

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2020-3019612
Office of Consumer Advocate	:	C-2020-3021049
Stephanie Myers	:	C-2020-3020950
Ryan Foust	:	C-2020-3020951
Margaret Foust	:	C-2020-3020952
Vickie Mabry	:	C-2020-3020953
Bess Mowry	:	C-2020-3020954
Michele Walter	:	C-2020-3020955
Stephanie Probst	:	C-2020-3020956
Dillon Sarcinella	:	C-2020-3020957
James Vessella	:	C-2020-3020958
Steve Bertolasio	:	C-2020-3021165
Amanda Hughes	:	C-2020-3021166
William And Janine Taylor	:	C-2020-3021372
Roderick T Daugherty	:	C-2020-3021373
Theresa Taranto	:	C-2020-3021374
Sean DeCiancio	:	C-2020-3021375
Carol Laverty	:	C-2020-3021377
Natalie McCloskey	:	C-2020-3021400
Wilma Brandt	:	C-2020-3021404
Beth Erdman	:	C-2020-3021405
Julie Griswold	:	C-2020-3021515
Karen Nestor	:	C-2020-3021636
Donna Vigus	:	C-2020-3021779
Kevin Pierce	:	C-2020-3021804
Sue Mathieson	:	C-2020-3021805
Sean and Michael Belback	:	C-2020-3021807
Daniel A. Frazier	:	C-2020-3021927
Joe Buhovecky	:	C-2020-3022059
	:	
	:	
v.	:	
	:	
Reynolds Disposal Company	:	

RECOMMENDED DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This Decision recommends the Pennsylvania Public Utility Commission (Commission) approve, without modification, the Joint Petition for Settlement of Rate Investigation (the Settlement) filed on January 22, 2021, by Reynolds Disposal Company (RDC or Company), the Commission's Bureau of Investigation and Enforcement (I&E or BIE), the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA). This Decision also recommends that the associated customer complaints be dismissed. The Company's rate filing is suspended until June 1, 2021, the deadline for Commission action.

The Settlement is to be effective upon order of the Commission, but no later than September 1, 2021. The Settlement provides for a \$135,000 increase in the Company's annual revenue, or 30.24%, over three phases, in lieu of the proposed \$215,646 increase or 48.32% contained in the Company's initial filing in Supplement No. 5 to Tariff Sewage-Pa. P.U.C. No. 4 (Supplement No. 5). Approval of the Settlement is recommended because it is supported by substantial evidence and is in the public interest.

The Phase I rates, a 19.55% increase solely to the Pennsylvania Infrastructure Investment Authority (PENNVEST) loan repayment rates, would produce an annual increase of \$17,220. On a total Company revenue basis, this approximates an overall increase in rates of 3.85%. This rate change would become effective upon approval of this Joint Petition. The Phase II rates, a 21.71% increase to general rates, will produce an additional increase of \$77,780, and would become effective on July 1, 2021. On a total Company revenue basis, the Phase II increase approximates an overall 17.43% increase.

The Phase III rates, a 9.15% increase to general rates, will produce an additional increase of \$40,000 and would become effective on January 1, 2022. On a total Company revenue basis, the Phase III increase approximates an overall 8.96% increase.

HISTORY OF THE PROCEEDING

On June 30, 2020, RDC filed Supplement No. 5 to become effective September 1, 2020. If approved, Supplement No. 5 would have increased RDC's annual wastewater revenue by \$215,646 based on a future test year ending December 31, 2020.

RDC is a Pennsylvania public utility that provides wastewater service to approximately 685 customers (559 residential) in Pymatuning, Delaware and Hempfield Townships, Mercer County, Pennsylvania. As initially filed, Supplement No. 5 represented an approximate overall 48% increase in the Company's annual revenues at present rates. This amount included a proposed \$198,426 increase (55%) in base rates and a proposed increase in its PENNVEST surcharge of \$17,220 (20%). Under the Company's initial proposal, the proposed rates (including base rates and the PENNVEST surcharge) for an average customer using 9,000 gallons per quarter would have increased from \$98.91 to \$146.35, or by 48%. The Company also has a number of unmetered customers. Under the Company's initial proposal, an unmetered residential customer's bill would have increased from \$149.47 to \$221.07 per quarter. The Company also proposed a change from quarterly to monthly billing.

OCA filed a formal Complaint on July 27, 2020 at Docket No. C-2020-3021049. OSBA filed a notice of intervention on August 4, 2020. I&E filed a notice of appearance on August 14, 2020.

By Order entered August 27, 2020, the Commission suspended Supplement No. 5 by operation of law until April 1, 2021 and instituted an investigation into the reasonableness of the proposed rates. On August 31, 2020, RDC filed Supplement No. 6 to comply with the Commission's suspension order.

Formal Customer Complaints against Supplement No. 5 were filed by Stephanie Myers at Docket No. C-2020-3020950; Vickie Mabry at Docket No. C-2020-3020953; Ryan Foust at Docket No. C-2020-3020951; Margaret Foust at Docket No. C-2020-3020952; Bess Mowry at Docket No. C-2020-3020954; Michele Walter at Docket No. C-2020-3020955; Stephanie Probst at Docket No. C-2020-3020956; Dillon Sarcinella at Docket No. C-2020-3020957; James Vessella at Docket No. C-2020-3020958; Steve Bertolasio at Docket No. C-2020-3021165; Amanda Hughes at Docket No. C-2020-3021166; William and Janine Taylor at Docket No. C-2020-3021372; Roderick Daugherty at Docket No. C-2020-3021373; Theresa Taranto at Docket No. C-2020-3021374; Sean DeCiancio at C-2020-3021375; Carol Laverty at Docket No. C-2020-3021377; Natalie McCloskey at Docket No. C-2020-3021400; Wilma Brandt at Docket No. C-2020-3021404; Beth Erdman at Docket No. C-2020-3021405; Julie Griswold at Docket No. C-2020-3021515; Karen Nestor at Docket No. C-2020-3021636; Donna Vigus at Docket No. C-2020-3021779; Kevin Pierce at Docket No. C-2020-3021804; Sue Mathieson at Docket No. C-2020-3021805; Sean and Michele Belback at Docket No. C-2020-3021807; Daniel Frazier at Docket No. C-20203021927; and Joe Buhovecky at Docket No. C-2020-3022059.

A prehearing conference was scheduled for September 11, 2020 by Notice issued August 31, 2020 and Prehearing Conference Order entered September 2, 2020. The Notice and Prehearing Conference Order were e-served on the parties who had registered for e-service. The documents were emailed to all other parties for whom the Commission had an email address on file.¹ The documents were sent via first-class mail to those parties for whom the Commission did not have an email address on file.²

Prehearing Memoranda were filed by RDC, I&E, OCA, and OSBA.

The Prehearing Conference was held on September 11, 2020, as scheduled. Counsel for I&E, OCA, OSBA and RDC attended the prehearing conference. Customer complainants Margaret Foust and Ryan Foust also attended the conference. During the

¹ See, *Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Order Entered March 20, 2020).

² As of the date of this Recommended Decision, there are only two parties for whom the Commission does not have an email address: Vickie Mabry and Theresa Taranto.

Conference, RDC advised it had agreed to use the Office of Administrative Law Judge (OALJ) mediation process to try to resolve the rate investigation.

As required by 52 Pa.Code § 69.392(d)(2), which requires that when the party with the burden of proof consents to mediation in proceedings subject to a statutory deadline for adjudication, that party must also agree, in writing, to extend the statutory deadline by, at least 60 days, RDC filed Supplement No. 7 on September 17, 2020, voluntarily extending the statutory deadline of Supplement No. 5 to June 1, 2021.

Matthew Homsher, Esquire, was assigned as the OALJ Mediator. Mediation sessions were held on October 2, 14, and 30, 2020. RDC, OCA, I&E and OSBA participated in the mediation sessions. Customer complainants James Vessella, Margaret Foust, and Ryan Foust participated in the mediation session on October 2, 2020. Customer complainants Vessella and Margaret Foust participated in the mediation session on October 14, 2020. Customer complainants Vessella, Margaret Foust and Ryan Foust participated in the mediation session on October 30, 2020.

Public input hearings were held in the afternoon and evening on October 23, 2020, at which six customers testified. Furthermore, comments on the proposed rate increase were filed by various individuals.³

On December 9, 2020, counsel for the Company advised the undersigned by email that the Company, BIE, OCA, and OSBA had reached a settlement in principle of all matters in the rate proceeding.

On December 14, 2020, an Interim Order was entered directing the parties to file their Settlement and statements in support of the Settlement on or before January 22, 2021. The Order further directed RDC to serve a copy of the Settlement upon each self-represented

³ These comments were placed into the public comments folder at the Secretary's Office in Harrisburg and were not scanned into the Commission's online docketing system. Employees of the Secretary's Bureau provided electronic scans of the comments to the undersigned who reviewed them prior to the issuance of this Recommended Decision.

complainant. Additionally, the Order provided that any self-represented complainant may submit objections to or comments regarding the Joint Petition for Settlement. The Order provided that any comments or objections must be e-filed with the Commission's Secretary's Bureau or emailed to the undersigned no later than February 3, 2021. Finally, the Order directed that the Company's responses to any comments were due on February 10, 2021.

The Settlement was filed on January 22, 2021 with the Company, I&E, OCA, and OSBA (Joint Petitioners or Settling Parties) as signatories.

On February 1, 2021, the undersigned received comments to the Settlement from complainant Margaret Foust by email. The other parties were not copied on the email. Therefore, the undersigned issued an Order on February 2, 2021 which provided a copy of Ms. Foust's comments to the parties. No other comments to the Settlement were filed or received by the undersigned from any other party.

On February 10, 2021, the Company filed a reply to Ms. Foust's comments.

On February 18, 2021, the presiding officer issued an Interim Order closing the hearing record.

TERMS OF THE SETTLEMENT

The Settlement is an eight (8) page document. 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, D, E, and F to the Settlement are the respective statements of RDC, BIE, OCA, and OSBA in support of the Settlement.

The essential terms of the Settlement are contained in Paragraph 11, which is quoted *in verbatim* below with subparagraph numbering and subheadings maintained as in the original for ease of reference:

Terms and Conditions of Settlement

11. 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 RDC 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 \$135,000 increase in annual revenue, or 30.24%, over three phases, in lieu of the proposed \$215,646 increase or 48.32% contained in Supplement No. 5. The Phase I rates, a 19.55% increase solely to the PENNVEST Loan Repayment rates will produce an annual increase of \$17,220. On a total Company revenue basis, this approximates an overall increase in rates of 3.85%. This rate change will become effective upon approval of this Joint Petition. The Phase II rates, a 21.71% increase to general rates, which will produce an additional increase of \$77,780, will become effective on July 1, 2021. On a total Company revenue basis, the Phase II increase approximates an overall 17.43% increase. The Phase III rates, a 9.15% increase to general rates, which will produce an additional increase of \$40,000 will become effective on January 1, 2022. On a total Company revenue basis, the Phase III increase approximates an overall 8.96% increase.

A proof of revenue for the Phase I, Phase II and Phase III rate increases is attached hereto as Appendix B.

(b) Renewal of NPDES Permit:

Joint Petitioners agree RDC will notify I&E, OCA and OSBA upon receipt of its NPDES renewal Permit.

(c) Stay Out

RDC 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), before August 1, 2022; provided, however, that this provision shall not prevent RDC 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 RDC's rates.

Settlement at 4-5.

Other specified terms of the Settlement include the following provisions: (1) although the Joint Petitioners are not in agreement with respect to each claim in the ratemaking

process and would not be able to agree upon the specific rate adjustments that may support their respective conclusions, their agreement as to the amount of increase in RDC's annual wastewater revenue, coupled with the other provisions, provides an appropriate basis for resolution of the instant rate litigation; (2) the Joint Petition is proposed to settle the instant matter and is made without any admission against or prejudice to any positions that any Joint Petitioner might adopt during subsequent litigation in any case, including further litigation in this case if this Joint Petition is rejected by the Commission or withdrawn by any one of the Joint Petitioners; (3) the Joint Petition is conditioned upon the Commission's approval of all its terms and conditions; and (4) the Joint Petition does not expressly or implicitly represent approval of any specific claim or claims made in this proceeding and the Joint Petitioners agree not to contend otherwise in any subsequent proceeding.

In the event the Commission does not approve the Settlement, or modifies any of the terms and conditions, the Joint Petition may be withdrawn by any Joint Petitioner upon written notice to the Commission and all parties.⁴ If the presiding officer recommends that the Commission adopt the Joint Petition without modification, the Joint Petitioners agree to waive the filing of Exceptions.⁵ 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.⁶

Finally, the Joint Petitioners recognize that the Joint Petition does not bind the *pro se* Formal Complainants and nothing in the Settlement is intended to limit in any way any position which any Joint Petitioner may have or take concerning any objection to the Settlement that may be filed by the *pro se* Complainants.

⁴ Settlement, ¶15.

⁵ Settlement, ¶16.

⁶ *Id.*

JOINT PETITIONERS' STATEMENTS IN SUPPORT

Reynolds Disposal Company

RDC argues the Joint Petition for Settlement is in the public interest because it: (a) minimizes cost-prohibitive litigation and administrative burden; (b) addresses, through the participation of I&E, OCA and OSBA, ratepayer questions concerning the proposed rate increase; and (c) provides RDC with additional and necessary cash flow. RDC notes these considerations are traditionally recognized as matters that further the public interest in settlement of rate proceeding. Furthermore, RDC argues that avoidance of litigation costs is important to RDC and its ratepayers as the cost of litigation may ultimately be reflected in higher rates for wastewater service.

RDC argues it is increasing its rates to bring its operating income to a reasonable level, and notes its last rate increase was in 2011. On a pro forma basis, RDC explains it will experience a *net income loss* of \$110,598 and a *negative* return of 13.364% at present rate levels. The Company emphasizes it is in need of immediate rate relief.

Under the presently suspended Supplement No. 5, the monthly cost of wastewater service would have increased by approximately \$15.81, or 48%, from \$32.97 to \$48.78. At the proposed rate level, the Company has calculated pro forma net income to be \$65,408 with an overall return of 7.86%. Under the Joint Petition for Settlement, the monthly cost of wastewater service to such residential customer would increase by approximately \$9.76, or 30%, from \$32.97 to \$42.73 over three phases.

RDC argues that the financial data it submitted in support of Supplement No. 5 fully supports the originally proposed increase of \$215,646 and, consequently, fully supports the substantially reduced increase of \$135,000 provided for in the Joint Petition.

The Company argues its filing was thoroughly investigated by I&E, OCA, and OSBA through initial and follow up discovery. After this investigation, RDC and the statutory

advocates engaged in substantive discussions and ultimately agreed, through mediation, to a reduced increase in annual revenue of \$135,000. RDC notes that the Settlement increase, at a level reduced from the Company's original filing, reflects a compromise of the positions of Joint Petitioners, which, consistent with Commission policy, fosters and promotes the public interest.

Although RDC believes that it could have readily supported a higher revenue requirement if it had proceeded to litigation, its decision to avoid litigation and come to a settled resolution avoids costs and expenses. Under the totality of the circumstances, RDC believes that cost avoidance is in its interest and also the interest of its customers. Although less than the initial proposed increase, the Company accepts the Settlement increase as a reasonable and appropriate resolution of this rate proceeding which should be sufficient to allow it to continue to provide reasonable and adequate wastewater service.

RDC has agreed, in settlement, to notify I&E, OCA and OSBA upon receipt of its National Pollutant Discharge Elimination System (NPDES) renewal permit. RDC applied to the Department of Environmental Protection (DEP) for the permit renewal on October 2, 2019. RDC accepts the Settlement term as reasonable and appropriate and consistent with the public interest.

RDC has agreed as part of the Settlement to a rate case stay out until August 1, 2022. RDC argues a rate case “stay out” gives ratepayers a specified level of rate security that would not exist absent the stay out and is a traditionally recognized part of the public's interest in settlement of a rate proceeding.

Bureau of Investigation and Enforcement

I&E explains that prior to agreeing to the Settlement, it conducted a thorough review of the Company's filing and supporting information, discovery responses, and actively participated in settlement discussions with the parties.

I&E argues that the Commission has recognized that a settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes

the public interest.”⁷ The Commission has also stated that the “public interest” is the prime determinant in evaluating a proposed settlement.⁸

I&E asserts that the Settlement satisfies all applicable legal and regulatory standards, is a product of negotiation and compromise, reflects concessions from RDC’s original rate request, and contains terms preferable to those that may have been achieved at the end of a fully litigated proceeding. Accordingly, I&E maintains that the proposed Settlement is in the public interest and requests that it be approved by the Administrative Law Judge and the Commission without modification.

I&E explains that it agreed to a settlement in the amount of \$135,000 only after it conducted an extensive investigation of RDC’s filing and related information through the discovery process. I&E used this information to determine the amount of revenue RDC needs to provide safe, effective, and reliable service without unduly impacting its customers through higher rates. Additionally, I&E submits that instituting a rate increase over three phases will mitigate the rate impact on customers. I&E argues that 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.

I&E explains that absent certain circumstances, 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 August 1, 2022, following the effective date of the Phase III increase. I&E argues this stay out provision will provide rate continuity to ratepayers for a defined period following the effective date of the Phase III increase, thereby providing a certain level of rate stability that would not otherwise be available in a fully litigated base rate case. At the same time, RDC will avoid hardship if certain unforeseeable events necessitate it to

⁷ *Pa. Pub. Util. Comm’n v. C S Water & Sewer Assocs.*, 74 Pa. PUC 767, 771 (1991).

⁸ *Pa. Pub. Util. Comm’n v. Phila. Elec. Co.*, 60 Pa. PUC 1, 22 (1985).

propose rate relief. For these reasons, I&E maintains that the stay out provision is in the public interest and should be approved.

I&E asserts that the provisions of the Settlement resolve the issues raised by I&E and represent a revenue increase that I&E agrees is fair, just, reasonable, and in the public interest. The Settlement represents approximately 67% of the filed request for additional revenues, and RDC will receive sufficient operating funds to provide safe and adequate service while the impact on ratepayers is less than initially proposed. I&E argues that 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 parties and customers, as well as certainty on the disposition of issues.

Office of Consumer Advocate

OCA explains that the proposed Settlement provides for an overall increase in annual revenues of \$135,000, or 30.24%, phased in over three phases. This agreed-upon increase is in lieu of the proposed \$215,646 increase originally proposed by RDC. OCA notes that this compromise represents a 37% reduction from RDC's original rate increase request.

OCA explains that under the Company's original proposal, the wastewater bill for the typical residential customer using 9,000 gallons of water per quarter would have increased from \$98.91 to \$146.35, or \$47.44 (48%) per quarter. Under the Company's original proposal, the wastewater bill for the typical residential customer using 3,000 gallons of water per month would have increased from \$32.97 to \$48.78, or \$15.81 (48%) per month.

OCA explains that under the proposed Settlement the monthly wastewater bill for the typical residential customer using 3,000 gallons of water per month will increase overall from \$32.97 to \$42.73, or \$9.76 (29.6%) after all three phases are implemented.

Based on OCA's analysis of the Company's filing and discovery responses, OCA believes the rate increase under the proposed Settlement represents a result that would be within the range of likely outcomes in the event of full litigation of the case. OCA argues this increase is appropriate when accompanied by other important conditions contained in the Settlement and yields a result that is just and reasonable.

OCA notes that under the proposed settlement, the Company has agreed not to file a general rate increase prior to August 1, 2022. OCA submits that this provision will provide a measure of rate stability that benefits the ratepayers.

Furthermore, OCA explains that the Company agrees it will notify the signatory parties when it receives its NPDES provision which will ensure that the signatory parties are aware of the renewal of the permit which is necessary for discharges from the wastewater treatment plant.

OCA argues 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. If approved, the proposed Settlement would provide for an increase of approximately \$135,000 in annual revenues phased in over three steps. This amount is reduced from the \$215,646 annual increase proposed in RDC's filing. In addition, OCA explains that the ratepayers will benefit from the stay-out for the next general rate increase request. Finally, OCA submits that the Commission and all parties will 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.

Office of Small Business Advocate

OSBA explains that, upon discussion and negotiation with the parties, it determined that the issues initially outlined in its prehearing memorandum had been adequately addressed. Thus, it did not submit testimony in this proceeding.

Although the OSBA did not submit testimony, it explains it supports the resolution outlined in the Settlement. In particular, OSBA argues that the rates will be phased in for small business customers. In lieu of the Company's requested 48.32% increase, the Settlement provides for an overall 30.24% increase, implemented over three steps. Of particular importance to OSBA is the fact the Settlement implements each step of the phase-in via a uniform increase to all applicable tariff charges, such that all classes will receive a uniform base rate increase. Since the Company did not sponsor a class cost-of-service study in this proceeding, OSBA submits there is no basis to assign anything other than a uniform base rate increases to all customer classes in this case. The Settlement therefore provides a just and reasonable resolution to class revenue allocation and rate design issues.

OSBA argues that settlement of this proceeding avoids the litigation of complex, competing proposals and saves the possibly significant costs of further administrative proceedings. Such costs are borne not only by the Company, but ultimately by the Company's customers as well. OSBA submits that avoiding further litigation of this matter will serve judicial efficiency and will allow OSBA to more efficiently employ its resources in other areas.

CUSTOMER CONCERNS AND COMMENTS

RDC's customers participated in this proceeding in a variety of ways. Some filed formal complaints, while others filed comments or testified at the public input hearings.

In written comments, customers expressed concerns that the initially requested increase of 46% was too high, especially for customers on fixed incomes or who may be impacted by unemployment related to the ongoing COVID-19 pandemic. Others argued that the proposed increase was inappropriate because RDC increased rates just a few years ago. Other customers questioned whether RDC was doing its part to keep costs down and obtain income from other funding sources. Other customers felt as though RDC was not properly maintaining and repairing the lines, resulting in poor water quality.

Six customers testified at the public input hearings. At the public input hearings, the customers' testimony echoed these concerns. The witnesses testified about their concerns of taking on additional PENNVEST loans when they are still paying off a previous PENNVEST loan,⁹ the need for the Company to pursue alternate sources of income other than a rate increase,¹⁰ and the need for oversight to ensure responsible Company spending.¹¹ Another customer questioned whether the repairs really needed to be completed.¹² Yet another customer conveyed his belief that many of the Company's customers are living under the poverty line and are unable to afford the originally requested 48% rate increase.¹³

Only one customer submitted comments to the Settlement.¹⁴ She questioned why the phased increases were not contingent upon the completion of the infrastructure projects. Additionally, with regard to a grant RDC expects to receive in July 2021, she questioned how the grant would affect the phased increases. Finally, she questioned whether "sewage only" customers would be subject to the phased increases.

Company's Reply to Comments

The Company filed responses to the comments to the Settlement. First, RDC explained that the phased increases are not contingent upon the completion of the needed projects as the Settling Parties did not negotiate completion dates as conditions precedent to any of the phased increases. Further, RDC points out that the Phase I increase is related solely to the repayment of an existing PENNVEST Loan and, therefore, is unrelated to any planned system projects.

⁹ N.T. 48-58.

¹⁰ N.T. 49-50, 81-82.

¹¹ N.T. 50-51.

¹² N.T. 54-55, 60.

¹³ N.T. 77-78.

¹⁴ See Comments of Margaret Foust, attached to Interim Order issued February 2, 2021, as Attachment A.

RDC explains that its automated meter system, at a cost of \$68,000 is completed, as is a substantial portion of the \$12,000 of miscellaneous smaller projects. RDC also advises that the two major construction projects – \$63,000 for an 8-inch line and \$238,000 for an 18-inch slip line – are planned for the summer of 2021 and will take less than one month to complete. RDC explains that the in-service dates for these two projects are timed to coincide, roughly, with financing for those projects.

RDC notes that the anticipated grant for a substantial portion of the cost related to the 18-inch slip line project is projected to be received in July 2021, and the Phases II and III increases will not become effective until July 1, 2021 and January 1, 2022, respectively.

Second, RDC submits that the need for the rate increase is not solely due to the planned construction projects. RDC explains it has a net income loss of \$110,598 and a negative return of 13.364% at present rate levels irrespective of any new plant investment. The Company explains it is increasing its rates to bring its operating income to a reasonable level.

Next, regarding the customer's questions about how the anticipated grant may affect the phased increases, RDC points out that the Settlement does not address how the grant would impact the proposed rate increase or the Settlement. RDC argues that the Settlement is a "black box" settlement, meaning that the Settling Parties did not negotiate each and every revenue and expense line item individually, but rather agreed upon a final revenue number based on their individual revenue and expense analyses.

Finally, in response to the customer's questions regarding rate increases for "sewage only" customers, RDC explains that the Settlement provides for increases to "sewage only" customers (flat rate customers) as part of the Phase II and Phase III increases at rates less than originally requested, and does not increase rates for these customers as part of the Phase I increase.

DISCUSSION

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.¹⁵

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the Commission.

Commission policy encourages settlements¹⁶ 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.

The proposed Settlement provides for an overall increase in annual revenues of \$135,000, or 30.24%, phased in over three phases. This agreed-upon increase is in lieu of the proposed \$215,646 increase originally proposed by RDC.¹⁷ This compromise represents a 37% reduction from RDC's original rate increase request.

The Joint Petitioners agree the proposed increase is necessary to ensure RDC can recoup the costs of providing wastewater service to its ratepayers while making infrastructure improvements in addition to earning a reasonable return on its investment. The data provided by

¹⁵ 66 Pa.C.S.A. § 315; *see also* 66 Pa.C.S.A. § 1301.

¹⁶ 52 Pa.Code § 5.231(a).

¹⁷ Settlement ¶ 11(a); *see also* Settlement Appendices A and B.

the Joint Petitioners and within the Settlement itself further support the assertions the increase is needed to cover reasonable and just costs.

In addition, the Joint Petitioners agree RDC will be unable to file for another rate increase prior to August 1, 2022. This stay-out provision will give ratepayers rate security at least until that time by establishing the earliest RDC 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.

As is common in general base rate proceedings, the Settlement is "black box," meaning that the Joint Petitioners have not negotiated each and every revenue and expense line item, but rather have been able to agree upon a final revenue number based on their individual revenue and expense analyses. The Commission has recognized that "black box" settlements are an important aspect in the process of delivering timely and cost-effective regulation.

The Commission has recognized that "black box" settlements can serve an important purpose in reaching consensus in rate cases:

We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases.^[18]

¹⁸ *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. R-2020-3017206 (Opinion and Order entered November 19, 2020), at 14 (quoting *Pa. Pub. Util. Comm'n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013), at 28 (citations omitted)).

The Joint Petitioners, including the statutory parties (who are tasked with protecting the interests of ratepayers), agree that the financial data submitted by RDC in support of Supplement No. 5 supports the proposed phased increase provided for in the Joint Petition. The Settlement increase, at a level reduced from the Company's original filing, reflects a compromise of the positions of Joint Petitioners, which, consistent with Commission policy, fosters and promotes the public interest.

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 RDC, I&E, OCA, and OSBA, I agree with the Joint Petitioners. This Settlement resulted after RDC, I&E, OCA, and OSBA engaged in discovery, mediation, and discussion. The customers' concerns regarding the proposed rate increase were considered and balanced as reasonably as the circumstances would permit.

RDC will have the increased revenue it needs to accomplish its improvement projects and earn a reasonable return on its investment. Furthermore, absent this increase, RDC would operate at a loss, and the phased increases will help ease the burden on the Company's ratepayers. The Company should not operate at a loss, and, as the customers testified at the public input hearings, the originally proposed 48% increase would be a considerable burden for them. Given the justification provided by the Joint Petitioners in this Settlement, as well as the support of all the statutory parties, the undersigned recommends the Commission approve the Settlement because the Settlement is a fair, just, and reasonable resolution of this proceeding. Furthermore, the individual consumer complaints should be dismissed.

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 & Sewer Assocs.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

3. 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. 66 Pa.C.S.A. § 315.

4. Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the Commission. 66 Pa.C.S.A. § 1301.

5. The Joint Petition for Settlement of Rate Investigation submitted by Reynolds Disposal Company, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate on January 22, 2021, is in the public interest.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement of Rate Investigation submitted by Reynolds Disposal Company, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate, at Docket No. R-2020-3019612, be approved.

2. That Reynolds Disposal Company shall place into effect the rates, rules, and regulations contained in Supplement No. 5 to Tariff Wastewater – Pa. P.U.C. No. 4, as modified by the Settlement filed on January 22, 2021, the same having been found to be just, reasonable, and therefore lawful.

3. That Reynolds Disposal Company shall file a tariff or tariff supplement containing the rates, rules and regulations consistent with Appendix A to the Joint Petition for Settlement of Rate Investigation.

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-2020-3019612 shall be terminated and the docket marked closed.

6. That the formal complaint filed by the Office of Consumer Advocate at Docket No. C-2020-3021049 against Supplement No. 5 to Tariff Wastewater-Pa. P.U.C. No. 4 be dismissed consistent with this Recommendation.

7. That the formal complaints against Supplement No. 5 filed by Stephanie Myers at Docket No. C-2020-3020950; Vickie Mabry at Docket No. C-2020-3020953; Ryan Foust at Docket No. C-2020-3020951; Margaret Foust at Docket No. C-2020-3020952; Bess Mowry at Docket No. C-2020-3020954; Michele Walter at Docket No. C-2020-3020955; Stephanie Probst at Docket No. C-2020-3020956; Dillon Sarcinella at Docket No. C-2020-3020957; James Vessella at Docket No. C-2020-3020958; Steve Bertolasio at Docket No. C-2020-3021165; Amanda Hughes at Docket No. C-2020-3021166; William and Janine Taylor at Docket No. C-2020-3021372; Roderick Daugherty at Docket No. C-2020-3021373; Theresa Taranto at Docket No. C-2020-3021374; Sean DeCiancio at C-2020-3021375; Carol Laverty at Docket No. C-2020-3021377; Natalie McCloskey at Docket No. C-2020-3021400; Wilma

Brandt at Docket No. C-2020-3021404; Beth Erdman at Docket No. C-2020-3021405; Julie Griswold at Docket No. C-2020-3021515; Karen Nestor at Docket No. C-2020-3021636; Donna Vigus at Docket No. C-2020-3021779; Kevin Pierce at Docket No. C-2020-3021804; Sue Mathieson at Docket No. C-2020-3021805; Sean and Michele Belback at Docket No. C-2020-3021807; Daniel Frazier at Docket No. C-2020-3021927; and Joe Buhovecky at Docket No. C-2020-3022059 be dismissed.

Date: March 8, 2021

/s/
Emily I. DeVoe
Administrative Law Judge