization of \$700. The Federal Tax term addresses the totality of tax matters under the TCJA, and Reynolds submits the negotiated settlement term is a just and reasonable resolution of the impact of the TCJA.

Significant Capital Projects

Reynolds asserts the Settlement acknowledges three important capital projects: water proofing/sealing of the sedimentation walls with an estimated cost of \$152,250; replacement of 500 feet of 8-inch water main under the Shenango River with an estimated cost of \$125,000; and installation of a liner in the filtration plant clear well with an estimated cost of \$50,000. The projects are necessary and proper. By holding implementation of the Phase II increase until those projects are completed, Reynolds contends the Settlement will incentivize Reynolds to complete the three projects as soon as possible.

Matters of Interest to Ratepayers

The Settlement addresses matters of monthly billing, rate design and billing format which matters are of interest to ratepayers⁵ and are a traditionally-recognized part of the public's interest in achieving a settlement. For monthly billing, Reynolds agrees to prepare an analysis of the potential additional costs and benefits of moving to monthly billing, the results of which analysis Reynolds will present in its next rate filing. For rate design, Reynolds agrees to eliminate the minimum water allowance in its next rate case filing and provide a bill frequency analysis with that filing. For the billing format, Reynolds agrees to update its bill format no later than the effective date of the Phase I revenue increase to show the PENNVEST surcharge is for Reynolds Disposal Company.

⁵ Joint Petition, paragraphs 10 (c) through 10 (e).

Rate Case Stay Out

As a final matter, Reynolds agrees to a two-year rate case stay out and agrees it cannot file another base rate proceeding until two years after Reynolds sends written notification of the Phase II completion. A rate case stay out gives ratepayers a specified level of rate security that would not exist absent the stay out provision. A rate case stay out is a traditionally-recognized part of the public's interest in settlement of a rate proceeding.

BIE'S STATEMENT IN SUPPORT

BIE contends the terms and conditions of the Settlement are in the public interest and represent a fair, just, and reasonable balance of the interests of Reynolds and its customers. BIE asserts the Settlement satisfies all applicable legal and regulatory standards, is a product of negotiation and compromise, reflects concessions from Reynold's original rate request, and contains terms preferable to those that may have been achieved at the end of a fully-litigated proceeding. Accordingly, BIE maintains the proposed Settlement is in the public interest and requests the terms be approved by the Commission without modification.

Revenue Increase and Phase-In

BIE acknowledges the Settlement provides for an increase of \$160,000 to the Company's annual overall revenue along with an offsetting \$1,400 Accumulated Deferred Income Tax (ADIT) normalization, which produces a net increase in annual revenue of approximately \$158,600 phased-in over two years. BIE notes the amount is appropriate after BIE conducted an extensive investigation of Reynolds' filing and related information through the discovery process in order to determine the amount of revenue Reynolds needs to provide safe, effective, and reliable service without unduly impacting its customers through higher rates. BIE points out that instituting a rate increase over two phases will mitigate the rate impact on customers, and Phase II will only be effective after completion of three capital projects. BIE argues moderation of the level of the rate increase benefits ratepayers and results in just and

reasonable rates in accordance with the Public Utility Code, regulatory standards, and governing case law, and should therefore be approved.

Federal Taxes Considerations

BIE notes the federal corporate income tax (FCIT) rate was reduced from 35% to 21%, effective January 1, 2018 as a result of the recently passed TCJA and pursuant to the Commission's Order (at Docket No. M-2018-2641242) parties in pending Section 1308(d) proceedings are required to address the effects of the reduction in tax rate before concluding any current proceedings. BIE asserts it supports the Settlement revenue requirement calculation based on a 21% FCIT rate because, for customer rates to be just and reasonable, they should reflect actual cost, which is the new FCIT rate. The rate increase proposed in this Settlement was based on a 21% FCIT and the decrease in the federal tax rate produced by the TCJA creates excess ADIT which must be refunded to customers.

BIE agrees with Reynolds' calculations of its excess ADIT at December 31, 2017, as being \$20,788 with a 15-year amortization period for returning the excess ADIT. Therefore, the amount of excess ADIT to be amortized on an annual basis is approximately \$1,400. BIE contends this amount was incorporated into the agreed-upon revenue increase. Reynolds will track the amortization against the beginning balance of \$20,784 so that in its next base rate case, the remaining excess ADIT balance can be easily determined. Further, Reynolds will continue to collect excess ADIT until the new rates proposed in this Settlement go into effect. The signatories estimate the amortization of excess ADIT that will be accrued through the effective date of new rates is approximately \$700, and the Settlement provides for this amount to be returned to customers through a one-time bill credit as an equal amount per customer. This adjustment will be reflected on the first billing cycle after Commission approval of the Settlement, which will ensure the excess ADIT is returned quickly and efficiently to customers.

Matters of Interest to Ratepayers

BIE notes that Reynolds' ratepayers currently are billed on a quarterly basis. These customers may benefit from switching to monthly billing, but presently there is no cost-benefit analysis supporting such a change. For this reason, BIE supports Reynolds' agreement to include a cost-benefit analysis for monthly billing in its next rate filing, which will be evaluated by BIE at that time.

BIE contends it supports Reynolds' elimination of a minimum allowance charge and its agreement to provide a bill frequency analysis in its next rate case filing. Reynolds' minimum allowance charges ratepayers a flat rate without regard to usage. Elimination of the minimum allowance, supported by a bill frequency analysis, would permit all rates to reflect individual customer usage, leading to more precise bills based on consumption.

BIE supports Reynolds' agreement to update its bill format no later than the effective date of the Phase I revenue increase. This update would reflect that the PENNVEST surcharge on ratepayers' billing is for the Reynolds Disposal Company. Currently, Reynolds' customer bills include a line item charge for "PENNVEST", without specification whether such surcharge is for a loan to Reynolds Water Company or Reynolds Disposal Company. This change is necessary to identify which utility service will receive this surcharge.

BIE points out the Settlement prevents Reynolds from filing for a general base rate increase, as that term is defined in Section 1308(d) of the Public Utility Code, until two years following the effective date of the Phase II increase, absent certain circumstances. Reynolds may only file a proposal for a general base rate increase before such time (1) in compliance with Commission orders or (2) in response to fundamental changes in regulatory policies or federal or state tax policies affecting Reynolds' rates. This stay out provision will provide rate continuity to ratepayers for at least two years following the date Reynolds sends written notification of the Phase II completion. At the same time, Reynolds will avoid hardship if certain unforeseeable events necessitate it to propose rate relief. For these reasons, the stay out provision is in the public interest and should be approved.

The Public Interest

BIE asserts the Settlement provisions resolve the issues it raised and represent a revenue increase that BIE believes is fair, just, reasonable, and in the public interest. BIE argues the Settlement represents approximately 67% of the filed request for additional revenues but it believes the additional revenue will provide Reynolds with sufficient operating funds to provide safe and adequate service while the impact on ratepayers is less than initially proposed. BIE argues that resolution of this case by settlement rather than litigation will negate the need for evidentiary hearings, which would compel an extensive devotion of time and expense for the preparation, presentation, and cross-examination of multiple witnesses, the preparation of main and reply briefs, the preparation of exceptions and replies, and the potential for appellate filings, thus yielding substantial savings for the signatories and customers, as well as certainty on the disposition of issues.

BIE contends the Commission should approve the Settlement because it is just and reasonable, and in the public interest, although the Settlement is not based upon any specific adjustments or ratemaking approach. BIE notes several reasons why the Settlement is in the public interest including that it: (1) provides a reasonable and lawful level of operating revenues; (2) moderates the amount of the increase for Reynolds' ratepayers; (3) avoids the need for additional litigation costs which would have been borne by the involved parties and the ratepayers; (4) precludes Reynolds from filing for another base rate increase within 24 months after the Commission's Order approving the Joint Settlement; (5) avoids rate shock to the ratepayers by reducing the proposed 45.4% increase to only 30.4% increase over the two Phases; and (6) the Settlement is the result of discovery and discussions which maintains a proper balance of the interests of all parties. Lastly, BIE notes it is satisfied that no further action is needed and considers its investigation of the rate filing to be complete. BIE notes the two-tiered operating revenue increase, specified in the Settlement, allows for Reynolds' just and reasonable costs to be covered while allowing for the second phased-in increase to become effective once Reynolds confirms in writing that the projects are complete.

OCA'S STATEMENT IN SUPPORT

OCA asserts the terms and conditions of the Settlement represent a fair and reasonable resolution of the issues and claims. OCA points out the ratepayers will benefit from the stay out and other provisions addressing ratemaking issues, and all parties would benefit from the reduction in rate case expense and the conservation of resources made possible by adoption of the Settlement in lieu of full litigation.

OCA points out that in Phase I, the rates will produce an annual revenue increase of \$111,198 or 21.31%, while in Phase II, the rates will produce an additional revenue increase of \$47,402, or 7.49%. The Phase II revenue increase will become effective after written confirmation from Reynolds to the Commission, OCA and BIE that it has completed three projects:

- i. Water proofing/sealing of the sedimentation walls, at an estimated cost of \$152,250;
- ii. Replacement of 500 feet of 8-inch water main under the Shenango River, at an estimated cost of \$125,000; and
- iii. Installation of a liner in the filtration plant clear well, at an estimated cost of \$50,000.

OCA contends the rate increase represents a result that would be within the range of likely outcomes in the event the case was fully litigated, this increase is appropriate when accompanied by other important conditions contained in the Settlement and yields a result that is just and reasonable. Those other important conditions are federal tax changes, a stay out provision, and requirements for the next base rate proceeding when Reynolds promises to provide analysis and/or make changes to the billing cycles, rate design and billing formats.

Federal Taxes

OCA notes the federal Tax Cuts and Jobs Act reduced the corporate income tax rate to 21%, and the parties reflected the reduced tax rate when calculating the proposed annual revenue increase of \$158,600. Reflecting the lower federal income tax rate in the revenue requirement calculation is reasonable and appropriate, and benefits the customers of Reynolds. OCA notes the Commission directed the utilities and parties in pending rate proceedings to address the impact of the reduced federal income tax rate, resulting from the federal Tax Cuts and Jobs Act, effective January 1, 2018, on the justness and reasonableness of rates charged during the term of the suspension period.⁶ OCA points out this Settlement addresses the return of \$700 as a one-time bill credit of \$1.00 per customer, which credit will be reflected on the first billing cycle after the Commission approves the Settlement. OCA notes the Commission requires parties in a water base rate proceeding to account for reduced expenses but there were no federal tax expenses during the suspension period because Reynolds' filing reflects a net loss during the suspension period. Due to the net loss reflected by Reynolds, there are no federal tax expense savings reflected in the Settlement.

Matters of Interest to Ratepayers

OCA points out the parties agreed Reynolds would not file another general rate increase, as that term is defined in Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), for at least two years following the effective date of the Phase II increase. OCA contends this provision will provide a level of rate stability that will benefit the ratepayers.

OCA notes Reynolds agrees it will include an analysis of the additional costs and benefits of going to monthly billing in its next rate filing. OCA points out that Reynolds agrees to eliminate the minimum allowance in its next rate case. Currently, the quarterly minimum allowance ranges from 2,000 gallons for a customer with a 5/8" meter and 160,000 gallons for a customer with an 8" meter. OCA points out that Reynolds agrees to provide a bill frequency

⁶ See Temporary Rates Order, at Docket No. M-2018-2641242 (entered March 15, 2018).

analysis in its next rate filing, which analysis will aid OCA when it reviews the proposed rate design in Reynolds' next rate filing.

OCA notes Reynolds agrees it will change its bill format to show ratepayers that the PENNVEST surcharge on the bill is intended for the Reynolds Disposal Company's PENNVEST loan. The Commission approved the surcharge for the PENNVEST loan previously in *Pa. Pub. Util. Comm'n v. Reynolds Disposal Co.*, Docket No. R-00061492 Order (May 14, 2007). This clarification will assist in ensuring the bills (which include water and sewer charges) are more easily understood by ratepayers and the charges for each utility service are identified clearly.

OCA avers in its Statement in Support of Settlement that the Settlement is in the public interest and, while it does not reach all of OCA's recommendations which it might have proposed in a fully-litigated case, it does satisfactorily address the issues OCA raised in its complaint. Based upon its analysis of Reynolds' filing, OCA avers the revenues proposed in the Settlement are within the range of likely outcomes in the event the matter was fully litigated. OCA avers the ratepayers are assured of some level of rate stability with the two-year stay-out provision.

COMMENTS FROM INDIVIDUAL COMPLAINANTS

None of the 20 individual Complainants were signatories to the Settlement, although five of the individual Complainants attended and/or participated in one or both of the mediation sessions in which the Settlement provisions were created.

The presiding officer provided the individual Complainants with an opportunity to comment on the proposed Settlement and explained how the individual Complainants were to file comments. The presiding officer received objections from the individual Complainants. On April 24, 2018, the presiding officer electronically provided a copy of the objections to counsels for Reynolds, BIE and OCA, who were all given the opportunity to respond. On April 27, 2018,

Reynolds filed a response entitled Reply of Reynolds Water Company to Objections/Comments of Customer Complainants.

Most Complainants made similar statements objecting to the Settlement, and used a standardized form response. Complainants who used this form statement were: James Vessella, Bea DeCiancio, John D'Urso, Plem Patterson, Matthew Nestor, Brian Hills, Laurel Litwiler, Thomas M. Hanzes, Clark W. Eberhart (on behalf of the Reynolds VFW), Mildred J. Heile, Helene Canady, Lucas Schilling, Diana Cole, Gilbert V. Brant, Marilyn A. Brant, David R. Roeder, Sr., Marie Potts and Sean Belback. These Complainants alleged the proposed 45.5% increase is unjust, outrageous, illogical, and unprecedented in any business. Complainants do not find the 30.4% increase proposed in the Settlement to be acceptable either and contend Reynolds should be forced to stay out until 2029 regardless of whether an emergency expenditure might arise.

Each Complainant claimed to wish to fully litigate this matter because they do not agree with the provisions of the Settlement. Complainants argue they have been forced to live with intimidation, bullying, manipulation and threats from Reynolds because of the averment of the signatories that the water rates will be increased even more if the base rate proceeding is fully litigated. Complainants insist the Commission should not close its investigation until Reynolds is precluded from increasing its base rate.

In addition, Complainants argue all fire hydrants in the Reynolds system are locked down except for the hydrants used by the school district (which must pay \$159.33 per hydrant per quarter), the Transfer Fire Department (which must pay \$600 per year), and the Reynolds VFW (which must pay \$159 per quarter). Complainants contend Reynolds is poorly managed and refuses to live within a structured budget as evidenced by Reynolds' admission in the Settlement that the rates have to increase in order to bring Reynolds' operating income to a reasonable level. Complainants aver Reynolds has some of the highest water and sewer rates in the state.

In addition to the formatted statements referenced above, eight individuals added additional comments and/or wrote their own statements.

a. James Vessella (Docket No. C-2017-2634797) provided numerous copies of documents which were printed from various websites about the corporate structure, board of directors and finances of Reynolds, in addition to printouts about the structure and finances of other water companies. Those documents were not authenticated and were not considered.

b. Margaret Foust (Docket No. C-2018-2644372) opposed making the new rate effective with only one day's notice. She opposed the 30.4% increase and was appalled when one of the statutory parties made a high initial offering during mediation. Ms. Foust contended it is unfair to expect the customers to pay 30.4% more indefinitely when the cost of the projects outlined by Reynolds would be paid for within three years. She argued that upon the completion of the projects, the rate should automatically decrease. Ms. Foust contended Reynolds should be forced to exhaust all other resources to fund the projects before it is permitted to increase the base rates. Ms. Foust argued Reynolds should be forced to use the 21% reduction in the Federal Income Tax to reduce any base rate increase, instead of paying back one dollar (\$1) to each customer. She opined the reduction would generate the income Reynolds needs in the initial phase, and should decrease the amount needed to increase the base rate. Lastly, Ms. Foust contested the dollar increases Reynolds used to describe a typical residential customer because Reynolds did not include all the quarterly charges that appear on the utility's bills, including the sewer charges (\$81.36) and the charges for the PENNVEST loan (\$17.55).

c. Clark W. Eberhart (Docket No. C-2018-2647318) is the Commander at the Reynolds VFW and he argued that the increase is extremely high, especially for a non-profit business that works on a limited cash flow. He argued the cost of the fire hydrant located by the VFW should be split among all the customers instead of requiring the VFW to pay \$159.33 each quarter. He pointed out that the school district is charged the same amount even though there are two fire hydrants used by the school district. He also contended the hydrants should not be locked.

d. Lucas Schilling (Docket No. C-2018-3000087) contended he already pays enough for water service and he does not want a rate increase.

e. Diana Cole (Docket No. C-2018-3000207) contended Reynolds should use the actual costs of the proposed projects referenced in the Settlement, instead of using estimated costs. She pointed out that she is a widow who must work full time to cover her living expenses but many low-income families live in Reynolds' territory who cannot cover their expenses. She questioned why the stay out provision is not longer, and said the fire hydrants should be unlocked. Ms. Cole pointed out she has a locked fire hydrant in her front yard and she is fearful of what will happen if her home catches fire. Ms. Cole contended the increase is too much. She had hoped to retire soon but with the increase she will not be able to retire as soon as she wanted to retire.

f. Ryan Foust (Docket No. C-2018-2647069) argued the proposed rate increase is unaffordable, irresponsible and detrimental to the ratepayers. Mr. Foust noted one ratepayer, the Reynolds School District, qualified for grants that provide free breakfast and lunches to students during the school year and during the summer break, in addition to providing weekend snacks for low-income students during the school year. Imposing any rate increase on a community already struggling to feed its children will have a negative detrimental impact but to impose a 30.4% increase is unaffordable by the ratepayers. Mr. Foust requested the Commission deny the increase and order Reynolds to pursue other means of project funding which would avoid the need to increase the base rate. Mr. Foust pointed out a nearby water company (Greenville Water Company) recently received \$320,000 in grant money. Mr. Foust also contended ratepayers' monies currently are used to pay off a PENNVEST loan taken out by Reynolds in 2007, in addition to the general base rate increase which Reynolds received from the Commission in 2009.

g. Helene Canady (Docket No. C-2018-3000065) contended the customers should know the actual costs of the projects for which Reynolds requests the additional monies, instead of using only estimated costs. She argued she is a widow with a limited income but no one has increased her income so she can pay for this new increased base rate.

h. Bea DeCiancio (Docket No. C-2017-2635838) argued the rate increase is unfair to everyone except Reynolds. She objected to the percentage increase in the base rate at one time, especially when the customers do not know at this time if their drinking water is safe. Ms. DeCiancio contended Reynolds' territory is a low-income community with a large number of senior citizens, including herself. She agreed monthly billing, which would be phased in, was a good idea and would help many residents. Lastly, she argued Reynolds should be assisting the disabled individuals and veterans in their territory.

RESPONSE OF REYNOLDS TO COMPLAINANTS' OBJECTIONS

On April 27, 2018, Reynolds replied to the objections from the individual Complainants. Reynolds averred the Settlement furthers the public interest because it resulted from mediation and is supported by financial information provided by the utility. Reynolds points out it had not filed for a base rate increase in over seven years. Reynolds' customers have experienced stable rates over that time period but those lower rates cannot be sustained any longer. Reynolds contends its rate of return has deteriorated over time and it operates with a net operating loss and a negative return. In order to remain a viable operating utility, Reynolds notes it must have an opportunity to earn a fair rate of return.

Reynolds also pointed out that the increase herein only applies to an increase in the water base rates, and there is no increase to the sewer base rates or the PENNVEST charges. Reynolds disagreed with Complainants' contentions and insisted it has not intimidated, bullied, manipulated or threatened its customers. Furthermore, Reynolds pointed out that this Settlement saves money for the customers because it lessens the time and costs of fully litigating the base rate filing. Reynolds denied the fire hydrants were locked down and insisted it works with the Transfer Fire Department to identify hydrants which will be available for fire-fighting emergencies. Reynolds averred it is careful about allowing unnecessary and/or inappropriate access to hydrants so it can maintain its system integrity and reliability.

DISCUSSION

The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Commission policy encourages settlements⁷ which often eliminate or significantly reduce the time, effort, and expense of litigating a proceeding to its final conclusion. This time, effort and expense can be extensive if the proceeding, with the resulting Commission decision, includes review by the Pennsylvania appellate courts. Such savings directly benefit the individual parties to a proceeding, the Commission, and the utility's ratepayers by reducing expenses the utility could claim in future rate cases.

Under the terms in the Settlement, BIE, OCA and Reynolds agreed that Reynolds should be permitted to increase the quarterly cost of water service to residential customers by a total of 30.4% over two phases. This adjustment would provide an increase in annual revenue of \$158,600. In addition, Reynolds agreed it would not file for another general base rate increase for a period of 24 months after the date on which Reynolds sends written confirmation of the completion of all projects in Phase I and Phase II, except for specifically designated contingencies. This Settlement provision is intended to provide a measure of rate stability.

Analysis

If approved, the Settlement will result in an increase of approximately \$158,600 in additional annual operating revenues which is significantly less than the \$236,829 originally requested by Reynolds. All signatory parties agree the proposed increase is necessary to ensure Reynolds can recoup the costs of providing water service to its ratepayers while making infrastructure improvements in addition to earning a reasonable return on its investment. The data provided by the signatory parties and within the Settlement itself further support the signatory parties' assertions that the increase is needed to cover reasonable and just costs.

⁷ 52 Pa.Code § 5.231(a).

In addition, the signatory parties agreed Reynolds will be unable to file for another rate increase for at least two years after Reynolds sends written confirmation of the completion of all projects in Phase I and Phase II. Stay out provisions give ratepayers a specified level of rate security by indicating the minimum amount of time before which a utility can return to seek a rate increase. Stay out provisions are not an indication of how quickly a utility will return to seek an increase but how long before they will be allowed to return. The Commission's rules further encourage utilities to stay out and only to request a rate increase when the cost of providing water service has increased sufficiently to justify the costs of seeking the increased rates.

This stay out provision was specifically opposed by five individual Complainants as being too short in duration. These five individual Complainants noted a general objection to the Settlement but proposed their concerns would be satisfied if the utility was unable to raise rates again for at least 11 years. The responses in opposition to the Settlement each indicate the basis for their objection is "sticker shock" with a 30.4% increase and a desire to have stable rates, i.e., no increase to the base rate. In fact, Reynolds' customers enjoyed stable base rates for nine years.

Reynolds could have lessened the sticker shock if it had sought an incremental increase sometime during the ensuing nine years instead of waiting until a large increase became necessary. Similar to other utilities, Reynolds has to walk a tightrope between coming to the Commission for an increase too soon or waiting too long. Apparently, Reynolds may have waited too long but the sticker-shock is one reason the Settlement uses a "phase-in" on the rates, in order to help to reduce the sticker-shock for Reynolds' customers. This Settlement reduces the impact of the rate increase and provides a level of rate stability. Therefore, the concerns of the objecting individual Complainants have been addressed while still balancing the need of the utility company to have the ratepayers cover the cost of providing the water service.

It should be noted there are some provisions which the signatory parties tout as benefitting the ratepayers. Those provisions include a cost analysis of switching from quarterly billing to monthly billing, and the implementation by Reynolds to remove charges based on an

assumed minimum consumption. This benefit is tempered by the knowledge that Reynolds last sought a base rate change nine years ago. Reynolds' customers will not benefit from the elimination of minimum consumption requirements until after the next base rate proceeding concludes. In addition, the Settlement does not ensure ratepayers that Reynolds will switch to monthly billing but merely indicates Reynolds' promise to present analysis data in its next base rate proceeding. The benefits of these provisions are illusory at this time.

Modifications to Settlement

After a thorough review of the filing and the Settlement, I recommend the Commission make some slight modifications to the Settlement. These modifications are to maintain consistency within the Settlement document and the signatories' contentions in the Statements in Support. This consistency is accomplished by modifications to Tariff Supplement No. 5 to Water-Pa. P.U.C. No. 4, as filed on October 30, 2017. None of the modifications noted here were made in any subsequent Supplement filed by Reynolds. A complete list of the modifications is included as Attachment A to this Recommended Decision.

Primarily, the Settlement and tariff filing, when read together, are unclear whether the Phase II rates will be effective upon completion of the projects or will be effective when Reynolds provides written confirmation that the projects were completed.⁸

Accordingly, the Settlement should be modified to clarify that the tariff filing, which Reynolds will file after the Commission's Order in this proceeding, will consistently specify that the Phase II rates will become effective upon written confirmation from Reynolds.

Most notably, on page 7A, a sentence should be added to the applicability section which states "Phase II rates will become effective upon written confirmation of three major water improvement projects,...." The sentence to be added should copy the text on page 2 regarding Phase II rates in order to memorialize this condition into the rate schedule itself.

⁸ See Supplement No. 5 to Water-Pa. P.U.C. No. 4, filed on October 30, 2017, page nos. 2, 5, 7A and 8A.

In addition, under Volumetric Rates on page 5 of the tariff filing, the header incorrectly reads “Residential and Commercial” when, in fact, the volumetric rates apply to all customers classes and are not limited to only residential and commercial.

Conclusion

The question that remains is whether the Settlement is fair, just, reasonable and in the public interest. Upon reviewing the terms and conditions of the Settlement, and the Statements in Support offered by Reynolds, BIE and OCA, I agree with the signatories. This Settlement resulted after Reynolds, BIE and OCA engaged in discovery, mediation and discussion.

Though the Settlement does not grant all of the individual Complainants’ concerns, those concerns were considered and, in the Settlement, have been balanced and met as reasonably as the circumstances will permit. Reynolds will have the increased revenue needed to accomplish its improvement projects, and to earn a reasonable return on its investment.

With the modifications noted above and in Attachment A, I recommend that the Settlement represents a fair, just, lawful, and reasonable resolution of this proceeding, and should be approved.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S.A. § 701.

2. To determine whether the parties’ settlement should be approved, one must decide whether the settlement promotes the public interest. See *Pa. Pub. Util. Comm’n v. C.S. Water and Sewer Associates*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm’n v. Philadelphia Electric Company*, 60 Pa. PUC 1 (1985).

3. The Joint Petition for Settlement submitted by Reynolds Water Company, the Bureau of Investigation and Enforcement and the Office of Consumer Advocate is in the public interest.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement submitted by Reynolds Water Company, the Bureau of Investigation and Enforcement and the Office of Consumer Advocate at Docket No. R-2017-2631441, be approved, as modified to reflect the changes noted in Attachment A to this Recommendation.

2. That Reynolds Water Company, shall not place into effect the rates, rules, and regulations contained in Supplement No. 5 to Water-Pa. P.U.C. No. 4, as filed on October 30, 2017, the same having been found to be unjust, unreasonable, and therefore unlawful.

3. That Reynolds Water Company shall file a tariff or tariff supplement containing the rates, rules and regulations consistent with Appendix A to the Joint Petition for Settlement and the modifications noted in Attachment A herein, designed to produce additional annual operating revenues of approximately \$158,600 over two Phases.

4. That said tariff or tariff supplement may be filed on at least one day's notice and may be filed to become effective for service rendered on and after the date on which the Commission's Order in this case is entered.

5. That upon acceptance and approval by the Commission of the tariff or tariff supplement as being consistent with this Order, the Commission's inquiry and investigation at Docket No. R-2017-2631441 shall be terminated and the docket marked closed.

6. That the following complaints filed against Supplement No. 5 to Tariff Water-Pa. P.U.C. No. 4 be dismissed consistent with this Recommendation:

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	C-2018-2647318
Mildred J. Heile	C-2018-3000054
Helene Canady	C-2018-3000065
Lucas Schilling	C-2018-3000087
Diana Cole	C-2018-3000207
Gilbert V. and Marilyn A. Brant	C-2018-3000208
David R. Roeder, Sr.	C-2018-3000250
Natalie M. McCloskey	C-2018-3000419
Marie T. Potts	C-2018-3000505
Sean Belback	C-2018-3000566

Date: May 16, 2018

/s/
Katrina L. Dunderdale
Administrative Law Judge

Attachment A

1. Title Page - The title page should state “NOTICE: This tariff makes increases in Existing Rates (See Page 2)”. See 52 Pa. Code § 53.21(10).
2. Page No. 2 – Phase-II reads “Phase-II rates will become effective upon completion of 3 major water improvement projects [...]”. This conflicts with Settlement Term No. 10 (a), which provides, in pertinent part “The Phase II rates [...] will become effective upon written confirmation from RWC to the Commission, the OCA and I&E of the completion of the following three projects:”. Phase II rates should become effective upon written confirmation.
3. Page No. 4 – Under the Volumetric Rates section, the header “Residential and Commercial” should be removed, since the volumetric rates apply to all customer classes, not just residential and commercial customers.
4. Page No. 5
 - a. Header should read “Phase II – Effective upon written confirmation of project completion”
 - b. A sentence should be added to the applicability section, stating “Phase-II rates will become effective upon written confirmation of 3 major water improvement projects [...]”. This sentence should copy the text on Page No. 2 regarding Phase-II rates to memorialize this condition into the rate schedule itself.
 - c. Also, under the Volumetric Rates section, the header “Residential and Commercial” should be removed, since the volumetric rates apply to all customer classes, not just residential and commercial customers.
5. Page No. 7A
 - a. Header should read “Phase II – Effective upon written confirmation of project completion”
 - b. A sentence should be added to the applicability section, stating “Phase-II rates will become effective upon written confirmation of 3 major water improvement projects [...]”. This sentence should copy the text on Page No. 2 regarding Phase-II rates to memorialize this condition into the rate schedule itself.
6. Page No. 8A - The header on this page reads “Effective upon completion of filter media project”. This condition is different than the other tariffs, which are based upon all projects being completed, rather than just one project being completed. This tariff should be revised like Page No. 5 and Page No. 7 (see above).