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June 13, 2013

*Via Electronic Filing*

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

In re: Docket No. R-2012-2315536, *et al.*  
Pa. P.U.C. *et al.* v. Imperial Point Water Service Company

Dear Secretary Chiavetta:

We are counsel for Imperial Point Water Service Company in the above matter and are enclosing for filing the Company's Supplemental Statement in Support of Joint Petition for Settlement of Rate Investigation. Copies of the Supplemental Statement are being served upon the persons and in the manner set forth on the certificate of service attached to it. Please contact me if you have any questions concerning this matter.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By

Thomas T. Niesen

Encl.

cc: Certificate of Service (w/encl.)  
David Wurst (w/encl.)

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2012-2315536
Office of Consumer Advocate	:	C-2013-2344260
Otylia L. Schenker	:	C-2013-2340419
Georgiann Tressler	:	C-2013-2341458
George Maslar	:	C-2013-2348063
	:	
v.	:	
	:	
Imperial Point Water Service Company	:	

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**SUPPLEMENTAL STATEMENT OF IMPERIAL POINT WATER SERVICE  
COMPANY IN SUPPORT OF JOINT PETITION FOR  
SETTLEMENT OF RATE INVESTIGATION**

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**TO ADMINISTRATIVE LAW JUDGE KATRINA L. DUNDERDALE:**

AND NOW, comes Imperial Point Water Service Company (“IPWSC” or “Company”), by its attorneys, and respectfully submits the following supplemental statement in support of the Joint Petition for Settlement of Rate Investigation (“Joint Petition”) submitted to the Public Utility Commission (“Commission”) by IPWSC, the Bureau of Investigation and Enforcement (“I&E”) and the Office of Consumer Advocate (“OCA”).

**Introduction**

1. IPWSC is a Pennsylvania public utility that provides water service to the public in Girard Township, Erie County, Pennsylvania.
2. On October 31, 2012, IPWSC filed Supplement No. 16 to Tariff Water-Pa. P.U.C. No. 2 (“Supplement No. 16”) to be effective December 30, 2012. If approved,

Supplement No. 16 would increase IPWSC's annual water revenue by \$61,321 based on a future test year ending December 31, 2012.

3. IPWSC, I&E and the OCA (the "Settling Parties") have agreed that this rate proceeding can be settled without further litigation under the terms set forth in the Joint Petition. The Settling Parties have agreed *inter alia* that IPWSC may file a tariff supplement increasing its annual revenue by \$46,800, in lieu of the proposed \$61,321 annual revenue increase contained in Supplement No. 16. Mediation preceded the filing of the Joint Petition.

**The Proposed Settlement is Consistent With Commission Regulations and In The Public Interest. It Minimizes Cost Prohibitive Litigation and Administrative Burden.**

4. It is the stated policy of the Commission to encourage parties in contested proceedings to enter into settlements.<sup>1</sup> Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. 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 replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings. Such savings directly benefit the individual parties to a proceeding. At the same time, these savings also benefit the Commission and all ratepayers of the utility, who otherwise may have to bear the financial burden such litigation necessarily entails.<sup>2</sup> The avoidance of further litigation expense in this proceeding is in the public interest.

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<sup>1</sup> 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

<sup>2</sup> *Pa. P.U.C. v. The Newtown Artesian Water Company*, Docket No. R-2011-2230259, Recommended Decision of Administrative Law Judge Elizabeth H. Barnes dated September 20, 2011 ("*Recommended Decision of*

5. The Joint Petition proposes a settled resolution of all issues in the rate proceeding. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest.<sup>3</sup> The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest.<sup>4</sup>

6. The Settling Parties agree that the Joint Petition is in the public interest because it (a) minimizes cost prohibitive litigation and administrative burden; (b) recognizes ratepayers' concerns; and (c) provides IPWSC with additional and necessary cash flow.<sup>5</sup> These three considerations are traditionally recognized as matters that further the public interest in settlement of rate proceedings.<sup>6</sup> Each of these considerations applies here where the settlement minimizes cost prohibitive litigation and administrative burden as set forth above and recognizes ratepayers' concerns and provides IPWSC with additional and

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*ALJ Barnes*"), mimeo at 9; *Pa. P.U.C. v. Reynolds Disposal Company*, Docket No. R-2010-2171339, Recommended Decision of Administrative Law Judge Conrad A. Johnson dated January 11, 2011 ("*Recommended Decision of ALJ Johnson*"), mimeo at 12; *Pa. P.U.C. v. Lake Spangenberg Water Company*, Docket No. R-2009-2115743, Recommended Decision of Administrative Law Judge Ember S. Jandebour dated March 2, 2010 ("*Recommended Decision of ALJ Jandebour*"), mimeo at 11; *Pa. P.U.C. v. Reynolds Water Company*, Docket No. R-2009-2102464, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated February 16, 2010 ("*Recommended Decision of ALJ Dunderdale*"), mimeo at 5.

<sup>3</sup> *Recommended Decision of ALJ Barnes*, mimeo at 9, citing *Pa. P.U.C. v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) and *Pa.P.U.C. v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

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

<sup>5</sup> Joint Petition, paragraph 13.

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

necessary cash flow as set forth below. The Settling Parties also filed individual statements in support of the Joint Petition.<sup>7</sup>

7. IPWSC submits that the proposed comprehensive resolution of this proceeding, presented by the Settling Parties after review and analysis and Commission encouraged mediation,<sup>8</sup> is in the public interest and consistent with the requirements of the Public Utility Code and established Commission policy. While it may not always be the case, it is the case here that the participation of the Settling Parties in Commission encouraged mediation supports the conclusion that the Joint Petition furthers and is consistent with the public interest.

**The Financial Data Submitted By IPWSC Supports the Settlement Increase Which Will Provide the Company With Additional and Necessary Cash Flow**

8. Under the presently suspended Supplement No. 16, the quarterly cost of water service to a typical residential customer using 5,000 gallons of water per quarter would have increased from \$41.80 to \$60.63. Under the Joint Petition, the quarterly cost of water service to such residential customer will increase from \$41.80 to \$52.85.

9. As is common in general base rate proceedings, the settlement is “black box,” meaning that the parties have not negotiated each and every revenue and expense line item but rather have, after considerable effort, been able to agree upon a final revenue number based on their individual revenue and expense analysis.

10. The financial data submitted by IPWSC in support of Supplement No. 16 fully supported the original, as-filed for annual increase of \$61,321 and, consequently, fully

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<sup>7</sup> IPWSC also filed this Supplemental Statement in Support.

<sup>8</sup> The Commission’s Order entered January 24, 2013, in this matter assigned the case to the Office of Administrative Law Judge for Alternate Dispute Resolution, if possible.

supports the substantially reduced increase of \$46,800 provided for in the Joint Petition. The financial data was submitted in the form of a traditional rate base/rate of return analysis. For the test year ending December 31, 2012, the Company projected net operating revenue of (\$39,272) at present rates.

11. In regard to the reasonableness of the proposed settlement terms and the public interest question, it is important to note as a threshold matter and as explained in the supporting information for Supplement No. 16 that IPWSC could have calculated its revenue requirement based on an overall rate of return of 8.72%. IPWSC, however, voluntarily decided to mitigate the rate of return down to 4.62%. This voluntary effort to mitigate the effect of its rate increase reduced the as-filed for increase below what it otherwise might have been.

12. In addition to IPWSC's voluntary effort to mitigate the effect of its rate increase, IPWSC has agreed in settlement to a substantial reduction in its rate request from the as-filed for annual increase of \$61,321 to the settlement annual increase of \$46,800 as set forth above. Although less than the increase supported by IPWSC's filing, the Company accepts the settlement increase as a reasonable and appropriate resolution of this rate proceeding which should be sufficient to allow it to continue to provide reasonable and adequate service and to implement the settlement commitments earlier than would be the case with full term litigation.<sup>9</sup>

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<sup>9</sup> The public interest is furthered when a utility is provided with sufficient revenue to meet its obligations under Section 1501 of the Public Utility Code, 66 Pa. C.S. §1501, to provide safe, reliable and adequate service. The courts have long recognized that, in order to function in the public interest, the utility must have rates which are sufficient to recover legitimate operating costs, and at the same time not result in an excessive return. *Recommended Decision of ALJ Barnes*, citing *Orlosky v. Pa. P.U.C.*, 171 Pa. Superior Ct. 409, 89 A.2d 903 (1952).

13. Considering all of the foregoing, IPWSC submits that it is clear that the Joint Petition and the revenue level that is reflected in the settlement rates are in the public interest. IPWSC could have easily supported a higher revenue requirement if it had proceeded to litigation. Its decision, however, to avoid litigation and mediate a settled resolution avoids costs and expenses as aforesaid. Under the totality of the circumstances presented in this case, IPWSC believes that cost avoidance is in its interest and also the interest of its customers. The settlement, moreover, will provide IPWSC with additional and necessary cash flow.

### **The Settlement Addresses Ratepayer Concerns**

The Joint Petition addresses matters of water quality and quantity raised by ratepayers at the public input hearing.<sup>10</sup> Addressing ratepayer concerns is a traditionally recognized part of the public's interest in settlement.<sup>11</sup> The settlement terms, which are summarized as follows, are the result of the mediation efforts of the active Settling Parties. In each instance, the Company accepts the settlement terms as reasonable and appropriate efforts in settlement to address ratepayers' concerns and submits that they are consistent with the public interest:

#### **System Flushing**

IPWSC will continue its practice of flushing its system at least two times per year (usually in April and October) and provide customers with advance notice of flushing as set forth in the Joint Petition.

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<sup>10</sup> Joint Petition, paragraph 10 (b) through 10 (h).

<sup>11</sup> See, for example, *Recommended Decision of ALJ Jandebour*, mimeo at 12 – 15 and *Recommended Decision of ALJ Barnes*, mimeo at 9 – 10, cited in footnote 6 above, wherein Judge Barnes concludes that the joint petition in settlement of a water rate proceeding is in the public interest, in part, because it recognizes ratepayers' concerns.

### **Water Pressure**

IPWSC will install a continuous pressure recording gauge at the blow off at 562 Shadybrook Circle. The gauge will stay in place for 30 days. If the recorded data establishes that pressure is below Commission standards at 52 Pa. Code § 65.6, IPWSC will add a 6-inch line from the outer circle of Shadybrook into the center of the circle and tie it into the existing 2-inch line. IPWSC will comply with Commission requirements regarding pressure surveys at 52 Pa. Code §65.6 and use the pressure recording gauge to conduct the pressure surveys. It will record complaints regarding low pressure in its log of customer complaints.

### **Unaccounted For Water**

IPWSC will begin to estimate actual water lost during breaks in mains and services rather than using the same estimate in preparing its annual report to the Commission.

### **Sulfur – Rotten Egg – Smell**

Corrosion protection in hot water heaters can produce an environment that is ideal for the production of hydrogen sulfide gas. Although the sulfur or rotten egg smell created in water heaters is not a water contaminant, IPWSC has agreed as part of the settlement of this proceeding to provide a brochure about hot water heaters and sulfur smell to customers who contact the IPWSC office with a complaint of water smelling like rotten eggs. IPWSC also will include language in its next Consumer Confidence Report to inform customers of steps customers with electric hot water heaters can take within their homes to try to address sulfur odor. IPWSC will record requests for sulfur – rotten egg – odor information in its log of customer complaints.

### **Fire Hydrants**

During the use of fire hydrants for fire fighting purposes, IPWSC will attempt to maintain pressure to all customers equal to or in excess of 20 psi.

### **Water Hardness**

IPWSC recently had a test done of the hardness of the water. The test result showed a hardness level of 329 mg/l or 19.22 grains of hardness. Although hardness is not a water contaminant, IPWSC has agreed as part of the settlement of this proceeding to provide hardness information to any customer who contacts the Company with a complaint related to hardness.



IPWSC will record requests for water hardness information in its log of customer complaints.

### **Membership in Pennsylvania Rural Water Association**

IPWSC has joined the Pennsylvania Rural Water Association. Membership in the Association will assist IPWSC in continuing to provide reasonable and adequate service.

### **The Settlement Also Provides for a Rate Case “Stay Out”**

15. IPWSC has agreed as part of the settlement to a thirty (30) month rate case stay out. A rate case “stay out” gives ratepayers a specified level of rate security – two and one half years here – that would not exist absent the stay out. A rate case “stay out” is a traditionally recognized part of the public’s interest in settlement of a rate proceeding.<sup>12</sup>

### **Conclusion**

16. The Joint Petition, which arose only after much discovery and discussion, is the result of mediation between IPWSC, I&E and OCA. The settlement increase will provide IPWSC with additional and necessary cash flow to meet operating expenses. Through the settlement, ratepayer concerns are addressed and the cost and uncertainty of litigation are avoided. IPWSC submits that the Joint Petition is reasonable and in the public interest and should be approved without modification.

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<sup>12</sup> See, for example, *Recommended Decision of ALJ Johnson*, mimeo at 16 and *Recommended Decision of ALJ Dunderdale*, mimeo at 8-9.

WHEREFORE Imperial Point Water Service Company respectfully requests that Administrative Law Judge Katrina L. Dunderdale and the Pennsylvania Public Utility Commission accept the foregoing in support of the Joint Petition for Settlement of Rate Investigation and further that Administrative Law Judge Dunderdale recommend approval of and the Commission approve the Joint Petition for Settlement of Rate Investigation.

Respectfully submitted,

By  \_\_\_\_\_

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Attorneys for  
Imperial Point Water Service Company

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Georgiann Tressler	:	C-2013-2341458
George Maslar	:	C-2013-2348063
	:	
v.	:	
	:	
Imperial Point Water Service Company	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 13<sup>th</sup> day of June, 2013, served a true and correct copy of the Supplemental Statement of Imperial Point Water Service Company in Support of Joint Petition for Settlement of Rate Investigation in the above matter, upon the persons and in the manner indicated below:

**EMAIL AND FIRST CLASS MAIL, POSTAGE PREPAID**

Honorable Katrina L. Dunderdale Administrative Law Judge Pennsylvania Public Utility Commission Piatt Place, 301 5 <sup>th</sup> Avenue Pittsburgh, PA 15222	Allison Kaster, Prosecutor Office of Trial Staff Pennsylvania Public Utility Commission P. O. Box 3265 Harrisburg, PA 17105-3265
Christine M. Hoover Senior Assistant Consumer Advocate Office of Consumer Advocate 555 Walnut Street Forum Place, 5 <sup>th</sup> Floor Harrisburg, PA 17101-1923	Herbert Nurick, Mediator Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265 (email only)

**FIRST CLASS MAIL, POSTAGE PREPAID**

Otylia L. Schenker 266 Palacade Court Girard, PA 16417	George Maslar 9065 Ridge Road Girard, PA 16417
Georgiann Tressler 116 Honeybrook Circle Girard, PA 16417	

  
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Thomas T. Niesen, Esquire