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November 9, 2011

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building—2 North
P.O. Box 3265
Harrisburg, PA 17105

**Re: Docket No. C-2010-2217564
Arnold Kring v. Little Washington Wastewater Company
Motion for Judgment on the Pleadings of LWWC**

Dear Secretary Chiavetta:

Enclosed for filing, please find the original of the Motion for Judgment on the Pleadings of Little Washington Wastewater Company in the above-captioned proceeding.

As indicated on the certificate of service, a copy of the Motion for Judgment on the Pleadings has been provided to the Complainant in the manner indicated.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP


Margaret A. Morris, Esquire

Enclosures

cc: Arnold Kring
Honorable Denise M. Buckley

**Re: Docket No. C-2010-2217564
Arnold Kring v. Little Washington Wastewater Company
Motion for Judgment on the Pleadings of LWWC**

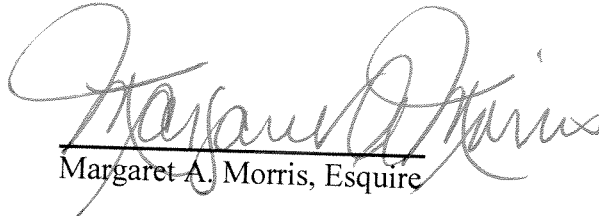
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via First Class Mail

Mr. Arnold Kring
83 Winterberry Drive
Downingtown, PA 19335

Dated: November 9, 2011


Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ARNOLD KRING

Complainant

v

LITTLE WASHINGTON
WASTEWATER COMPANY

Respondent

Docket No. C-2010-2217564

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103, you are hereby notified that, if you do not file a written response answering the enclosed Motion for Judgment on the Pleadings of Little Washington Wastewater Company within twenty (20) days from service of this notice, the facts set forth by Little Washington Wastewater Company in the Motion for Judgment on the Pleadings may be deemed to be true, whereby requiring no other proof. All pleadings, such as an Answer to the Motion for Judgment on the Pleadings, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Aqua Pennsylvania, Inc., Margaret A. Morris, and the presiding judge, the Honorable Denise M. Buckley.

File with:

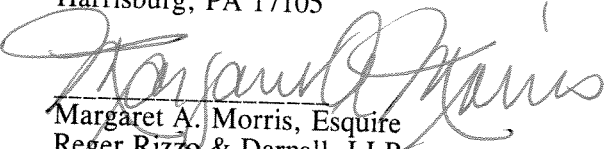
Ms. Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building - 2 North
P.O. Box 3265
Harrisburg, PA 17105

With a copy to:

Margaret A. Morris, Esquire
Reger Rizzo & Darnall, LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Honorable Denise M. Buckley
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building - 2 West
P.O. Box 3265
Harrisburg, PA 17105

Dated: November 9, 2011


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Counsel for Little Washington Wastewater
Company

LWWC's facility constantly emits a noxious sewage odor. Complaint at ¶4A. A copy of the Complaint is attached as Exhibit A.

2. The Complaint was consolidated with the then pending rate proceeding of LWWC at Docket No. R-2010-2207853.

3. The Complainant participated in LWWC's rate case and opposed the Joint Settlement, entered into by several of the parties, which the presiding administrative law judges recommended be approved. A copy of the Recommended Decision is attached as Exhibit B.

4. The Complainant specifically filed Exceptions to the Recommended Decision regarding the increase to the customer charge and his issue regarding odor. A copy of the Complainant's Exception is attached as Exhibit C.

5. The Commission approved the Joint Settlement which *inter alia* approved the increase to the customer charge. The Commission did grant the Complainant's Exception to the extent that LWWC was directed to submit a report on its odor remediation activities as part of its next base rate filing. In all other respects, the Complainant's Exceptions and Complaint were dismissed. See, *Order* at pages 15-19. A copy of the *Commission's Order* in Docket No. R-2010-2207853 is attached as Exhibit D.

6. The pending Complaint has already been adjudicated by the Commission and specifically was dismissed. The Complainant had an adequate opportunity to participate in the

rate case and he did so. He submitted his objection to the Commission and as set forth above, his Complaint was dismissed. The Complainant has had his opportunity to be heard regarding his issues.

7. The Commission need not address the Complainant's claim again and the Respondent should not be required to re-litigate with the same Complainant the very same issue that was part of the last rate case. The Complainant's attempt to re-litigate the identical issue is not a reasonable use of the Commission or the Respondent's time or resources, nor is it required by the Public Utility Code or Commission Regulations.

8. Section 5.102 of the Commission Regulations provides for the granting of a Motion for Judgment on the Pleadings where there is no genuine issue as to a material fact and that LWWC is entitled to a judgment as a matter of law. A prior proceeding has already addressed the allegation by the Complainant in his Complaint. The Complainant had an adequate opportunity to participate in LWWC's rate case proceeding. His objection to the Recommended Decision was submitted to the Commission and his Complaint was dismissed.

9. The unwillingness to allow a second action based on a prior proceeding is consistent with established principles of *res judicata* (or claim preclusion) and collateral estoppel (or issue preclusion). See *Rita & Ray Royce c/o/ Safeguard International, Inc. v PECO*, Docket No. C-20067158 (Order entered August 26, 2008); *Schuylkill Twp. v Borough of Phoenixville*, Docket No. R-00932770, *et al.* (Order entered October 1, 1993). The Commission has applied these principles to prevent reconsideration of administrative matters in which a final judgment

has already been entered. *O'Toole v Bell Telephone Company of PA*, 77 Pa. PUC 98 (1992); *Tomazin v PAWC*, 1997 Pa. PUC LEXIS 52 (1997).

10. *Res judicata* (or claim preclusion) bars the subsequent re-litigation of matters that were actually litigated, as well as matters that should have been litigated, in a prior action as part of the same cause of action. *Borough of Phoenixville*, supra. The doctrine applies when the following four conditions are met: (1) identity of the subject matter; (2) identity of the cause(s) of action; (3) identity of parties to the action; and (4) identity of the quality or capacity of the parties suing or being sued. Id. *Safeguard International*, supra.

11. In a similar vein, the doctrine of collateral estoppel (or issue preclusion) seeks to prevent the re-litigation of an issue of fact or law which was previously litigated in a prior proceeding and subject to a final Commission Order. *Safeguard International*, supra. A plea for collateral estoppel requires that: (1) the issue(s) decided by a prior final order is identical with the one(s) presented in the later action; (2) there was final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party to the prior litigation; and (4) the party against whom the plea is asserted had a full and fair opportunity to litigate the issue in question in the prior action. Id.

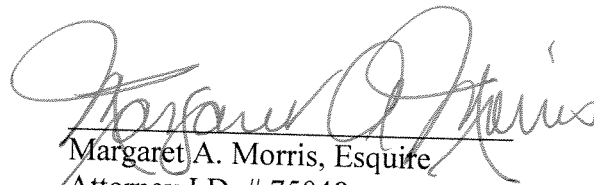
12. In the instant matter, it is clear that the Commission is presented with the same Complainant, the same Respondent and the same allegations. The Complainant has had a full and fair opportunity to litigate his concerns in LWWC's rate case. The Commission dismissed

his Complaint. An identical Complaint and further litigation is neither necessary nor reasonable, nor is it required by the Public Utility Code or Commission Regulations.

13. The Complainant had his concerns heard and addressed by the Commission. Established legal principles and a common sense approach justify the dismissal of the present identical Complaint.

WHEREFORE, for the foregoing reasons, Little Washington Wastewater Company respectfully requests that this Honorable Court, in the absence of a hearing, grant this Motion for Judgment on the Pleadings and dismiss the Complaint of Arnold M. Kring in Docket No. C-2010-2217542.

Respectfully submitted,



Margaret A. Morris, Esquire
Attorney I.D. # 75048
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 (voice)
(215) 495-6600 (fax)
mmorris@regerlaw.com

Dated: November 9, 2011

Counsel for Little Washington Wastewater Company

Arnold M. Kring v LWWC
Docket No. C-2010-2217564

EXHIBIT A

2010 Formal Complaint

5/10
11/0
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print in ink or type.

02010-2217564

RECORDED
2010 DEC 20 AM 9:56
SECRETARY'S BUREAU
ORIGINAL

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name ARNOLD M. KRING

Street/P.O. Box 83 Winterberry Dr. Apt # _____

City DOWNINGTOWN State PA Zip 19335

County CHESTER

Daytime Telephone Number Where We Can Contact You: 484 459 1638

E-mail Address (optional): _____

Utility Account Number ~~000983769 0324597~~
(from your bill) 000983769 0324597

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

Little Washington Wastewater aka aqua pennsylvania
aka aqua america

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

(e.g., taxi, moving company, limousine)

TELEPHONE
(local, long distance)

COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.

Other (explain). *THE LOCAL WASTEWATER TREATMENT FACILITY CONSTANTLY EMITS A NOXIOUS SEWAGE ODOR!*

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

The noxious odor must be eliminated. The requested rate increase not only must be denied, but the rate increase granted 3 years ago must be eliminated and returned to the ~~of~~ prior rate!

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations) Yes, they are aware!
NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name N/A

Street _____

City _____ State _____ Zip _____

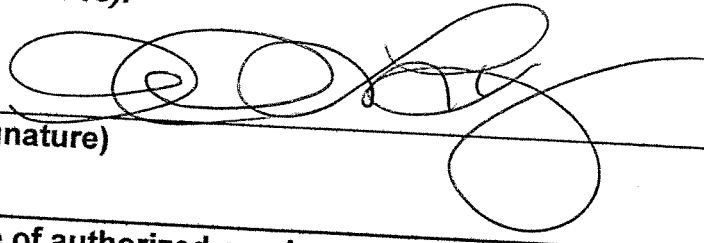
Area Code/Phone Number _____

E-mail Address (If Known) _____

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification: I ARNOLD M. KRING hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


(Signature)

Dec. 16, 2010
(Date)

Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.

Arnold M. Kring v LWWC
Docket No. C-2010-2217564

EXHIBIT B

Recommended Decision

LWWC's last rate case

Docket R-2009-2207853

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2010-2207853
Office of Consumer Advocate	:	C-2010-2209923
William Fink	:	C-2010-2213900
Edward C. Oleckna	:	C-2010-2213719
National Income Tax, Inc.	:	C-2010-2215189
Arnold M. Kring	:	C-2010-2217542
Borough of Media	:	C-2010-2217581
Jeffrey Fleming	:	C-2010-2217951
Samuel L. Johnson	:	C-2011-2218537
	:	
v.	:	
	:	
Little Washington Wastewater Company,	:	
Southeast Consolidated Division	:	

RECOMMENDED DECISION

Before
Marlane R. Chestnut
Administrative Law Judge

Christopher P. Pell
Administrative Law Judge

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I. HISTORY OF THE PROCEEDING

On October 29, 2010, Little Washington Wastewater Company – Southeast Consolidated Division (LWWC or respondent) filed with the Pennsylvania Public Utility Commission (Commission) its proposed Supplement No. 74 to Tariff Sewer - Pa. P.U.C. No. 1 to become effective January 1, 2011. Supplement No. 74 contained proposed changes in rates, rules and regulations calculated to produce an overall \$1,078,292 in additional revenues, an increase of approximately 32.2% over existing base rates anticipated for the future test year ending June 30, 2011, from eight divisions with stand alone rates (Chesterdale, Greens at Penn Oaks, Media, New Daleville, Newlin Green, Little Washington, Peddlers View and Twin Hills) and to consolidate the rate bases of the other five divisions (Bridlewood, Deerfield Knoll, East Bradford, Links at Gettysburg and Plumstock) without any change in the existing rates.¹ With respect to the proposed rate increase, the company requested the following:

(1) A rate increase for the Chesterdale Division of \$45,397, which would be a 9.37% increase to revenues. If the entire increase is granted by the Commission, an average residential customer's monthly bill would increase from \$49.56 to \$54.18.

(2) A rate increase for the Greens at Penn Oaks Division of \$12,990, which would be a 15.05% increase to revenues. If the entire increase is granted by the Commission, an average residential customer's monthly bill would increase from \$95.14 to \$108.37.

(3) A rate increase for the Media Division of \$829,265, which would be a 66.1% increase to revenues. If the entire increase is granted by the Commission, an average residential customer's monthly bill would increase from \$16.26 to \$36.93, a commercial customer's monthly bill would increase from \$16.26 to \$36.93, and a municipal customer's bill would increase from \$22.67 to \$48.20.

¹ These customers are in portions of Chester, Bucks and Delaware counties.

(4) A rate increase for the New Daleville Division of \$28,021, which would be a 35% increase to revenues. If the entire increase is granted by the Commission, an average residential customer's monthly bill would increase from \$66.67 to \$90.00.

(5) A rate increase for the Newlin Green Division of \$38,336, which would be a 65.22% increase to revenues. If the entire increase is granted by the Commission, an average residential customer's monthly bill would increase from \$100.34 to \$165.79.

(6) A rate increase for the Little Washington Division of \$45,826, which would be a 10.93% increase to revenues. If the entire increase is granted by the Commission, an average residential customer's monthly bill would increase from \$85.32 to \$96.34.

(7) A rate increase for the Twin Hills Division of \$56,913, which would be a 26.19% increase to revenues. If the entire increase is granted by the Commission, an average residential customer's monthly bill would increase from \$54.74 to \$69.08.

(8) A rate increase for the Peddlers View Division of \$21,544, which would be an 11.71% increase to revenues. If the entire increase is granted by the Commission, an average residential customer's monthly bill would increase from \$71.33 to \$79.68.

Included with the filing were supporting information (filings 1 through 7), the direct testimony of Joseph R. Daubert, Aqua America, Inc., Senior Rates Analyst (LWWC St. 1) and Alan D. Roth, LWWC, Manager of Wastewater Operations (LWWC St. 2) and Exhs. DEPR1 and BA1.

On November 12, 2010, the Office of Consumer Advocate (OCA) filed a Public Statement, a Notice of Appearance on behalf of Dianne E. Dusman, Esq., and Shaun A. Sparks, Esq., on behalf of Irwin A. Popowsky, Esq., the Consumer Advocate, and a formal Complaint. The Complaint was docketed at C-2010-2209923.

LWWC filed a revised Supplement No. 74 on November 16, 2010.

By Order entered on December 16, 2010, the Commission instituted a formal investigation to determine the lawfulness, justness and reasonableness of existing and proposed rates, rules and regulations, and assigned the proceeding to the Office of Administrative Law Judge for resolution. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S.A. § 1308(d), Supplement No. 74 to Tariff Sewer - Pa. P.U.C. No. 1 was suspended by operation of law until August 1, 2011, unless permitted by Commission order to become effective at an earlier date.

A prehearing conference was scheduled for January 7, 2011, and the matter was assigned to us. On December 16, 2010, we issued a Prehearing Conference Order which directed the parties to comply with various procedural requirements in connection with the scheduled prehearing conference.

In addition to a number of Rate Protests filed by individuals, several customers filed formal Complaints. These include William Fink (Docket No. C-2010-2213900), Edward Oleckna (Docket No. C-2010-2213719), National Income Tax, Inc. (Docket No. C-2010-2215189), Arnold M. Kring (Docket No. C-2010-2217542), Jeffrey Fleming (Docket No. C-2010-2217951) and Samuel L. Johnson (Docket No. C-2011-2218537).²

On December 21, 2010 a formal Complaint was filed by the Borough of Media (Media) at Docket No. C-2010-2217581. On January 7, 2011, the Commission's Office of Trial Staff (OTS) filed a Notice of Appearance on behalf of Richard Kanaski, Esq.

² A Complaint filed by Karen Savini at Docket No. C-2010-2214914 was withdrawn by her by letter received by us on December 30, 2010 and closed by the Commission on February 16, 2011.

The prehearing conference was held in Philadelphia on January 7, 2011, as scheduled. Present through counsel either in person or telephonically from Harrisburg were respondent LWWC, OTS, OCA and Media. Each party in attendance filed and served a prehearing memorandum. No individual complainants participated in the prehearing conference. We addressed discovery and other procedural requirements and established a litigation and briefing schedule, as set out in Prehearing Order #1 dated January 11, 2011.

On January 27, 2011, Media served the direct testimony of Jeffrey Smith, Borough of Media, Borough Manager (Media St. 1 and Exh. 1, the Asset Purchase Agreement between the borough and LWWC dated May 20, 1999).

In order to allow the company's customers the opportunity to express their concerns or opinions concerning the pending rate increase request, a telephonic public input hearing was held on January 28, 2011.³ Present and participating through counsel were the company, OTS, OCA and Media. Ten individuals, one of whom had filed a formal Complaint (Mr. Kring) testified. Two witnesses were customers of the Little Washington Division; four were customers of the New Daleville Division and four were customers of the Media Division.

The parties conducted settlement discussions and, as a result, were able to reach a settlement to resolve all issues in this proceeding. As we were informed by the parties (LWWC, OTS and OCA) that they had reached agreement on the issues in this proceeding and that they intended to file a settlement petition as soon as possible, we issued an Order Suspending Schedule on March 2, 2011, that suspended the litigation schedule contained in Prehearing Order #1 and canceled the hearings scheduled for March 8-10, 2011.

On March 2, 2011, a Joint Petition for Settlement of Rate Investigation (Joint Petition or Settlement) was filed and served. Signatories to the Joint Petition include LWWC,

³ Conducting the public input hearing telephonically, as a way of increasing customer participation, was suggested by OCA. We'd like to thank Ms. Dusman and Mr. Sparks of OCA for registering and counseling the potential participants, and also Ms. Joyce of LWWC for arranging for the telephone conference bridge that enabled all participants to be connected simultaneously. We'd especially like to thank each customer who participated, as their testimony was unusually compelling and to the point.

OTS and OCA (collectively, settling parties or joint petitioners). The Joint Petition included statements in support of the settlement from each of the settling parties.

By letter dated March 3, 2011, we informed the Borough of Media and the individual complainants (each of whom had been served with the Settlement Petition) of the settlement agreement and requested that they indicate if they wished to join, oppose or take no position on the proposed settlement. We also enclosed a signature page that the complainants could sign and return to us if they wished to join in the joint settlement petition. By letter received by us on March 8, 2011, complainant Kring (Docket No. C-2010-2217542) opposed the settlement, alleging that the settlement provisions regarding odor abatement were inadequate. No other responses were received. By letter dated March 11, 2011, the Borough of Media joined in the proposed settlement.

LWWC's filing (Filings 1 through 7, LWW Sts. 1 and 2 and Exhs. DEPR1, BA1) and the Joint Petition for Settlement, with its appendices, will be admitted into the record through this Recommended Decision. The record therefore consists of the filing, the statements and exhibits, the Joint Petition for Settlement and the transcripts of the January 7, 2011, prehearing conference and the January 28, 2011, telephonic public input hearing.

The settling parties' position is that the proposed settlement provides a fair, just and reasonable resolution of the issues, is supported by the record and is in the public interest. We agree. The settlement terms appear to be a fair and reasonable resolution of the various issues, and appropriately balance the interests of the company and its customers. Therefore, the Joint Petition should be approved without modification by the Commission as expeditiously as possible. We commend the parties –and the counsel representing them – for their outstanding efforts in this proceeding.

II. THE PROPOSED SETTLEMENT

The Joint Petition for Settlement of Rate Investigation is a document signed by the company, OCA and OTS, three of the four active parties.⁴ Appendix A of the Joint Petition is the proposed tariff supplement (settlement rates). Appendix B is the proof of revenues. Appendix C is LWWC's Statement in Support. Appendix D is OTS' Statement in Support. Appendix E is OCA's Statement in Support.

The principal terms and conditions of the proposed settlement, contained in Paragraph 11 of the Petition, (a) through (i) (the original numbering is maintained here for ease of reference), provide that:

11. Joint Petitioners agree that this rate proceeding can be settled without further litigation. The Settlement consists of the following terms and conditions:

a. The Commission will act as soon as possible to grant LWW-Southeast 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 tariff supplement increases LWW-Southeast's revenues for wastewater by \$999,000 so as to produce not in excess of \$4,336,541 in annual revenues. This represents an increase of no more than 29.93%. A proof of revenue is attached hereto as Appendix B.

b. The LWW-Southeast will have a single cost of service and one revenue requirement for the thirteen systems included in the filing on a going forward basis.

c. LWW-Southeast will further investigate odor complaints in the Little Washington and Twin Hills Divisions. The Company will contact an expert with experience in controlling wastewater odors for assistance in resolving this issue in the Little Washington Division and will provide a malodor remediation progress report to the OCA within 90 days and at 180 days after the Commission's

⁴ As indicated above, the Borough of Media (the fourth active party) joined in the settlement by letter dated March 10, 2011.

entered order approving the Settlement. In the Twin Hills Division, a customer that resides approximately 750 feet from the plant complained about odor. The Company will contact customers nearby the plant and request that they advise the Company when there are any odor issues so the Company can determine the source of any such odors. If the Company cannot correct the issue, the Company will contact an expert for advice in resolving and possible odor issues.

d. The current and settlement base facility charge and volumetric charge for the eight systems that are receiving a rate increase are outlined below:

MEDIA

Media currently has a base facility charge of \$5.07 per month and a volumetric charge of \$3.20 per thousand gallons for a 5/8" meter. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of 14.30 per month and a volumetric charge of \$5.20 per thousand gallons in year 1. In year 2, LWW Southeast will revise its rate design to a base facility charge of 15.95 per month and a volumetric charge of \$5.77 per thousand gallons.

Media currently has a base facility charge of \$7.20 per month and a volumetric charge of \$3.20 per thousand gallons for a 3/4" meter. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$22.50 per month and a volumetric charge of \$5.20 per thousand gallons in year 1. In year 2, LWW Southeast will revise its rate design to a base facility charge of \$25.00 per month and a volumetric charge of \$5.77 per thousand gallons.

Media currently has a base facility charge of \$12.82 per month and a volumetric charge of \$3.20 per thousand gallons for a 1" meter. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$34.50 per month and a volumetric charge of \$5.20 per thousand gallons in year 1. In year 2, LWW Southeast will revise its rate design to a base facility charge of \$38.00 per month and a volumetric charge of \$5.77 per thousand gallons.

Media currently has a base facility charge of \$28.94 per month and a volumetric charge of \$3.20 per thousand gallons for a 1 1/2" meter. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$80.25 per month and a volumetric charge of \$5.20 per thousand gallons in year 1. In year 2, LWW Southeast will revise its rate design to a base facility charge of \$89.00 per month and a volumetric charge of \$5.77 per thousand gallons.

Media currently has a base facility charge of \$51.34 per month and a volumetric charge of \$3.20 per thousand gallons for a 2" meter. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$148.50 per month and a volumetric charge of \$5.20 per thousand gallons in year 1. In year 2, LWW Southeast will revise its rate design to a base facility charge of \$165.00 per month and a volumetric charge of \$5.77 per thousand gallons.

Media currently has a base facility charge of \$115.60 per month and a volumetric charge of \$3.20 per thousand gallons for a 3" meter. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$327.50 per month and a volumetric charge of \$5.20 per thousand gallons in year 1. In year 2, LWW Southeast will revise its rate design to a base facility charge of \$364.00 per month and a volumetric charge of \$5.77 per thousand gallons.

Media currently has a base facility charge of \$205.35 per month and a volumetric charge of \$3.20 per thousand gallons for a 4" meter. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$534.50 per month and a volumetric charge of \$5.20 per thousand gallons in year 1. In year 2, LWW Southeast will revise its rate design to a base facility charge of \$594.00 per month and a volumetric charge of \$5.77 per thousand gallons.

The monthly bill for a typical metered residential customer using 3,800 gallons of water per month in Media is summarized as follows:

Current Rates	\$17.23
Proposed Rates	\$38.75
Settlement Rates (Year 1)	\$34.06
Settlement Rates (Year 2)	\$37.88

For the typical Media residential user, this represents a bill increase of \$16.83/month or 97.68% in year 1. In year 2, a Media residential bill increases \$3.82/month or 11.20%.

GREENS AT PENN OAKS

The Greens at Penn Oaks currently has a base facility charge of \$90.00 per month and a volumetric charge of \$1.50 per thousand gallons. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$93.25 per month and a volumetric charge of \$3.75 per thousand gallons.

The monthly bill for a typical metered residential customer using 3,400 gallons of water per month in Greens at Penn Oaks is summarized as follows:

Current Rates	\$95.10
Proposed Rates	\$108.26
Settlement Rates	\$106.00

For the typical Greens at Penn Oaks residential user, this represents a bill increase of \$10.90/month or 11.46%.

TWIN HILLS

Twin Hills currently has a base facility charge of \$47.00 per month and a volumetric charge of \$1.76 per thousand gallons. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$54.00 per month and a volumetric charge of \$3.05 per thousand gallons.

The monthly bill for a typical metered residential customer using 4,400 gallons of water per month in Twin Hills is summarized as follows:

Current Rates	\$54.74
Proposed Rates	\$69.08
Settlement Rates	\$67.42

For the typical Twin Hills residential user, this represents a bill increase of \$12.68/month or 23.16%.

NEW DALEVILLE

New Daleville currently has a base facility charge of \$66.67 per month. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$70.64 per month.

The monthly bill for a typical metered residential customer using 0 gallons of water per month in New Daleville is summarized as follows:

Current Rates	\$66.67
Proposed Rates	\$90.00
Settlement Rates	\$70.64

For the typical New Daleville residential user, this represents a bill increase of \$3.67/month or 5.95%.

NEWLIN GREEN

Newlin Green currently has a base facility charge of \$90.00 per month and a volumetric charge of \$1.50 per thousand gallons. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$110.00 per month and a volumetric charge of \$7.50 per thousand gallons.

The monthly bill for a typical metered residential customer using 6,800 gallons of water per month in Newlin Green is summarized as follows:

Current Rates	\$100.20
Proposed Rates	\$165.04
Settlement Rates	\$161.00

For the typical Newlin Green residential user, this represents a bill increase of \$60.80/month or 60.68%.

PEDDLERS VIEW

Peddlers View currently has a base facility charge of \$49.00 per month and a volumetric charge of \$4.75 per thousand gallons. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$54.00 per month and a volumetric charge of \$5.05 per thousand gallons.

The monthly bill for a typical metered residential customer using 4,700 gallons of water per month in Peddlers View is summarized as follows:

Current Rates	\$71.33
Proposed Rates	\$79.68
Settlement Rates	\$77.74

For the typical Peddlers View residential user, this represents a bill increase of \$6.41/month or 8.99%.

LITTLE WASHINGTON

Little Washington currently has a base facility charge of \$67.00 per month and a volumetric charge of \$5.15 per thousand gallons. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$74.00 per month and a volumetric charge of \$5.70 per thousand gallons.

The monthly bill for a typical metered residential customer using 3,500 gallons of water per month in Little Washington is summarized as follows:

Current Rates	\$85.03
Proposed Rates	\$96.00
Settlement Rates	\$93.95

For the typical Little Washington residential user, this represents a bill increase of \$8.93/month or 10.50%.

CHESTERDALE

Chesterdale currently has a base facility charge of \$42.00 per month and a volumetric charge of \$2.40 per thousand gallons. Pursuant to the terms of this settlement, LWW Southeast will revise its rate design to a base facility charge of \$43.00 per month and a volumetric charge of \$3.00 per thousand gallons.

The monthly bill for a typical metered residential customer using 3,200 gallons of water per month in Chesterdale is summarized as follows:

Current Rates	\$49.68
Proposed Rates	\$54.34
Settlement Rates	\$52.60

For the typical Chesterdale residential user, this represents a bill increase of \$2.92/month or 5.88%.

e. The Settlement provides for an overall increase in revenues of \$999,000. The increase will be implemented in two phases for the Media Division. In the first phase, effective upon one day's notice, the rates are designed to produce \$852,314 in additional revenue from customers. In the second phase for the Media Division, effective one year after Commission approval of the Joint Petition, the rates are designed to produce \$146,686 in additional revenue from customers.

f. The parties have agreed that LWW-Southeast will not file for a base rate increase in the LWW-Southeast Division before November 1, 2012.

g. The Company agrees that, in its next filing, if the requested increase is over one million dollars, it will either seek a waiver to not include all minimum filing requirements or will proceed under the Commission's regulations as stated.

h. Little Washington will propose a block rate in the next rate filing for the New Daleville system.

i. If a legislative body or administrative agency, including the Commission, orders or enacts fundamental changes in policy or statutes which directly and substantially affect the Company's rates, this Settlement shall not prevent the Company from filing tariff supplements to the extent necessitated by such action.

In addition, the settlement petition contains the standard provisions in ¶¶ 14-19 that the settlement agreement is made without prejudice to each party's litigation position, that it is conditioned upon the Commission's approval of the agreement without modification, that the parties agree to waive the filing of exceptions and reply exceptions if it is recommended that the Commission adopt the settlement without modification, that if the Commission fails to grant approval of the Settlement Petition or modifies any material term or condition of the Settlement, any party may elect to withdraw, in whole or in part, from the Settlement upon written notice to the Commission and the other parties within three business days of the entry of the Commission order, and in that case, the settlement will be of no force and effect, that each party reserves its right to fully litigate the case, and that the settling parties will support the settlement and make reasonable good faith efforts to obtain approval of the settlement by the Commission and any courts.

III. DISCUSSION

A. Applicable Legal Principles

The purpose of this investigation is to establish rates for LWWC's customers which are just and reasonable pursuant to Section 1301 of the Public Utility Code, 66 Pa.C.S.A. § 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. *Pennsylvania Gas & Water Co. v. Pennsylvania 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 & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield*, 262 U.S. 692-93, 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 too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

In analyzing a proposed general rate increase, the Commission determines a rate of return to be applied to a rate base measured by the aggregate value of all the utility's property used and useful in the public service. In determining a proper rate of return, the Commission calculates the utility's capital structure and the cost of the different types of capital during the period in issue.

Because of its administrative expertise, the Commission has wide discretion in determining the cost of capital. *Equitable Gas Co. v. Pennsylvania Pub. Util. Comm'n*, 405 A.2d 1055 (Pa. Cmwlth. 1979).

Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. 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. That is one reason why settlements are encouraged by long-standing Commission policy.

In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pennsylvania Pub. Util. Comm'n v. C S Water & Sewer Assoc.*, 74 Pa.PUC 767 (1991); *Pennsylvania Pub. Util. Comm'n v. Philadelphia Electric Co.*, 60 Pa.PUC 1 (1985).

The Joint Petition will be examined in accordance with the above principles.

B. Revenue Increase

First, the company has agreed to accept a lower increase in annual revenues than it had originally requested. See, ¶ 11(a, d and e). The proposed settlement permits LWWC to establish rates that produce additional annual operating revenues of \$999,000 (\$852,314 in the first year, \$146,686 in the second) rather than the \$1,078,292 originally requested, an increase

over current revenue of 29.93% rather than 32.2%, for an overall revenue requirement of \$4,336,541.

Because of the varying level of current rates in the various divisions, the actual and percentage increase for a typical residential customer in any division will vary from the overall increase, as set out in ¶ 11(d):

Division	Current rates	Settlement rates	Percentage Increase
Greens at Penn Oaks	\$95.10	\$106.00	11.46%
Twin Hills	\$54.74	\$67.42	23.16%
New Daleville	\$66.67	\$70.64	5.95%
Newlin Green	\$100.20	\$161.00	60.68%
Peddlers View	\$71.33	\$77.74	8.99%
Little Washington	\$85.03	\$93.95	10.50%
Chesterdale	\$49.68	\$52.60	5.88%
Media	\$17.23	\$34.06/\$37.88	97.68%/11.20%

As explained by OCA in its Statement in Support at 4, while this result produces inconsistent increases and rates, it “sets the stage for avoiding full rate shock in the full consolidation of the LWWC Southeast systems into one single-tariff rate in a future filing.”

With respect to the level of the requested revenue increase, two items need to be noted. First, as the result of the testimony provided at the public input hearing, the company was able to identify several New Daleville customers who had not been included in the customer count because the developer had failed to notify LWWC of new construction. Inclusion of these additional customers allows the increase to be spread over a larger customer base, resulting in a lower increase for each customer. Those customers who testified are to be thanked for bringing this clearly relevant and material information to the attention of the company and the Commission; LWWC is to be commended for quickly and voluntarily following up and making the necessary changes.

Second, the company has agreed to accept the revenue increase from the Media Division in two steps, with the first step to be effective upon one day’s notice of the date of entry

of the Commission's order in this proceeding. The second step will go into effect one year later. See, ¶ 11(e). This allows the company to benefit from being able to obtain moderate and immediate rate relief while providing some measure of insulation to its customers from being required to absorb the full rate increase in a short time.

Clearly the requested revenue increase represents an amount which would be within the range of likely outcomes in the event of full litigation. In its Statement in Support at 3, the company finds that this level of allowable revenue is adequate to provide it with "increased cash flow to maintain safe and adequate service." The customers, in turn, will experience a rate increase less than that originally proposed. As stated by OTS in its Statement in Support at 5, "Mitigation of the level of the rate increase benefits ratepayers as it helps to maintain affordability and ensures that rates remain just and reasonable."

We find that the increased level of revenues agreed to by the parties allows the recovery of prudently incurred expenses, provides the company with the opportunity to earn a reasonable return on the value of assets used and useful in serving the public, results in rates that are just and reasonable and therefore appropriately balances the interests of the company, its investors and its customers.

C. Rate Consolidation

At ¶ 11(b), the settlement provides that, "The LWW-Southeast will have a single cost of service and one revenue requirement for the thirteen systems included in the filing on a going forward basis." LWWC explained in its Statement in Support at 4-5 that consolidation of the thirteen systems ". . . will align the accounting and, ultimately, allow movement toward a single rate structure within the Southeast Division. Over time, it is the goal of Little Washington to adopt rates that reflect a unified rate structure for its multiple wastewater service areas. Under consolidated pricing, customers pay a utility the same rate for similar service, regardless of the physical location of their service area. A consolidated rate structure can protect against unaffordable rates, address small system viability issues and control administrative costs for the utility and the agencies that regulate it."

Clearly, rate consolidation is in the public interest. As noted by LWWC, it will enable major capital improvements to be spread over a larger customer base, promote efficient operation, minimize rate shock and reduce regulatory expense. A similar rate consolidation was approved by the Commission with respect to LWWC's Northeast Division, *Pennsylvania Pub. Util. Comm'n v. Little Washington Wastewater - Northeast PA Consolidated*, Docket No. R-2008-2081738, Commission Opinion and Order entered September 24, 2009.

The proposed consolidation promotes the Commission's general policy of encouraging single tariff pricing.⁵ The Commission discussed the benefits of single tariff pricing in *Pa. P.U.C. v. Western Pennsylvania Water Co.*, 72 PUR 4th 103, 147-48 (1986):

1. A larger rate and revenue base ameliorates the impact of major capital additions needed from time to time in every service area;
2. A larger revenue base promotes flexibility in timing and financing major capital additions;
3. The impact of instability resulting from changes in sales volumes is mitigated when the effect of such volumetric factors is spread over a larger economic base; and
4. The reduction of the number of accounting units and the number of individual rate filings results in administrative efficiency with a potential to reduce costs to ratepayers.

Therefore, the proposed rate consolidation is in the public interest.

D. Stay Out

The settlement at ¶ 11(f and i) provides that the Little Washington divisions that are the subject of this proceeding will not file for another base rate increase before November 1, 2012, provided that, in the interim, the company's rates are not directly and substantially affected by changes in regulatory or legislative requirements. This stay out would not have been possible

⁵ See, Small Water and Wastewater Systems – Statement of Policy, 52 Pa. Code § 69.711(a)(6), 1996 Pa. PUC LEXIS 47 (Pa. PUC 1996), relating to acquisition incentives.

had the case been litigated. Given the usual seven-month suspension by the Commission of such requests for rate increases, this ensures that the company's customers will enjoy an extended period of rate stability. It also will encourage efficient investment and operation on the part of LWWC. In addition, this stay-out period will assist in the synchronization of the filing periods for all the individual systems within the Northeast and Southeast Divisions, making it easier to consolidate them for single tariff ratemaking. OCA Statement in Support at 3; LWW Statement in Support at 6.

E. Odor Complaints

The settlement at ¶ 11(c) provides that the company will further investigate odor complaints in the Little Washington and Twin Hills Divisions. With respect to Little Washington, the company already has made improvements to the system by planting additional vegetation as a buffer, utilizing deodorant and aerosol misting systems as neutralizers, using chemical additions as a preventative neutralizer and adjusting air patterns within the treatment plant to control outward airflow from the wastewater facility. It will contact an expert with experience in this area, and will provide progress reports to OCA within 90 days and then 180 days after the entry of the Commission's order in this proceeding. In response to one odor complaint from a Twin Hills customer, the company agreed to contact customers near the wastewater plant and request that they advise the company of any problems so that the company can timely investigate and take action if necessary.

While we recognize that these commitments do not satisfy Mr. Kring, a Little Washington customer, they certainly are not only reasonable but fall well within the range of likely outcomes had the case been litigated. It must be remembered that there have been no findings of any violation on LWWC's part with respect to septic odor; Mr. Kring's own testimony establishes that the company has been completely responsive to his concerns. See, Tr. 75, 80. This is a sewer plant and a certain level of odor is unavoidable, especially in the humid weather addressed by Mr. Kring in his testimony and letter opposing the settlement. Since it is the other customers who will bear the burden of capital investment and on-going expenses, the question is whether there are reasonable and cost-effective remediation measures available that the company has refused to undertake. The record in this proceeding does not support such a finding. In fact, the company is to be commended for the efforts it has made

and its responsiveness to customers as well as the commitments it has agreed to in the instant settlement.

F. New Daleville Billing

The settlement at ¶ 11(h) addresses a concern expressed by customers of the New Daleville Division, who currently pay a flat rate, as those customers receive water service from a utility other than Aqua Pennsylvania. The company has agreed to propose a volumetric rate in its next wastewater rate case, assuming that the other utility will share its water volumetric reads. This is a reasonable solution, as obviously that information – necessary for volumetric billing – is not currently available to LWWC. There is no question that volumetric billing is preferable to flat rate billing, as it provides better price signals and promotes conservation.

G. Conclusion

LWWC, OTS and OCA have agreed that the proposed settlement resolves all of the issues in this proceeding. Each of the Joint Petitioners has provided statements in support of the settlement which explain why the settlement is in the public interest. As discussed above, the proposed settlement is manifestly reasonable and in the public interest and therefore should be approved without modification by the Commission. It represents a just and fair compromise of the serious issues raised in this proceeding. The fact that both statutory parties as well as the Borough of Media joined in the proposed settlement is significant. The parties (and their counsel, all of whom exhibited the highest degree of professionalism throughout the proceeding) are to be commended for reaching a comprehensive, consensus agreement.

The settlement resolves all issues regarding the request for an increase in total operating revenues by Little Washington Wastewater Company, as well as rate structure and quality of service issues raised by the parties and customers. The reduction in the proposed revenue requirement increase, the multi-year Media Division revenue phase-in, the movement toward rate consolidation, the stay-out, the provisions relating to odor complaints and the New Daleville rate structure, along with all of the other terms and conditions of the Settlement together represent a fair and reasonable settlement of this proceeding. Resolution of this proceeding by

negotiated settlement removes the uncertainties of litigation, as well as the reduction in rate case expense and the conservation of resources made possible by adoption of the proposed settlement in lieu of litigation. This savings in rate case expense serves the interests of LWWC, its ratepayers, the Commission and the parties.

As to the non-settling parties, Mr. Kring's (C-2010-2217542) opposition to the settlement is addressed above; he provided no evidence that would support further litigation, only his opinion concerning the adequacy of the odor abatement provisions, and therefore his Complaint is denied.⁶ The individual complainants (Mr. Fink at C-2010-2213900, Mr. Oleckna at C-2010-2213719, National Income Tax, Inc. at C-2010-2215189, Mr. Fleming at C-2010-2217951 and Mr. Johnson at C-2010-2217951) were provided a copy of the Joint Petition and offered an opportunity to comment or object to its terms and demonstrate why the case should be litigated rather than settled. None chose to respond. Inasmuch as their due process rights have been fully protected, their respective formal Complaints can be dismissed for lack of prosecution. See, *Schneider v. Pa. Public Utility Comm'n*, 83 Pa.Cmwlth. 306, 479 A.2d 10 (1984) (Commission is required to provide due process to the parties; when parties are afforded notice and an opportunity to be heard, Commission requirement to provide due process is satisfied).

We further recommend that the Commission's investigation at Docket Number R-2010-2207853 be marked closed at this time and that the associated Complaints filed by Irwin A. Popowsky, Consumer Advocate, at Docket No. C-2010-2209923 and the Borough of Media at Docket No. C-2010-2217581 be sustained in part and denied in part, consistent with this Recommended Decision.

We therefore recommend that the Commission approve the Joint Petition as submitted, as expeditiously as possible.

⁶ Mr. Kring in his letter expressed his dissatisfaction with the settlement terms; he did not request further litigation. If he had, his request would have been denied, consistent with the directive in the March 3, 2011, settlement letter, that "[O]bjections to the settlement must include facts, affidavits, argument and relevant legal analysis as substantiation. Continued litigation of a complaint will be considered only if specifically requested and supported by appropriate information and legal argument concerning the implications of denial of a continued opportunity to litigate the matter in lieu of settlement." Of course, the testimony he gave at the telephonic public input hearing was fully considered by us and, we assume, the settling parties, as odor remediation was expressly addressed in the settlement.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this proceeding.

2. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pennsylvania Pub. Util. Comm'n v. C S Water & Sewer Assoc.*, 74 Pa.PUC 767 (1991); *Pennsylvania Pub. Util. Comm'n v. Philadelphia Electric Co.*, 60 Pa.PUC 1 (1985).

3. The settlement rates, terms and conditions contained in the Joint Petition for Settlement of Rate Investigation at Docket No. R-2010-2207853, submitted by Little Washington Wastewater Company – Southeast Consolidated Division, the Office of Trial Staff and the Office of Consumer Advocate, are just, reasonable and in the public interest.

4. The Joint Petition for Settlement of Rate Investigation at Docket No. R-2010-2207853, submitted by Little Washington Wastewater Company – Southeast Consolidated Division, the Office of Trial Staff and the Office of Consumer Advocate, promotes the public interest and therefore should be approved as submitted, without modification.

5. The Commission is required to provide due process to the parties; when parties are afforded notice and an opportunity to be heard, Commission requirement to provide due process is satisfied. *Schneider v. Pa. Public Utility Comm'n*, 83 Pa.Cmwlth. 306, 479 A.2d 10 (1984).

V. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That admitted into the record of the proceeding at Docket No. R-2010-220785 are the following documents:

a) The filing at R-2010-2207853, Supplement No. 74 to Tariff Sewer-Pa. P.U.C. No. 1, including Filings 1 through 7;

b) LWWC St. 1, the direct testimony of Joseph R. Daubert, Aqua America, Inc., Senior Rates Analyst;

c) LWWC St. 2, the direct testimony of Alan D. Roth, LWWC, Manager of Wastewater Operations;

d) LWWC Exhs. DEPR1 and BA1; and

e) The Joint Petition for Settlement of Rate Investigation, including all appendices.

2. That Supplement No. 74 to Tariff Sewer-Pa. P.U.C. No. 1 not be permitted to be placed in effect;

3. That the rates, terms and conditions contained in the Joint Petition for Settlement of Rate Investigation at Docket No. R-2010-2207853, submitted by Little Washington Waste Company– Southeast Consolidated Division, the Office of Trial Staff and the Office of Consumer Advocate be approved and adopted without modification;

4. That upon the Commission's approval of this Settlement, Little Washington Wastewater Company – Southeast Consolidated Division will be permitted to charge the rates for water service set forth in the proposed tariff supplement which is attached to the Joint Petition for Settlement of Rate Investigation at Docket No. R-2010-2207853 as Appendix A designed to produce annual operating revenue not in excess of \$4,190,034 in annual revenues (Step 1) and to produce annual operating revenue not in excess of \$4,336,547 (Step 2), as shown on the proof of revenues attached to the Joint Petition for Settlement of Rate Investigation as Appendix B;

5. That Little Washington Wastewater Company – Southeast Consolidated Division file a tariff supplement in substantially the same form as that attached as Appendix "A" to the Joint Petition for Settlement of Rate Investigation at Docket No. R-2010-2207853 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 Petition for Settlement of Rate Investigation;

6. That the Complaints filed at Docket Nos. C-2010-2209923, C-2010-2213900, C-2010-2213719, C-2010-2215189, C-2010-2217542, C-2010-2217581, C-2010-2217951 and C-2011-2218537 be terminated and marked closed; and

7. That upon acceptance and approval by the Commission of the tariff supplement filed by Little Washington Wastewater Company – Southeast Consolidated Division consistent with this Order, this proceeding at Docket R-2010-2207853 shall be marked closed.

Date: March 23, 2011

Marlane R. Chestnut
Administrative Law Judge

Christopher P. Pell
Administrative Law Judge

Arnold M. Kring v LWWC
Docket No. C-2010-2217564

EXHIBIT C

Kring Exception
to Recommended Decision
LWWC's last rate case
Docket R-2009-2207853

To: PUC

RECEIVED

April 8, 2011

2011 APR 11 AM 10:38

Re: Exceptions to: R-2010-220783

PA P.U.C.
SECRETARY'S BUREAU

C-2010-2209923_{at}

Here are nine copies & an original of my signed exceptions.

I have not sent any to all parties involved since they have apparently agreed to the administrative law judges recommendation ~~to one~~ ~~and~~ besides, I do not have their addresses.

By the way, the sewer odor was very noticeable this morning.

Sincerely,
Arnold D. K. F.

R-2010-2207853

C-2010-2209923 et. al

April 5, 2011

RECEIVED
2011 APR 11 AM 10:38
PA P.U.C.
SECRETARY'S BUREAU

TO: Pennsylvania Public Utilities Commission

From: Arnold M. Kring, Little Washington Wastewater Customer

Re: EXCEPTIONS

Dear PUC Members,

I was not surprised, though disappointed, to read the Administrative Law Judge's recommended decision re: Little Washington Wastewater's request for rate increases totaling almost One Million dollars, making annual revenue in Southeastern in excess of \$4,336,541. This represents an increase of no more than 29.93% as stated by the Administrative Law Judges.

The economic status of LWW's customers must be much greater than I realize if the judges allow such an increase in revenue. Who am I to disagree?

On page 15 of the above-referenced recommendation it states: ".....the company has agreed to accept a lower increase in annual revenues than it had originally requested." How comforting to read that. It almost makes me feel that all LWW customers had won a major victory!

On page 17 it is stated that LWW is moving towards a unified single rate structure for all eight entities here in southeastern Pennsylvania. LWW additionally states that this will protect against unaffordable rates and control administrative costs. That's very comforting. Why doesn't the PUC REQUIRE this to be accomplished within the next year and then examine the new rate structure at that time? If that is such a good idea as stated by LWW, and if the PUC and Office of Consumer Advocate are both "looking out" for the public as well as for the utility, then why not place a time frame in which this consolidation is to be accomplished? It could be completed within one year if we are serious.

Let me say now, that LWW, as I have stated on other occasions, is not a little Mom and Pop operation located in a little wooded area in southeastern Pennsylvania, but a multimillion dollar operation also known as Aqua Pennsylvania and Aqua America.....these names being omitted in all these proceedings.

On page 19 the Administrative Law judges mention the feeble attempts (my description) LWW has made to control the odor situation, ie. aerosols, and air pattern configurations etc.....all to no avail in reducing the odors. FINALLY, after three yearsreally since 2007 when this problem was also addressedthey are now suggesting that you require an expert with experience in this area to

provide progress reports90and 180 days. I am hereby requesting copies of these progress reports, as well as the name, contact information and credentials of the expert assigned this task.

The Administrative Law Judges also mention that I have said that the company has been completely responsive to my concern re: the odor problem. That is an over simplification. All I have stated is that when I smell the odor I e-mail LWW and in each case they thank me for bringing it to their attention, and have e-mailed in return indicating that they received my e-mail and they will continue to work on the problem. If that is "completely responsive to the problem" then so be it.

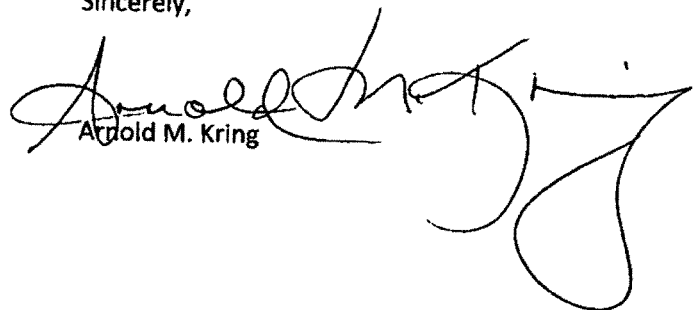
The Administrative Law Judges have conveniently overlooked my recommendation. I have continually suggested that the PUC grant a "stay" of the most recent LWW request and allow a year or perhaps two, for them to clean up the odor problem. When that is accomplished then the PUC may revisit this request for an increase and act accordingly. As it is now, there are no teeth in the order, similar to the order granting an increase back in 2007 when the odor problem also existed.

It has also been stated by the Administrative Law Judges ".....that other customers will bear the burden of capital investment" I certainly realize that, but it is an interesting attempt to place an amount of guilt on yours truly. How different is that from any other situation where capital improvement is made in one area for the benefit of an entire area. This is standard operating procedure for any utility whether it be sewer, water, electric, gas etcwe all share in the capital for the benefit of the whole. I'm sure Aqua America has purchased utilities in poor condition and, by upgrading, spent capital which was passed on to customers completely separate from the recent purchase. I personally resent the condescending attitude of the Administrative Law Judges in this regard.

Again, I would plead that the PUC give my request due consideration independent of the Administrative Law Judges recommendation for the entire southeast region of LWW.

Thank you.

Sincerely,


Arnold M. Kring

From: Arnold M. King
83 Winterberry Dr
Duncansboro, PA
19338

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HARRISBURG, PA 17105

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Photo Document Mailer

Arnold M. Kring v LWWC
Docket No. C-2010-2217564

EXHIBIT D

PUC entered Order

LWWC's last rate case

Docket R-2010-2207853

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held June 9, 2011

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Tyrone J. Christy
Wayne E. Gardner
James H. Cawley

Pennsylvania Public Utility Commission	R-2010-2207853
Office of Consumer Advocate	C-2010-2209923
William Fink	C-2010-2213900
Edward C. Oleckna	C-2010-2213719
National Income Tax, Inc.	C-2010-2215189
Arnold M. Kring	C-2010-2217542
Borough of Media	C-2010-2217581
Jeffrey Fleming	C-2010-2217951
Samuel L. Johnson	C-2010-2218537

v.

Little Washington Wastewater Company
Southeast Consolidated Division

OPINION AND ORDER

BY THE COMMISSION

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Arnold M. Kring to the Recommended Decision (R.D.) of Administrative Law Judges Marlane R. Chestnut and Christopher P. Pell (ALJs), issued on March 30, 2011, in which the ALJs recommended approval of the Joint Petition for Settlement of Rate Investigation (Settlement). Reply Exceptions were filed by Little Washington Wastewater Company – Southeast Consolidated Wastewater Company (LWW-SE or Company).

I. Background

LWW-SE is part of Little Washington Wastewater Company which is a wastewater utility subsidiary of Aqua Pennsylvania, Inc. LWW-SE provides wastewater service to approximately 4,349 residential, commercial and public customers in portions of Chester, Bucks and Delaware Counties, Pennsylvania. LWW-SE is comprised of thirteen divisions, each with individual rate schedules.

II. History of the Proceeding

On October 29, 2010, LWW-SE filed with the Commission Supplement No. 74 to Tariff Sewer - Pa. P.U.C. No. 1 (Supplement No. 74) to become effective January 1, 2011. Supplement No. 74 contained proposed changes in rates, rules and regulations calculated to produce an overall increase of \$1,078,292 in annual operating revenues, or an increase of approximately 32.2% over existing base rates anticipated for the future test year ending June 30, 2011. Supplement No. 74 proposed to increase the rates of eight of LWW-SE's thirteen divisions. The rates of the other five divisions

would remain unchanged.¹ LWW-SE explained that it is using this rate filing as the first step toward the consolidation of LWW-SE wastewater rates. LWW Statement JRD-1 at 3. LWW-SE subsequently filed a revised Supplement No. 74 on November 16, 2010.

On November 12, 2010, the Office of Consumer Advocate (OCA) filed a Public Statement, a Notice of Appearance and a formal Complaint. The Complaint was docketed at C-2010-2209923.

On December 10, 2010, the Masthope Property Owners Association filed a Notice of Appearance.

By Order entered on December 16, 2010, the Commission instituted a formal investigation to determine the lawfulness, justness and reasonableness of existing and proposed rates, rules and regulations, and assigned the proceeding to the Office of Administrative Law Judge for resolution. Pursuant to Section 1308(d) of the Public Utility Code (Code), 66 Pa. C.S.A. § 1308(d), Supplement No. 74 was suspended by operation of law until August 1, 2011, unless permitted by Commission order to become effective at an earlier date.

In addition to a number of Rate Protests filed by individual customers, eight customers filed formal Complaints. These include William Fink (Docket No. C-2010-2213900), Edward Oleckna (Docket No. C-2010-2213719), National Income Tax, Inc. (Docket No. C-2010-2215189), Arnold M. Kring (Docket No. C-2010-2217542),

¹ Information on the specific divisions and the existing and proposed rates is presented in our discussion of the proposed Settlement, *supra*.

Jeffrey Fleming (Docket No. C-2010-2217951), Samuel L. Johnson (Docket No. C-2011-2218537) and the Borough of Media (Media) (Docket No. C-2010-2217581).²

On January 7, 2011, the Commission's Office of Trial Staff (OTS) filed a Notice of Appearance.

A telephonic public input hearing was held on January 28, 2011. Present and participating through counsel were LWW-SE, the OTS, the OCA and Media. Ten individuals, including one that filed a formal Complaint (Mr. Kring) testified. Two of the witnesses were customers of the Little Washington Division; four were customers of the New Daleville Division and four were customers of the Media Division.

On March 2, 2011, the Settlement was filed. Signatories to the Settlement were LWW-SE, the OTS and the OCA (Joint Petitioners). Included with the Settlement was Supplement No. 78 to Sewer PA. P.U.C. No. 1 (Supplement No. 78) containing the proposed Settlement rates, the Proof of Revenues for Supplement No. 78, and Statements of Support of the Settlement (Statements of Support) filed by LWW-SW, the OTS and the OCA.

By letters dated March 3, 2011, the ALJs requested that each of the Complainants indicate if they wish to join, oppose or take no position on the proposed Settlement. By letter received on March 8, 2011, Arnold M. Kring opposed the Settlement, alleging that the settlement provisions regarding odor abatement were inadequate. By letter dated March 14, 2011, Media joined in the proposed Settlement. No other responses were received.

² A Complaint filed by Karen Savini at Docket No. C-2010-2214914 was withdrawn by Ms. Savini by letter received on December 30, 2010. The Complaint was closed by the Commission on February 16, 2011.

By Recommended Decision issued March 30, 2011, the ALJs recommended, *inter alia*, that the Settlement be approved without modification. Exceptions to the Recommended Decision were filed, but not served, by Arnold M. Kring on April 11, 2011. By letter dated April 12, 2011, Mr. Kring's Excerptions were served by the Commission's Secretary. Reply Exceptions were filed by LWW-SE on April 21, 2011.

III. Discussion

A. Rate of Return

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. *Pennsylvania Gas and Water Co. v. Pennsylvania 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 too high or too low by changes

affecting opportunities for investment, the money market and business conditions generally.

Bluefield, 262 U.S. at 692-3.

The ALJs recommended, *inter alia*, that we adopt the Settlement which does not make any specific findings regarding a fair rate of return. Instead, the Parties to the Settlement request that the Commission find that specific increases in annual water and wastewater service revenue, and corresponding changes in rates are fair, just and reasonable, and, therefore, in the public interest. By making that request, the Parties agree that the rates set forth in the Settlements are designed to yield a fair rate of return.

B. Burden of Proof

A public utility has the burden of proof to establish the justness and reasonableness of every new proposed rate. The standard to be met by the public utility is set forth in the Code at 66 Pa. C.S. § 315(a). It provides in pertinent part:

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.

In rate proceedings, the burden of proof does not shift to parties challenging the rate filing. Rather, the utility's burden of proof to establish the justness and reasonableness of every component of its rate request is an affirmative one and the burden of proof remains with the public utility throughout the course of the rate proceeding. The Courts have held that there is no similar burden placed on other parties to justify a proposed adjustment to the utility's filing. *Berner v. Pa. PUC*, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955). Therefore, LWW-SE has the burden of proving that the proposed rates, rules and regulations are just and reasonable under the Code.

C. Terms of the Settlements

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, M-00031768 (January 7, 2004); *Pa. PUC v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

The following discussion is intended to be a summary of the terms of the Settlement and, accordingly, not every detail has been reflected. Consequently, the omission of any details of the Settlement should not be interpreted as amending the provisions of the Settlement.

1. Proposed Settlement Rates

Through the Settlement, LWW-SE has agreed to accept a lower increase in annual revenues than it had originally requested. Paragraphs 11.a. and e. of the Settlement provide that LWW-SE may establish rates that produce additional annual operating revenues of \$999,000 (\$852,314 in the first year, \$146,686 in the second year) rather than the amount of \$1,078,292, as originally requested. The incremental increase in the second year is the result of the two-step increase proposed for the Media Division. The proposed rates are designed to produce annual revenue not to exceed \$4,336,541, an increase over current revenue of 29.93%. Settlement at 4 and 12. If adopted, the Settlement would result in the following increases in the monthly facility charges and the volumetric charges for eight of the Company's thirteen divisions.

Current and Proposed Rates per the Settlement by Division

Meter Size / Customer Class		Monthly Facility Charge		Volumetric Charge per 1,000 gallons	
		Current	Proposed	Current	Proposed
Media					
5/8"	Year 1	\$5.07	\$14.30	\$3.20	\$5.20
	Year 2		\$15.95		\$5.77
3/4"	Year 1	\$7.20	\$22.50	\$3.20	\$5.20
	Year 2		\$25.00		\$5.77
1"	Year 1	\$12.82	\$34.50	\$3.20	\$5.20
	Year 2		\$38.00		\$5.77
1 1/2"	Year 1	\$28.94	\$80.25	\$3.20	\$5.20
	Year 2		\$89.00		\$5.77
2"	Year 1	\$51.34	\$148.50	\$3.20	\$5.20
	Year 2		\$165.00		\$5.77
3"	Year 1	\$115.00	\$327.50	\$3.20	\$5.20
	Year 2		\$364.00		\$5.77
4"	Year 1	\$205.35	\$534.50	\$3.20	\$5.20
	Year 2		\$594.00		\$5.77
Greens at Penn Oaks					
Residential		\$90.00	\$93.25	\$1.50	\$3.75
Twin Hills					
Residential		\$47.00	\$54.00	\$1.76	\$3.05
New Daleville					
Residential		\$66.67	\$70.64	none	none

Current and Proposed Rates per the Settlement by Division (continued)

Customer Class	Monthly Facility Charge		Volumetric Charge per 1,000 gallons	
	Current	Settlement	Current	Settlement
Newlin Green				
Residential	\$90.00	\$110.00	\$1.50	\$7.50
Peddlers View				
Residential	\$49.00	\$54.00	\$4.75	\$5.05
Little Washington				
Residential	\$67.00	\$74.00	\$5.15	\$5.70
Chesterdale³				
Residential	\$42.00	\$43.00	\$2.40	\$3.00

Source: Settlement Paragraph 11.d. at 5-12.

The Settlement contains the following information that reflects the impact the proposed Settlement rates will have on “typical” residential customers in the eight divisions that would experience a rate increase.

³ This division is referred to as the Chesterdale Division in the Settlement but is entitled the Willistown Woods Division in the Company’s tariff. Supplement No. 78 at Thirty-Ninth Revised Page No. 2 and Sixth Revised Page No. 4A.

Typical Residential Monthly Consumption and Rates by Division

	Consumption (gallons)	Current Rate	Proposed Rate	Settlement Rate	Increase at Settlement Rates
Media	3,800	\$17.23	\$38.75	Year 1 \$34.06	97.68%
				Year 2 \$37.88	11.20%
Greens at Penn Oaks	3,400	\$95.10	\$108.26	\$106.00	11.46%
Twin Hills	4,400	\$54.74	\$69.08	\$67.42	23.16%
New Daleville	Flat Rate	\$66.67	\$90.00	\$70.64	5.95%
Newlin Green	6,800	\$100.20	\$165.04	\$161.00	60.68%
Peddlers View	4,700	\$71.33	\$79.68	\$77.74	8.99%
Little Washington	3,500	\$85.03	\$96.00	\$93.95	10.50%
Chesterdale	3,200	\$49.68	\$54.34	\$52.60	5.88%

Source: Settlement Paragraph 11.d. at 5-12.

In its Statement of Support, the OTS submitted that the issues identified for investigation in its Prehearing Memorandum have been satisfactorily resolved through discovery and discussions with the Company, and the resolutions are incorporated into the Settlement. OTS Statement in Support at 7. The OTS stated that the Settlement provides that the customer and volumetric charges in the Company’s proposed tariffs will be moderated to reflect “the proper balance of the nature of the costs of providing wastewater service.” The OTS averred that maintaining the proper customer charge benefits ratepayers by shifting the additional costs associated with the level of use to the associated volumetric charge. The OTS argued that it is important to allow the utility to recover the fixed portion of providing service in the customer charge, while protecting ratepayers by ensuring that any costs not associated with wastewater service have been

eliminated. The OTS concluded that the negotiated terms of the Settlement Agreement accomplish these goals and it, therefore, recommended that the Settlement be approved without modification. *Id.* at 6.

The OCA stated that the Settlement attempts to design reasonable allocations for rate increases given the circumstances of each division. The OCA explained that, although this produces inconsistent increases and rates from one division to the next, it anticipates that this pricing movement sets the stage for avoiding rate shock as the Company migrates toward full consolidation of the LWW-SE divisions into one single-tariff rate. OCA Statement in Support at 4.

As part of their recommendation to adopt the rates set forth in the Settlement, the ALJs note that the requested revenue increase represents an amount which would be within the range of possible outcomes has the case been fully litigated. The ALJs found that the increased level of revenues agreed to by the Parties allows the recovery of prudently incurred expenses, provides the Company with the opportunity to earn a reasonable return on the value of assets used and useful in serving the public, and results in rates that are just and reasonable. The ALJs concluded that the Settlement, therefore, appropriately balances the interests of the Company, its investors and its customers. R.D. at 17.

On review, we concur with the ALJs and the Parties that rates set forth in the Settlement should be adopted. Aside from the specific issues included in the Settlement, discussed *infra*, a settlement of this nature does not address ratemaking issues other than proposed final revenue requirements and proposed final rates. However, our review of the information submitted in support of the proposed rates, and the other information developed in the record of this proceeding, supports our conclusion that the level of revenues and proposed rates included in the Settlement are just reasonable and in the public interest.

2. Rate Consolidation

Paragraph 11.b. of the Settlement provides that, “[t]he LWW-SE will have a single cost of service and one revenue requirement for the thirteen divisions included in the filing on a going forward basis.” Settlement at 4. The Company explained that consolidation of the thirteen divisions will align the accounting and, ultimately, allow movement toward a single rate structure for LWW-SE. The Company stated that its goal is to adopt rates that reflect a unified rate structure for its multiple wastewater divisions. LWW-SE also explained that, under consolidated pricing, customers pay a utility the same rate for similar service, regardless of the physical location of their service area. LWW-SE averred, *inter alia*, that many of its stand-alone divisions need major capital improvements and that a consolidated rate structure can do the following: (1) minimize rate shock; (2) protect against unaffordable rates; (3) address small system viability issues; and (4) control administrative costs. LWW-SE Statement of Support in Support at 4-5.

The ALJs noted that a similar rate consolidation was approved by the Commission with respect to LWW’s Northeast Division in 2009. *See Pa. PUC v. Little Washington Wastewater – Northeast PA Consolidated*, Docket No. R-2008-2081738, (Opinion and Order entered September 24, 2009). The ALJs also opined that the proposed consolidation of rates promotes the Commission’s general policy of encouraging single-tariff pricing as set forth at 52 Pa. Code § 69.711(a)(6). The ALJs stated that the Commission discussed the following benefits of single-tariff pricing in *Pa. PUC v. Western Pennsylvania Water Co.*, 72 PUR 4th 103, 147-48 (1986):

1. A larger rate and revenue base ameliorates the impact of major capital additions needed from time to time in every service area;

2. A larger revenue base promotes flexibility in timing and financing major capital additions;

3. The impact of instability resulting from changes in sales volumes is mitigated when the effect of such volumetric factors is spread over a larger economic base; and

4. The reduction of the number of accounting units and the number of individual rate filings results in administrative efficiency with a potential to reduce costs to ratepayers.

R.D. at 17-18.

For all of the reasons presented *supra*, we concur that a gradual progression toward rate consolidation for the thirteen LWW-SE divisions is in the public interest.⁴ We note that the instant Settlement only provides for a single cost of service and single revenue requirement for the thirteen divisions on a going forward basis. Consequently, future steps toward rate consolidation will be addressed by the Commission and the Parties as part of subsequent LWW-SE rate filings.

3. Malodor Remediation

Paragraph 11.c. of the Settlement includes the following provisions to address odor complaints in the Little Washington and Twin Hills Divisions:

c. LWW-Southeast will further investigate odor complaints in the Little Washington and Twin Hills Divisions. The Company will contact an expert with experience in controlling wastewater odors for assistance in resolving this issue in the Little Washington Division and will provide a malodor remediation progress report to the OCA within 90 days and at 180 days after the Commission's entered order approving the Settlement. In the Twin Hills

⁴ As discussed *infra*, Complainant Arnold Kring has raised an issue regarding the pace of LWW-SE's migration towards consolidated rates.

Division, a customer that resides approximately 750 feet from the plant complained about odor. The Company will contact customers nearby the plant and request that they advise the Company when there are any odor issues so the Company can determine the source of any such odors. If the Company cannot correct the issue, the Company will contact an expert for advice in resolving any possible odor issues.

Settlement at 4-5.

The proposed resolution of the odor complaint at the Little Washington Division has been challenged in the Exceptions of Complainant Arnold Kring. Accordingly, the merits of this component of the Settlement will be addressed in our discussion of the Exceptions, *infra*.

4. Stay Out

Paragraphs 11.f. and i. of the Settlement provide that LWW-SE will not file for another base rate increase before November 1, 2012, provided that, in the interim, the Company's rates are not directly and substantially affected by changes in regulatory or legislative requirements. Settlement at 12-13.

The OCA stated that this approximate eighteen-month stay-out period will provide an extended period of rate stability for LWW-SE's customers and will encourage efficient investment and operation on the part of the Company. The OCA also averred that this stay-out period will also assist in the synchronization of the filing periods for all the individual divisions within LWW-SE. OCA Statement in Support at 3.

On review, we concur with the OCA. The stay-out period provides an important degree of rate stability for LWW-SE's ratepayers and also helps ensure that the migration to consolidated rates will occur at a reasonable pace.

5. Volumetric Billing for New Daleville

As indicated, *supra*, under the proposed Settlement, customers in the New Daleville division would pay a flat rate of \$70.64 per month for wastewater service. LWW-SE is currently unable to bill New Daleville customers on a volumetric basis because they receive water service from a utility other than LWW-SE's affiliate, Aqua Pennsylvania. LWW-SE explained that, as part of the Settlement (Paragraph 11.h.), it has agreed to propose a volumetric rate for the New Daleville Division in its next rate filing, assuming that the water provider will share the volumetric reads with the Company. NWW-SE Statement in Support at 6.

The ALJs conclude that there is no question that volumetric billing is preferable to flat rate billing, as it provides better price signals and promotes conservation. R.D. at 20. We agree. In addition to encouraging the conservation of water and wastewater services, volumetric billing also results in a more equitable distribution of the variable costs of wastewater service among ratepayers.

D. Exceptions to the Recommended Decision

Initially, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania, et al. v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

1. Pace of Rate Consolidation

As discussed *supra*, Paragraph 11.b. of the Settlement provides that LWW-SE will have a single cost of service and a single revenue requirement for the thirteen divisions for future rate filings with the Commission. Settlement at 4.

This alignment of the accounting for the thirteen divisions is the first step in a movement toward a single rate structure within LWW-SE.

In his Exceptions, Arnold Kring questions why the Commission does not require this to be accomplished within the next year and then examine the new rate structure at that time. Mr. Kring argues that if rate consolidation “is such a good idea as stated by [LWW-SE], and if the PUC and [OCA] are both ‘looking out’ for the public as well as the utility, then why not place a time frame in which this consolidation is to be accomplished?” Mr. Kring avers that “[i]t could be completed within one year if we are serious.” Kring Exc. at 1.

One of the Commission’s primary concerns in addressing the migration toward consolidated rates is the potential for sudden, significant changes in customers’ rates commonly known as “rate shock.” As reflected in the current and proposed settlement rates for the eight LWW-SE divisions presented *supra*, there is a considerable variation in the current and proposed monthly rates across those eight divisions. We note that expedited migration to consolidated rates, as proposed by Mr. Kring, would likely subject a number of customers to significant changes in their monthly bills. We believe that the alignment of the accounting of the Company’s thirteen divisions in the next rate proceeding coupled with the stay-out provision set forth in the Settlement establish an appropriate progression toward consolidated rates for LWW-SE. Accordingly, Mr. Kring’s Exception is denied.

2. Malodor Remediation as a Condition of Rate Increase

As noted, Complainant Arnold Kring also excepts to the ALJs’ recommendation that we adopt a provision of the Settlement that addresses the odor complaints at Little Washington and Twin Hills Divisions. As discussed *supra*, the Settlement provides LWW-SE will further investigate odor complaints in the Little

Washington and Twin Hills Divisions. The Company will contact an expert with experience in controlling wastewater odors for assistance in resolving this issue in the Little Washington Division and will provide malodor remediation progress reports to the OCA within 90 days and at 180 days after the Commission enters an Order approving the Settlement. Settlement at 4-5.

The ALJs noted that, in response to Mr. Kring's concerns regarding odors coming from the treatment facility at the Little Washington Division, the Company already has made improvements. These improvements include: (1) planting additional vegetation as a buffer; (2) utilizing deodorant and aerosol misting systems as neutralizers; (3) using chemical additions as a preventative neutralizer; and (4) adjusting air patterns within the treatment plant to control outward airflow from the wastewater facility. The ALJs observed that there have been no findings of any violation on the Company's part with respect to "septic" odor and that Mr. Kring's own testimony establishes that the Company has been completely responsive to his concerns (Tr. 75, 80).

The ALJs stated that this is a sewer plant and that a certain level of odor is unavoidable, especially during humid weather as addressed by Mr. Kring in his testimony and letter opposing the Settlement. The ALJs opined that it is the other customers who will bear the burden of capital investment and the on-going expenses of odor remediation. Accordingly, the ALJs stated that the question is whether there are reasonable and cost-effective remediation measures available that the Company has refused to undertake. The ALJs concluded that the record in this proceeding does not support such a finding. The ALJs submitted that the Company is to be commended for the efforts it has made up to this point and its on-going responsiveness to its customers, as well as the commitments it has agreed to in the instant Settlement. R.D. at 19-20.

In his Exceptions, Mr. Kring objects to the ALJs' characterization that LWW-SE completely has been responsive to the odor problem. Mr. Kring explains that

when he smells the odor, he alerts LWW-SE by email and the Company responds by thanking him for bringing it to its attention and indicating that it will continue to work on the problem. Mr. Kring requests that he receive copies of the malodor remediation progress reports from the odor expert that the Company will provide to the OCA within 90 and 180 days following the date of entry of this Opinion and Order. Kring Exc. at 2.

Mr. Kring also argues that the ALJs have overlooked his recommendation that the Commission grant a stay on the instant rate request for a year or two to allow LWW-SE time to clean up the odor problem. Mr. Kring avers that like LWW-SE's last rate order when the odor problem existed, there is "no teeth" in the Settlement to address the problem. *Id.*

We concur with Mr. Kring's Exceptions to the extent that we agree that the odor problem needs to be addressed in timely manner. While we are not inclined to make the resolution of the odor problem in the Little Washington and Twin Hills Divisions a condition for approving the rates set forth in the instant Settlement, we want to ensure that the most economical and effective means of odor control will be explored and implemented prior to the Company's next rate filing. The provision of the Settlement that requires the utilization of an expert and the submission of progress reports to the OCA in 90 and 180 days after the date of entry of this Opinion and Order is an appropriate first step to that end. However, independent of our approval of the Settlement, we will direct LWW-SE to submit, as part of its next base rate filing, a comprehensive report of its odor remediation activities at the Little Washington and Twin Hills Divisions. In the event that the odor problems persist, these reports shall serve as the basis to develop a record to support findings of whether further remediation activities are warranted.

IV. Conclusion

Consistent with the discussion *supra*, and based upon our review of the record before us, the supporting statements of LWW-SE, the OTS and the OCA, and the Recommended Decision of the ALJs, we conclude that the Settlement results in rates, terms and conditions that are just, reasonable and in the public interest and are in accord with the rules and regulations of this Commission and the provisions of the Public Utility Code. Accordingly, we shall adopt the Recommended Decision, consistent with this Opinion and Order, and approve the Settlement. Additionally, we shall grant the Exceptions of Arnold Kring to the extent that LWW-SE shall submit a report on its odor remediation activities as part of its next base rate filing, and deny the Exceptions in all other regards; **THEREFORE:**

IT IS ORDERED:

1. That the Exceptions of Arnold M. Kring, to the Recommended Decision of Administrative Law Judges Marlane R. Chestnut and Christopher P. Pell, are granted in part, and denied in part, consistent with this Opinion and Order.
2. That the Recommended Decision of Administrative Law Judges Marlane R. Chestnut and Christopher P. Pell, issued March 30, 2011, is adopted to the extent consistent with this Opinion and Order.
3. That Supplements No. 74 to Tariff Sewer – Pa. P.U.C. No. 1, which have been found to be unjust and unreasonable and, therefore, unlawful, shall not be placed into effect.
4. That the Joint Petition for Settlement of Rate Investigation, filed by Little Washington Wastewater Company – Southeast Consolidated Division, the Office

of Trial Staff and the Office of Consumer Advocate on March 2, 2011, is approved, without modification.

5. That Little Washington Wastewater Company – Southeast Consolidated Division is hereby authorized to file tariffs, tariff supplements, or tariff revisions containing rates, rules and regulations, consistent with Appendix A of the Joint Petition for Settlement of Rate Investigation filed by Little Washington Wastewater Company – Southeast Consolidated Division, the Office of Trial Staff and the Office of Consumer Advocate designed to produce annual operating revenue not to exceed \$4,190,034 during the first year that the tariffs are in effect and annual operating revenue not to exceed \$4,336,547 thereafter.

6. That Little Washington Wastewater Company – Southeast Consolidated Division's tariffs, tariff supplements, or tariff revisions may be filed upon less than statutory notice and, pursuant to the provisions of 52 Pa. Code §§ 53.31 and 53.101, may be filed to be effective for service rendered on and after the date of entry of this Opinion and Order.

7. That Little Washington Wastewater Company – Southeast Consolidated Division shall file detailed calculations with its tariff filings, which shall demonstrate to the Commission that the filed rates comply with the proof of revenue, in the form and manner customarily filed in support of compliance tariffs.

8. That the Complaint filed by the Office of Consumer Advocate, docketed at C-2010-2209923, is sustained to the extent consistent with this Opinion and Order, and otherwise, is denied and dismissed.

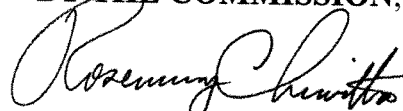
9. That the following Complaints are sustained to the extent consistent with this Opinion and Order, and otherwise, are denied and dismissed:

- a. William Fink at C-2010-2213900.
- b. Edward C. Oleckna at C-2010-2213719
- c. National Income Tax, Inc. at C-2010-2215189
- d. Arnold M. Kring at C-2010-2217542
- e. Borough of Media at C-2010-2217581
- f. Jeffery Fleming at C-2010-2217951
- g. Samuel L. Johnson at C-2010-2218537

10. That as part of its next base rate filing, Little Washington Wastewater Company – Southeast Consolidated Division shall submit a report of its odor remediation activities at the Little Washington and Twin Hills Divisions.

11. That, after acceptance and approval by the Commission of the tariff revisions filed by Little Washington Wastewater Company – Southeast Consolidated Division, the investigation at Docket Nos. R- 2010-2207853 shall be terminated and the record shall be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 9, 2011

ORDER ENTERED: June 9, 2011