

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2019-3007103
Office of Consumer Advocate	:	C-2019-3007947
	:	
v.	:	
	:	
Buck Hill Water Company	:	

RECOMMENDED DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Decision recommends the Commission approve the Joint Petition for Settlement of Rate Investigation (Settlement) dated May 7, 2019, filed by Buck Hill Water Company (Buck Hill) and the Office of Consumer Advocate (OCA)(hereinafter collectively referred to as “Joint Petitioners”). The Joint Petitioners agreed Buck Hill should not charge the base rates the utility proposed initially, which would have increased annual revenues by \$103,985, or 33.5%, based on a future test year ending September 30, 2019. Instead, the Joint Petitioners request the Commission authorize Buck Hill to earn a net increase in annual revenue of \$76,000, or 24.5%. Under the Settlement, the average residential customer using 7,000 gallons per quarter will see their quarterly bill increase from \$207.80 to \$258.66.

HISTORY OF THE PROCEEDING

On January 11, 2019, Buck Hill Water Company (Buck Hill) filed Supplement No. 32 to Tariff Water – Pa. P.U.C. No. 3 (Supplement No. 32) to become effective April 1,

2019. The subject tariff supplement would have increased Buck Hill's total annual operating revenues for water service by approximately \$106,458, or 34.57%, based on a future test year ending September 30, 2019. Buck Hill subsequently reduced the proposed increase to \$103,985, or 33.5%, to correct an understatement of \$2,473 in commercial customer revenue at present rates.

On February 15, 2019, the Office of Consumer Advocate (OCA) filed a formal Complaint, Public Statement, Verification, and a Notice of Appearance on behalf of Christine Hoover, Esq. The Complaint was docketed at C-2019-3007947.

On February 26, 2019, the Office of Small Business Advocate (OSBA) filed a formal Complaint, Public Statement, Verification, and a Notice of Appearance on behalf of Steven C. Gray, Esq. The Complaint was docketed at C-2019-3008081.

By Order entered March 14, 2019, the Pennsylvania Public Utility Commission (Commission) instituted an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in Buck Hill's proposed Supplement No. 32 to Tariff Water – Pa. P.U.C. No. 3. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S. § 1308(d), Supplement No. 32 to Tariff Water – Pa. P.U.C. No. 3 was suspended by operation of law until November 1, 2019, unless permitted by Commission Order to become effective at an earlier date. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness and reasonableness of the existing rates, rules, and regulations of Buck Hill. The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

In accordance with the Commission's March 14, 2019 Order, the matter was assigned to the undersigned Administrative Law Judge F. Joseph Brady.

On March 14, 2019, both a Prehearing Conference Order and Notice were issued, scheduling an initial prehearing conference for Friday, March 29, 2019 at 10:00 a.m.

On March 22, 2019, the OSBA submitted a Petition for Leave to Withdraw Its Complaint at Docket No. C-2019-3008081.

On March 27, 2019, Prehearing Memoranda were filed by Buck Hill and OCA.

A dual location Prehearing Conference was held on March 29, 2019. Counsel for Buck Hill and OCA participated.

By Initial Decision dated April 3, 2019, and issued on April 11, 2019, I granted OSBA's Petition for Leave to Withdraw Its Complaint at Docket No. C-2019-3008081.

On May 7, 2019, Buck Hill filed a Joint Petition for Settlement of Rate Investigation on behalf of the Joint Petitioners: Buck Hill and the OCA.

TERMS OF THE SETTLEMENT

The Settlement is a six (6) page document containing eighteen (18) numbered paragraphs. Appendix A to the Settlement contains the proposed tariff pages to be filed upon approval of the Settlement.¹ Appendix B contains the settlement rates and proof of corresponding revenue. Appendices C and D are the respective statements of Buck Hill and the OCA in support of the Settlement. Appendix E contains the As-Filed Rate Study and Revised Schedules.

The essential terms of the Settlement are contained in Paragraphs 11 and 12, which are quoted below:

¹ On May 14, 2019, Buck Hill filed a new Page No. 6 of the Appendix A Settlement Supplement and a new Revised Schedule G-1 of the Appendix E Revised Rate Study Schedules.

Terms and Conditions of Settlement

11. 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 BHWC 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 \$76,000, or 24.5%, increase in annual revenue. The proof of revenue for the settlement rate increase is attached hereto as Appendix B.

(b) Stay-Out

BHWC 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 3 years following the effective date of rates pursuant to this settlement; provided, however, that this provision shall not prevent BHWC 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 BHWC's rates.

Other Provisions

12. Under the presently suspended Supplement No. 32, the quarterly cost of water service to a typical residential customer using 7,000 gallons per quarter would have increased by approximately \$71.84, or 34.57%, from \$207.80 to \$279.64. Correcting for the understatement of commercial customer revenue, the quarterly cost of water service to a typical residential customer using the same 7,000 gallons per quarter would have increased by approximately \$69.59, or 33.5%, from \$207.80 to

\$277.39. Under the Joint Petition, the quarterly cost of water service to such residential customer would increase by approximately \$50.86, or 24.5%, from \$207.80 to \$258.66.

Other specified terms of the Settlement include the following provisions: (1) the parties submit the Settlement without any admissions against prejudice to positions Buck Hill or the 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 Joint Petitioners 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, Buck Hill and/or the OCA may withdraw from the Settlement upon written notice (Settlement, ¶16). If the presiding officer recommends approval of the Settlement, then Buck Hill and the 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, ¶18).

BUCK HILL'S STATEMENT IN SUPPORT

Buck Hill asserts it provides utility water service to 300 residential and 14 commercial customers, in the Township of Barrett, Monroe County, Pennsylvania. Further, 289 of the residential customers located within the Buck Hill Falls Community have a financial interest in the Company as each of these residential customers are shareholders of Buck Hill. There are 11 remaining residential customers located outside of the Buck Hill Falls Community that have no financial interest in the Company. Moreover, although located within the Buck Hill Falls Community, the 14 commercial customers have no financial interest in the Company.

Buck Hill 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 \$76,000 increase in annual revenue and a three-year stay-out.

Buck Hill contends the Settlement increase will provide it with additional and necessary cash flow to meet operating expenses, while addressing matters of interest to ratepayers and avoiding the cost and uncertainty of litigation. Buck Hill 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.

Buck Hill points out that both signatories agree the Settlement is in the public interest because it provides Buck Hill with additional and necessary cash flow and recognizes ratepayers' concerns. Buck Hill contends the Settlement minimizes cost-prohibitive litigation and administrative burden. Furthermore, Buck Hill 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, and the avoidance of increased litigation expenses is a recognized public interest benefit of settlement.

Additional and Necessary Cash Flow

Buck Hill avers it must increase its base rates in order to ensure its operating income is at a reasonable level. Buck Hill contends that it is in need of immediate rate relief since its last rate increase was in 2005 and at present rate levels, on a *pro forma* basis, it will experience a \$1,506 net income and a return of only 0.11%.

Buck Hill initially requested (in Supplement No. 32), the quarterly cost of water service to a typical residential customer using 7,000 gallons of water per quarter should be increased from \$207.80 to \$277.39 and calculated the *pro forma* net income to be \$98,813 with an overall return of 7.01%. Under the Settlement, the quarterly cost of water service to a typical residential customer will increase by approximately \$50.86, or 24.5%, from \$207.80 to \$258.66.

Buck Hill averred the financial data it submitted fully supports the substantially reduced increase of \$76,000 provided for in the Settlement and believes the increase should be

sufficient to allow it to continue to provide reasonable and adequate service. Although Buck Hill 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 Buck Hill and its customers.

Rate Case “Stay-Out”

Additionally, Buck Hill agrees to a three-year rate case stay-out. 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.

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 the proposed Settlement provides for an overall increase in annual revenues of \$76,000, or 24.5%, in lieu of the proposed \$106,458 increase originally proposed by Buck Hill. This compromise represents a 29% reduction from Buck Hill's original rate increase request. Further, OCA highlights that under the proposed Settlement, the bill for the typical residential customer using 7,000 gallons of water per quarter would increase from \$207.80 to \$258.66 per quarter, or by \$50.86 (24.5%) rather than \$69.59 (33.5%) as originally proposed by the Company.

OCA points out that Buck Hill has agreed not to 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), prior to

three (3) years following the effective date of the rate increase. OCA contends this provision will provide a level of rate stability that will benefit the ratepayers.

OCA avers in its Statement in Support that the terms and conditions of the proposed Settlement of this rate proceeding represent a fair and reasonable resolution of the issues and claims arising in this proceeding. Based upon its analysis of Buck Hill's 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 three-year stay-out provision.

DISCUSSION

The purpose of this investigation is to establish water rates for Buck Hill customers which are "just and reasonable" pursuant to Section 1301 of the Code, 66 Pa. C.S. § 1301. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. Gas and Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa.Cmwlth. 1975). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield* the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time

and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

Bluefield, 262 U.S. at 692-93.

The “burden of proof” standard employed in contested matters is not the standard for deciding whether a proposed settlement should be recommended for approval. *Pa. Pub. Util. Comm’n v. City of Lancaster -- Bureau of Water*, 2010 Pa. PUC LEXIS 1318 (Pa. PUC 2010). *See also, Pa. Pub. Util. Comm’n v. Penn Estates Utilities, Inc. Water Division*, 2012 Pa. PUC LEXIS 331 (Pa. PUC 2012). In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. York Water Co.*, Docket No. R-00049165 (Opinion and Order entered October 4, 2004); *Pa. Pub. Util. Comm’n v. C. S. Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991).

Section 315(a) of the Code reads as follows:

§ 315. Burden of proof

(a) Reasonableness of rates.--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings and decide the same as speedily as possible.

66 Pa.C.S. § 315(a). Consequently, in this proceeding, Buck Hill has the burden to prove that the rate increase it has proposed through the Settlement is just and reasonable. The Joint Parties have reached an accord on the issues and claims that arose in this proceeding and submitted a Joint Settlement Petition for Commission review. In reviewing the Settlement, the question which must be answered is whether it is in the public interest. The Joint Parties have the burden to prove that the Settlement is in the public interest.

In addition, it is the policy of the Commission to encourage settlements. 52 Pa.Code § 5.231(a). The Commission has set forth settlement guidelines and procedures for major rate cases at 52 Pa.Code § 69.401, wherein the Commission states:

§ 69.401. General.

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, 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. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402-69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases. A partial settlement is a comprehensive resolution of all issues in which less than all interested parties have joined. A stipulation is a resolution of less than all issues in which all or less than all interested parties have joined.

Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. Rate cases are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy. *Pa. Pub. Util. Comm'n. v. PECO Energy Co.*, Docket No. R-2018-3000164 (Order entered Dec. 20, 2018), at 14.

Nevertheless, the Commission has also stated:

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the

Commission must determine that the proposed terms and conditions are in the public interest. The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote and serve the public interest. Because the Joint Petitioners request the Commission enter an order in this proceeding approving the Partial Settlement without modification, they share the burden of proof to show that the terms and conditions of the Partial Settlement are in the public interest.

Id. at 15 (citations omitted).

The instant Settlement was achieved without specific ratemaking adjustments to support the specific components it contains. However, the Settlement balances the interests of the Joint Parties to the proceeding and provides reasonable resolutions for the issues that were pending producing fair results. The Joint Petitioners have agreed to an overall outcome that they find reasonable under the unique circumstances of the proceeding and have not identified individual components of the overall revenue requirement to settle upon.

The Settlement in this case is a “black box” settlement. This means that the parties were not able to agree on each and every element of the revenue requirement calculation. The Commission has noted that “black box” settlements are an important aspect in the process of delivering timely and cost-effective regulation.” *Pa. Pub. Util. Comm’n v. Citizens’ Electric Co. of Lewisburg, Pa.*, Docket No. R-2010-2172665 (Final Order, entered January 13, 2011); see also *Pa. Pub. Util. Comm’n v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. Pub. Util. Comm’n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Final Order entered December 19, 2013); *Pa. Pub. Util. Comm’n v. Borough of Ambler Water Dept.*, Docket No. R-2014-2400003 (Final Order entered December 4, 2014); *Pa. Pub. Util. Comm’n v. PECO Energy Co.*, Docket No. R-2015-2468981 (Final Order entered Dec. 17, 2015); *Pa. Pub. Util. Comm’n v. Pennsylvania-American Water Co.*, Docket No. R-2017-2595853 (Final Order entered Dec. 7, 2017); and *Pa. Pub. Util. Comm’n v. PECO Energy Co.*, Docket No. R-2018-3000164 (Final Order entered Dec. 20, 2018).

A “black box” settlement is a means to reach agreement on a rate increase in a case where the issues raised are varied and complex. To delineate and specify each component of the rate increase to the issues would be difficult, time-consuming, expensive and costly to the consumers as a rate case expense. To curtail any delineation is to save time, expense and costs of the parties and the ratepayers. The Commission has in the past found such “black box” settlements to be reasonable and in the public interest. See for example, *Pa. Pub. Util. Comm’n v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2014-2406274 (Final Order entered December 10, 2014) (approving “black box” settlement for a base rate increase of \$32.5 million); *Pa. Pub. Util. Comm’n v. Duquesne Light Co.*, Docket No. R-2013-2372129 (Final Order entered April 23, 2014) (approving “black box” settlement for a base rate increase of \$48 million); *Pa. Pub. Util. Comm’n v. PPL Electric Utilities Corp.*, Docket No. R-2010-2161694 (Final Order entered December 16, 2010) (approving “black box” settlement for a base rate increase of \$77.5 million).

Accordingly, I find that the instant case is consistent with Commission precedent.

Here, Buck Hill has not received a rate increase since its last rate increase was approved by Commission Order entered March 4, 2005 at Docket No. R-00049493. Thus, Buck Hill customers have not experienced an increase in base rates for fourteen (14) years. Absent rate relief, Buck Hill’s financial position may deteriorate to the point that its ability to provide reasonable and adequate service to its customers is put in serious jeopardy.

Under the terms in the Settlement, the OCA and Buck Hill agreed that Buck Hill should be permitted to increase the quarterly cost of water service to a typical residential customer by \$50.86 (24.5%). This adjustment would provide an increase in annual revenue of \$76,000, which is significantly less than the \$106,458 increase originally proposed by Buck Hill. The Joint Parties agree the proposed increase is necessary to ensure Buck Hill can recoup the costs of providing reasonable and adequate water service to its ratepayers. 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.

In addition, the signatory parties agreed Buck Hill will be unable to file for another general rate increase for at least three years. 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.

Based on the foregoing, and upon reviewing the terms and conditions of the Settlement and the Statements in Support offered by Buck Hill and the OCA, I agree with the signatories. This Settlement will give Buck Hill the financial stability that will allow it to continue to provide reasonable and adequate water service to its ratepayers, and therefore, foster, promote, and serve the public interest. Accordingly, I recommend that the Settlement be approved.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. §§ 1301 and 1308.
2. In a rate case, the burden of proof to show that the proposed rates are just and reasonable is on the public utility. 66 Pa. C.S. § 315(a).
3. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. Gas and Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa. Cmwlth. 1975).
4. In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works and Improvement Co. v. Public Service*

Comm'n of West Virginia, 262 U.S. 679 (1923) and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

5. The policy of the Commission is to promote settlements. 52 Pa.Code §§ 5.231(a) and 69.401.

6. Despite the Commission policy to promote settlements, the Commission's determination to approve the proposed settlement is whether the proposed terms and conditions foster, promote and serve the public interest. *Pa. Pub. Util. Comm'n. v. PECO Energy Co.*, Docket No. R-2018-3000164 (Order entered Dec. 20, 2018), at 15.

7. The Joint Petition for Settlement submitted by Buck Hill Water Company and the Office of Consumer Advocate is in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Buck Hill Water Company shall not place into effect the rates, rules, and regulations contained in Supplement No. 32 to Tariff Water – Pa. P.U.C. No. 3 as filed on January 11, 2019;

2. That the rates, terms and conditions contained in the Joint Settlement Petition filed by Buck Hill Water Company and the Office of Consumer Advocate be approved and adopted consistent with the discussion contained herein;

3. That upon the Commission's approval of this Joint Settlement, Buck Hill Water Company will be permitted to charge the rates for water service set forth in the revised

Supplement No. 34 to Tariff Water – Pa. P.U.C. No. 3, which is attached to the Joint Settlement Petition as Appendix A;

4. That Buck Hill Water Company file a tariff or tariff supplement in substantially the same form as that attached as Appendix “A” to the Joint Settlement Petition of the Rate Investigation at Docket No. R-2019-3007103 reflecting the rates, rules, and regulations to become effective upon one day's notice, upon entry of the Commission Order approving the recommendation to adopt the Joint Settlement Petition of the Rate Investigation consistent with the discussion contained herein;

5. That upon acceptance of the appropriate compliance filing, the formal Complaint of the Office of Consumer Advocate filed at Docket No. C-2019-3007947 be deemed satisfied and marked closed; and

6. That upon acceptance of the appropriate compliance filing, the Commission’s inquiry and investigation at Docket R-2019-3007103 be marked closed.

Date: May 29, 2019

_____/s/
F. Joseph Brady
Administrative Law Judge