

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2018-3003104
Ray and Donna McCarthy	:	C-2018-3003507
	:	
v.	:	
	:	
Timberlee Valley Sanitation Company, Inc.	:	

**RECOMMENDED DECISION**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

This Decision recommends the Pennsylvania Public Utility Commission approve, without modification, the Joint Petition for Settlement of Rate Investigation (the Settlement) dated September 25, 2018, to be effective upon order of the Commission but no later than April 1, 2019. The Joint Petitioners agreed Timberlee Valley Sanitation Company, Inc. (Timberlee Valley) should charge the flat rate of \$75 which the utility proposed initially. The increased flat rate, as proposed, will increase annual revenues by \$22,560, or 36.36%, based on a future test year ending December 31, 2018.

**HISTORY OF THE PROCEEDING**

On June 29, 2018, Timberlee Valley Sanitation Company, Inc. (Timberlee Valley or Company) filed Supplement No. 6 to Tariff – Wastewater Pa. P.U.C. No. 1 (Supplement No. 6) to become effective September 1, 2018. It proposed to increase Timberlee Valley’s annual wastewater revenue by approximately \$22,560 or 36.36% based on the future test year ending December 31, 2018.

Timberlee Valley engages in the business of furnishing wastewater services to approximately 89 residential usage customers in portions of Connoquenessing and Lancaster Townships, Butler County, Pennsylvania. For typical residential customers, the cost of providing wastewater services would increase from \$660 per year to \$900 per year, as proposed.

On July 18, 2018, a formal complaint was filed by ratepayers, Ray and Donna McCarthy (Mr. and Mrs. McCarthy or formal complainants), at Docket No. C-2018-3003507. Mr. and Mrs. McCarthy complained the increased cost for only wastewater service was excessive and the cost to expand the system due to new development in the area should be borne by the developer, not ratepayers. As of the date of the prehearing conference, no other entity or person had filed a formal complaint in this proceeding.

On August 23, 2018, the Pennsylvania Public Utility Commission (Commission) entered an order suspending the implementation of Supplement No. 6 by operation of law until April 1, 2019, 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. 6. 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 August 29, 2018, the OALJ scheduled a call-in telephonic prehearing conference for September 7, 2018 at 1:30 p.m., to be conducted telephonically on the Commission's bridge conference number. Prehearing Memoranda were submitted by Timberlee Valley and the Commission's Bureau of Investigation and Enforcement (BIE) prior to the start of the prehearing conference.

On September 7, 2018, the presiding officer conducted a telephonic prehearing conference, at which Timberlee Valley, BIE and Mr. and Mrs. McCarthy were represented or participated. The parties asserted a settlement in principle had been reached between Timberlee Valley and BIE. Timberlee Valley and BIE requested time in which to discuss the settlement details with the formal complainants and agreed to file a joint petition on or before October 5, 2018.

On September 10, 2018, the presiding officer issued the Prehearing Order which memorialized the discussions at the prehearing conference, and consolidated the formal complaint filed with the rate proceeding.

On September 25, 2018, Timberlee Valley filed a Joint Petition for Settlement of Rate Investigation (Settlement) which was signed by Timberlee Valley, BIE and Ray and Donna McCarthy (collectively, Joint Petitioners). The Settlement included Statements in Support from Timberlee Valley and BIE, and the parties stipulated to the admission of a rate study, which was attached to the Settlement as Appendix E.

On October 10, 2018, the presiding officer issued the Fifth Interim Order Closing the Hearing Record.

#### TERMS OF THE SETTLEMENT

The Settlement is a seven (7) page document containing fifteen (15) numbered paragraphs. Appendix A to the Settlement contains the proposed tariff pages to be filed upon approval of the Settlement. Appendix B contains the Proof of Revenue. Appendices C and D to the Settlement are the respective statements of Timberlee Valley and BIE in support of the Settlement. Appendix E contains the detailed rate study filed by Timberlee Valley.

The essential terms of the Settlement are contained in Paragraph 8, which is quoted *in verbatim* below:

#### **Terms and Conditions of Settlement**

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

- (a) Revenue Increase

Joint Petitioners respectfully request that the Commission act as soon as possible to approve this Joint Petition and grant Timberlee Valley 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 implements the \$22,560 increase in annual revenue as proposed by the Company in Supplement No. 6. The proof of revenue for the rate increase is attached hereto as Appendix B.

(b) Stay Out

Timberlee Valley 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 settlement; provided, however, that this provision shall not prevent Timberlee Valley 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 Timberlee Valley's rates.

Other specified terms of the Settlement include the following provisions: (1) the parties submit the Settlement without any admissions against or prejudice to positions Timberlee Valley, BIE or the formal complainants 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 wastewater 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, Timberlee Valley, BIE and/or Mr. and Mrs. McCarthy may withdraw from the Settlement upon written notice (Settlement, ¶13). If the presiding officer recommends approval of the Settlement, then Timberlee Valley, BIE and Mr. and Mrs. McCarthy 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, ¶14).

TIMBERLEE VALLEY'S STATEMENT IN SUPPORT

Timberlee Valley avers the Settlement is consistent with Commission regulations and is in the public interest because it minimizes cost-prohibitive litigation and the

administrative burden of fully litigating the case. Timberlee Valley notes the Commission’s policy is to encourage parties in contested proceedings to enter into settlements<sup>1</sup> because settlements lessen the time and expense of litigating a case and administrative hearing resources. Timberlee Valley notes 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. These reduced costs directly benefit all parties concerned.<sup>2</sup> Timberlee Valley points out the principal issue for Commission consideration is whether the agreement reached is in the public interest<sup>3</sup> and whether the proposed terms and conditions are in the public interest.<sup>4</sup>

Timberlee Valley avers the Settlement is in the public interest because it (a) minimizes cost-prohibitive litigation and administrative burden; (b) addresses, through the participation of BIE, ratepayer questions concerning the proposed rate increase; and (c) provides

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<sup>1</sup> See 52 Pa.Code § 5.231(a). 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> See *Pa. Pub. Util. Comm’n v. Reynolds Water Company*, Docket No. R-2017-2631441, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated May 16, 2018 (“*Recommended Decision of ALJ Dunderdale – RWC 2018*”), mimeo at 23; *Pa. Pub. Util. Comm’n v. Imperial Point Water Service Company*, Docket No. R-2012-2315536, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated June 25, 2013 (“*Recommended Decision of ALJ Dunderdale – Imperial Point*”), mimeo at 11; *Pa. Pub. Util. Comm’n 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. Pub. Util. Comm’n 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. Pub. Util. Comm’n v. Lake Spangenberg Water Company*, Docket No. R-2009-2115743, Recommended Decision of Administrative Law Judge Ember S. Jandebeur dated March 2, 2010, mimeo at 11; *Pa. Pub. Util. Comm’n v. Reynolds Water Company*, Docket No. R-2009-2102464, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated February 16, 2010 (“*Recommended Decision of ALJ Dunderdale – RWC 2010*”), mimeo at 5.

<sup>3</sup> *Recommended Decision of ALJ Barnes*, mimeo at 9, citing *Pa. Pub. Util. Comm’n v. C S Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991) and *Pa. Pub. Util. Comm’n v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985).

<sup>4</sup> *Recommended Decision of ALJ Barnes*, mimeo at 9, citing *Warner v. GTE North, Inc.*, Docket No. C-00902815, Opinion and Order entered April 1, 1996 and *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991).

Timberlee Valley with additional and necessary cash flow.<sup>5</sup> Each foregoing consideration is traditionally recognized as a matter that furthers the public interest when settling rate proceedings.<sup>6</sup> The Settlement minimizes cost prohibitive litigation and the administrative burden as set forth above, addresses ratepayer questions and concerns and provides Timberlee Valley with needed cash flow. Timberlee Valley argues the avoidance of litigation costs as a result of settlement is important to the utility and to rate paying customers because the cost of litigation ultimately may be reflected in higher rates for wastewater service. The avoidance of further litigation expense is a recognized public interest benefit of settlement.

Timberlee Valley asserts it is increasing rates in order to bring operating income to a reasonable level since its last rate increase in 2007. In support of its rate request, Timberlee Valley filed a detailed rate study consisting of 61 pages setting forth its financial condition under current and proposed rates. The rate study, which was prepared to meet the Commission's filing requirements when seeking to increase rates pursuant to Title 52 of the Pennsylvania Code, Section 53.52, 52 Pa.Code § 53.52, is included as Appendix E to the Joint Petition for Settlement.

Under the presently suspended Supplement No. 6, Timberlee Valley proposed to increase the monthly cost of wastewater service for a residential customer from a flat rate of \$55 to a flat rate of \$75. As proposed, the Company calculated pro forma net income to be \$17,224 with an overall return of 8.89%. The Joint Petitioners agreed through the Settlement to implement the monthly flat rate of \$75 as proposed in Supplement No. 6.

Timberlee Valley notes the Settlement is "black box," as is common in general base rate proceedings. A black box settlement means the Joint Petitioners have not negotiated each and every revenue and expense line item but rather have been able to agree the proposed

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<sup>5</sup> Joint Petition for Settlement, paragraph 10.

<sup>6</sup> *Recommended Decision of ALJ Barnes*, mimeo at 9 – 10 wherein Judge Barnes concluded that the joint petition in settlement of a water rate proceeding is in the public interest because it (a) minimizes cost prohibitive litigation and administrative burden; (b) recognizes ratepayers' concerns; and (c) provides [the utility] with additional and necessary cash flow.

monthly rate of \$75 may take effect. Furthermore, Timberlee Valley argues its financial data fully supports the monthly rate of \$75. The utility asserts it needs immediate rate relief. The results of the rate study show that, on a pro forma basis at present rate levels, Timberlee Valley will experience a *net income loss* of \$5,336 during the twelve months ending December 31, 2018 and a *negative return* of 2.75% at its present rate levels.

Timberlee Valley submitted the financial data in the form of a traditional rate base/rate of return analysis, and that data supported a monthly flat rate of \$76.90 and an annual revenue increase of \$24,698. The utility, however, moderated its proposed request and sought a monthly rate of \$75 and an annual revenue increase of only \$22,560. Although Timberlee Valley believes it could have supported Supplement No. 6 without the two-year stay-out provision if it had proceeded to litigation, its decision to avoid litigation and come to a settled resolution avoids costs and expenses. Timberlee Valley also points out BIE advised early in the prehearing process it had not identified any issues with the rate filing and it did not expect to call any witnesses if the investigation went to hearing.

Timberlee Valley notes the formal complainants' question - whether the rate request includes new plant additions to provide service for future potential development of residential growth - is answered in the rate filing as the most recent plant asset additions realized occurred during the 2007-2009 period of time.<sup>7</sup> Under the totality of the circumstances, Timberlee Valley avers cost avoidance is in its interest and also the interest of its customers. The proposed rate level should provide Timberlee Valley with the cash flow needed to provide reasonable and adequate wastewater service.

Timberlee Valley agreed in the Settlement to a two-year rate case stay-out. A rate case "stay-out" gives ratepayers a level of rate security for a specified period of time – two years

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<sup>7</sup> See Schedules J-1-1 and J-2-2 in Appendix E, Joint Petition for Settlement.

here – that would not exist absent the stay-out. A stay-out in a rate case is a traditionally recognized part of the public’s interest in settlement of a rate proceeding.<sup>8</sup>

In conclusion, Timberlee Valley argues this Settlement will provide it with additional and necessary cash flow to meet its operating expenses and give it the opportunity to earn a fair return. Through the Settlement, the ratepayers’ questions and matters of concern are addressed and the cost and uncertainty of litigation are avoided. Timberlee Valley submits the Settlement is reasonable, is in the public interest and should be approved without modification.

### BIE’S STATEMENT IN SUPPORT

BIE submits the terms and conditions of the Settlement are in the public interest and represent a fair, just, and reasonable balance of the interests of Timberlee Valley and its customers. Accordingly, BIE recommends the Administrative Law Judge and the Commission approve the Settlement in its entirety.

BIE notes the Commission encourages settlements to eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion,<sup>9</sup> and the Joint Petitioners here successfully achieved a settlement of all issues. The Commission has also stated the “public interest” is the prime determinant in evaluating a proposed settlement.<sup>10</sup>

BIE avers in negotiated settlements it seeks to identify how amicable resolution of any such proceeding serves the public interest by balancing the interests of customers, utilities, and the regulated community as a whole to ensure that a utility’s rates are just, reasonable, and nondiscriminatory.<sup>11</sup> Accordingly, prior to agreeing to the Settlement, BIE conducted a thorough

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<sup>8</sup> See, for example, *Recommended Decision of ALJ Dunderdale – Imperial Point*, mimeo at 20; *Recommended Decision of ALJ Johnson*, mimeo at 16; and *Recommended Decision of ALJ Dunderdale – RWC 2010*, mimeo at 8-9.

<sup>9</sup> *Pa. Pub. Util. Comm’n v. Venango Water Co.*, Docket No. R-2014-2427035, 2015 WL 2251531, at \*3 (Apr. 23, 2015 ALJ Decision) (adopted by Commission via Order entered June 11, 2015); See 52 Pa.Code § 5.231.

<sup>10</sup> *Pa. Pub. Util. Comm’n v. Philadelphia Electric Company*, 60 Pa. PUC 1, 22 (1985).

<sup>11</sup> See Pa.C.S.A. §§ 1301 and 1304.



review of the initial filing and supporting information, and participated in settlement discussions with Timberlee Valley. BIE asserts the Settlement satisfies all applicable legal and regulatory standards. Accordingly, BIE maintains the proposed Settlement is in the public interest and requests the following terms be approved by the ALJ and the Commission without modification: revenue increase and phase-in; and the stay-out provision.

BIE points out the Settlement provides for an increase of \$22,560 to the annual overall revenue. In order to continue to provide safe and reliable service, public utilities often need to make substantial investments in their utility assets. Since Timberlee Valley's last rate increase in 2007, it made substantial investment in its system. Further, in those intervening 11 years, operating expenses have increased. As Timberlee Valley noted in its filing, Timberlee Valley will lose \$5,336,<sup>12</sup> if the rate does not increase. The sewer rate study indicates Timberlee Valley could support a higher rate increase than the level requested. When taking into account all of these factors, BIE believes Timberlee Valley supported adequately its request for an increase of \$22,560. BIE notes it agreed to settle the amount only after BIE conducted an extensive investigation of Timberlee Valley's filing and related information. BIE used this information to determine the amount of revenue Timberlee Valley needs to provide safe, effective, and reliable service without unduly impacting its customers through higher rates.

BIE contends, absent certain circumstances, the Settlement prevents Timberlee Valley 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 this rate increase. Timberlee Valley 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 Timberlee Valley's rates. This stay-out provision will provide rate stability to ratepayers for at least two years following the effective date of the rate increase. At the same time, Timberlee Valley will avoid hardship if certain unforeseeable events necessitate it to propose rate relief in the interim. For these reasons, the stay-out provision is in the public interest and should be approved.

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<sup>12</sup> Filing, June 29, 2018, p. A-4.

Overall, BIE argues the Settlement resolves the issues raised by BIE and the formal complainants. BIE represents the revenue increase is fair, just, reasonable, and in the public interest. This increase will permit Timberlee Valley to receive sufficient operating funds to provide safe and adequate service. Resolution of this case by settlement rather than litigation will negate the need for evidentiary hearings, which would compel the 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 of filed appeals, yielding substantial savings for the litigants and customers, as well as certainty on the disposition of issues.

### DISCUSSION

Commission policy encourages settlements<sup>13</sup> 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, Timberlee Valley, BIE and Mr. and Mrs. McCarthy agreed Timberlee Valley should be permitted to increase the residential flat rate from \$55 to \$75 monthly. This increase to the flat rate would give Timberlee Valley the opportunity to increase its revenue by \$22,560 annually. In addition, Timberlee Valley agreed it would not file for another general base rate increase for a period of at least 24 months after the date on which this rate increase becomes effective. This Settlement provision is intended to provide a measure of rate stability.

The Joint Petitioners agree the proposed increase is necessary to ensure Timberlee Valley can recoup the costs of providing wastewater service to its ratepayers while making

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<sup>13</sup> 52 Pa.Code § 5.231(a).

infrastructure improvements in addition to earning a reasonable return on its investment. The data provided by the Joint Petitioners and within the Settlement itself, including the facts stipulated to by the parties, further support the assertions the increase is needed to cover reasonable and just costs.

In addition, the Joint Petitioners agree Timberlee Valley will be unable to file for another rate increase for at least two years after the effective date for the new rate. This stay-out provision gives ratepayers rate security for at least two years by indicating the minimum amount of time before Timberlee Valley can return to the Commission 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 request a rate increase only if the cost of providing utility service increases sufficiently to justify the costs of seeking the increased rates.

### Conclusion

The Joint Petitioners submit that 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 Timberlee Valley and BIE, I agree with the Joint Petitioners. This Settlement resulted after Timberlee Valley, BIE and Mr. and Mrs. McCarthy engaged in discovery and discussion. The concerns of Mr. and Mrs. McCarthy and BIE were considered and were balanced as reasonably as the circumstances would permit.

Timberlee Valley will have the increased revenue it needs to accomplish its improvement projects, and to earn a reasonable return on its investment. It was the rate study provided by Timberlee Valley which justified the increase. Also, with this increase, Timberlee Valley will not operate at a loss. Given the fact that Timberlee Valley has not sought an increase in many years, and given the justification provided by the parties in this Settlement, I recommend the Commission approve the Settlement because the Settlement is a fair, just and reasonable resolution of this proceeding.

## 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 of Rate Investigation submitted by Timberlee Valley, the Bureau of Investigation and Enforcement, and Ray and Donna McCarthy on September 25, 2018, is in the public interest.

## ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement of Rate Investigation submitted by Timberlee Valley Sanitation Company, Inc., the Bureau of Investigation and Enforcement and Ray and Donna McCarthy at Docket No. R-2018-3003104, be approved.

2. That Timberlee Valley Sanitation Company, Inc., shall place into effect the rates, rules, and regulations contained in Supplement No. 6 to Tariff Wastewater – Pa. P.U.C. No. 1, as filed on June 29, 2018, the same having been found to be just, reasonable, and therefore lawful.

