**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2012-2315536

Office of Consumer Advocate : C-2013-2344260

Otylia L. Schenker : C-2012-2340419

Georgiann Tressler : C-2013-2341458

George Maslar : C-2013-2348063

:

v. :

:

Imperial Point Water Service Company :

**RECOMMENDED DECISION**

Before

Katrina L. Dunderdale

Administrative Law Judge

This Decision recommends the Commission approve the Joint Petition for Settlement of Rate Investigation (the Settlement), which was filed with the Secretary’s Bureau on June 5, 2013, concerning a base rate increase which, if granted at the Public Meeting on October 17, 2013, would become effective on October 25, 2013.

HISTORY OF THE PROCEEDING

On October 31, 2012, Imperial Point Water Service Company (“Imperial Point” or the “Company”) filed Supplement No. 16 to Tariff Water – Pa. P.U.C. No. 2 at Docket No. R‑2012-2315536. Imperial Point proposed to increase annual revenues by $61,321 based on a future test year ending December 31, 2012, which increase represents an approximate 45% increase in annual water revenues. The Company proposed the water rate increase should become effective on or about December 31, 2012 but extended the effective date to January 25, 2013. Imperial Point engages in the business of furnishing water services to approximately 499 residential and commercial usage customers in portions of Girard Township, Erie County, Pennsylvania. A typical residential customer using 10,200 gallons per quarter would see a 45% increase from $57.75 per quarter to $83.77 per quarter, while a commercial customer would see a 45.1% increase in rates from $52.51 per quarter to $76.17 per quarter.

On January 24, 2013, the Commission suspended the proposed tariff supplement docketed at R-2012-2315536 for seven months, or until August 25, 2013, and ordered an investigation into the general rate increases requested by Imperial Point. By the same Order, the Commission assigned this case to the Office of Administrative Law Judge. On February 1, 2013, the Company filed Supplement No. 18 to Tariff Water – Pa. P.U.C. No. 2 which suspended Supplement No. 16 until August 25, 2013. On the same date, the Company filed Supplement No. 19 to Tariff Water – Pa. P.U.C. No. 2 which postponed the effective date of Supplement No. 16 by an additional sixty days, or to October 25, 2013, in order to make use of the Commission’s mediation procedures.

The Commission’s Bureau of Investigation and Enforcement (“BIE”) entered its appearance in this proceeding, in addition to the Office of Consumer Advocate (“OCA”), which also filed a complaint at C-2013-2344260. In addition to the complaint filed by OCA, formal complaints were also filed by three individual ratepayers: Otylia L. Schenker; Georgiann Tressler; and George Maslar at C-2012-2340419; C-2013-2341458; and C-2013-2348063, respectively.

The presiding officer conducted a telephonic prehearing conference on Monday, March 4, 2013 at which the Company, OCA and BIE agreed to a litigation schedule, including scheduling a public input hearing in the service territory. The parties present at the Prehearing Conference unanimously indicated a willingness to engage in a mediation process. On March 4, 2013, Commission Mediator Herbert R. Nurick conducted a mediation session in this matter. On June 5, 2013, the Mediator filed his Report of Mediator with the Secretary’s Bureau which indicated a settlement was reached between the Company, OCA and BIE. After the mediation session, the terms and conditions set forth in the Joint Petition for Settlement were agreed upon by counsel for the Company and the two statutory parties.

On April 11, 2013, a public input hearing was conducted in Fairview, Pennsylvania, which is near the service territory in Girard, Pennsylvania, and at which eleven (11) individuals testified.

On June 5, 2013, the Company submitted the Settlement with the Secretary’s Bureau. The presiding officer received the Joint Petition for Settlement electronically on June 5, 2013 and received it in hard copy on June 7, 2013. The Settlement included the Statements in Support from the Company, OCA and BIE, and all applicable attachments.

On June 6, 2013, OCA sent a copy of the Settlement to the three individual complainants (Otylia L. Schenker, Georgiann Tressler and George Maslar), and on the same date, the presiding officer sent a letter to the three individuals advising them about how to submit a comment or objection to the Settlement. The letter notified the individuals that comments or objections must be received by the presiding officer on or before Monday, June 17, 2013. The presiding officer never received any response from the individual complainants. Therefore, the presiding officer issued an Interim Order on June 19, 2013 and closed the hearing record.

The Settlement includes the Statements in Support of the Joint Petition for Settlement from Imperial Point, BIE and OCA as Appendices F, G and H, respectively. The record also included Supplemental Statement in Support filed by Imperial Point on June 13, 2013.

PUBLIC INPUT HEARING

As noted above, the presiding officer conducted one public input hearing on April 11, 2013 from which one transcript was produced consisting of twenty-eight (28) pages. A summary of the testimonies received that day are highlighted below:

1. Walter Hartman testified he has been a customer for six years and the entire time he has had water that looks normal but smells and tastes like rotten eggs. This problem is sporadic but happens at least once a week. He runs water from the spigot for 15 to 20 minutes when cooking or showering in order to have useable water. In addition, he has trouble with water pressure. He has complained to the water company and to the county Health Board which told him the problem is located inside his residence. His home was built in 1998 and all of his plumbing uses PVC pipe.
2. Keith Meyer testified he has been a customer for 22 years and he agrees with the testimony of Hartman. He has to clean his water tank twice a year due to residue build-up and for the last five years he has noticed a bad rotten egg odor from his water. He contacted the company and the county Health Board, which took water samples but did not provide him with the test results. His home was built in 1973 and he replaced the plumbing in his home with copper piping. He must use a CPAP machine every night using tap water but he has to clean the CPAP machine every week due to a white crusty scale that builds up on the medical device.
3. Attorney James Marsh appeared on behalf of two clients, Paul and Lewanna Luciano, and proposed to submit three exhibits: (1) a letter dated November 29, 2012 from Julio Pazmino at Imperial Point Water Service Company to the attorney’s law firm; (2) a letter to the Commission from his law firm dated December 21, 2012 with an objection to the rate increase and a synopsis of his clients’ positions; and (3) a Petition dated December 27, 2012 which includes signatures from 214 customers of Imperial Point Water Service Company requesting the Commission deny the rate increase request. The exhibits were marked as Public Input Exhibits 1, 2 and 3 and were admitted into evidence over objections from Imperial Point.
4. Paul Luciano testified his wife and he own a mobile home park with 375 “pads” in addition to also owning approximately 40 homes within that park where the tenants are customers of Imperial Point Water Service. He and his wife oppose the rate increase because it’s too excessive especially since the last increase was only six years earlier. As a result of the proposed increase, he has had to increase the rental rates at the mobile home park by $10 per month.
5. Jeremy Douglas testified he became a customer in September 2012. Since that time, the water has had a strong smell of either sulfur or chlorine. He cannot drink the water. He’s had excessive build-up of white scale on his appliances since September and since September has re-plumbed the entire home. Most importantly, he is concerned about the quality of a possible fire response and fire safety because, as a local volunteer fireman, he knows the firemen cannot use the 6-inch water mains in the service territory due to low water pressure. As a result, the fire departments must use a tanker in order to fight fires within the service territory.
6. Greg Bible testified he has been a customer for 33 years and has had to live with stinking water the entire time. He complained to the water company many times over the years but has given up trying due to lack of response from the company. He experiences a lot of trouble with sediment build-up. He must replace the shower heads every six months and must replace coffeemakers frequently. He acknowledged the quality improved a few years ago but the foul smell remains. He opposes the rate increase because there have been previous rate increases but no increases in quality.
7. Joanie Counts testified she has been a customer for 22 years and she has had to deal with low water pressure, scale build-up, sulfur smell and undrinkable water. Her water pressure is so low that often she cannot get the shower to turn on, especially on Saturday mornings. She has had to replace two water tanks in the last four years due to a white ridge of scale. She repeatedly soaks shower heads, and cleans the dishwasher and washer to remove the scale. The sulfur smell gets into her clothes when washing and she has to re-wash all her clothes. She drinks bottled water and uses bottled water for her animals because the water smells and tastes of chlorine. She has complained to the company in the past which tells her that it’s working on the problem and she will see improvements but the 45% requested increase is too much. Her home is a 1991 model with only PVC pipes.
8. Otylia Schenker testified she is a customer who opposes the increase because of service issues. Her water smells of either chlorine or eggs, she replaces her water filter monthly, and had to replace her water tank two years ago and still has white scale problems. She objected to the rate increase because she believes there will not be any improvement in service because there hasn’t been an improvement since the last rate increase.
9. Bruce Jones testified he has been a customer since 2001 and he agreed with the testimonies of the previous individuals. He cannot drink the water in his home, the water smells of sulfur and he has had to spend $1300 to install a water softener. He did not have to pay a “service charge” in 2001 but then the company started charging a “service charge” and his bills doubled. He testified company employees have told him that the company requests a large increase in rates but knows it will only get a little, and he believes what they are asking for is not right. He has not been bothered by a low pressure problem.
10. Jessica Nye testified she agrees with the testimonies of the previous individuals. She smells sulfur in her water but especially smells bleach. Sometimes she must forgo bathing her children due to the strong smell of bleach in the bath water. She purchases her water for drinking elsewhere because she can’t drink the water provided by the water company and it’s not safe.
11. Sally Swanson-Esquivel testified she’s been a customer since 2003 and she agrees with the testimonies of the previous individuals. She has to purchase a new coffeepot every four months due to the sediment left by the water. She will not drink the water unless it’s boiled. She thinks the water is safe but it is not very tasty. She spends a lot of money on bottled water. She believes the rate increase should be denied because it’s wrong and the water company comes in to request more money too frequently.

TERMS OF THE SETTLEMENT

The Settlement is a nine (9) page document containing seventeen (17) numbered paragraphs. Appendix A to the Settlement contains the proposed tariff pages to be filed upon approval of the Settlement. Appendix B contains the proof of revenue statement. Appendix C contains a map of the residential Shadybrook Circle plan with the size of pipes noted. Appendix D contains material the Settlement proposes will be distributed to ratepayers who complain about the smell of sulfur in the water. Appendix E contains an Environmental Fact Sheet to be distributed to ratepayers who complain about the hardness of the water. Appendices F, G and H to the Settlement are the respective statements of Imperial Point, BIE and OCA in support of the Settlement.

The essential terms of the Settlement are contained in Paragraphs 10 and 11:

Terms and Conditions of Settlement

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

a. Revenue Increase

Joint Petitioners respectfully request that the Commission act as soon as possible to approve this Joint Petition and grant IPWSC [“Imperial Point Water Service Company”] special permission to file a tariff supplement in the form attached hereto as Appendix A, to become effective for service on one day’s notice, following the entry of a Commission Order approving this Settlement. The tariff supplement is designed to produce an increase in annual revenue of $46,800, in lieu of the proposed $61,321 increase contained in Supplement No. 16. A proof of revenue is attached hereto as Appendix B.

b. System Flushing

IPWSC will continue its practice of flushing its system at least two times per year (usually in April and October). IPWSC will provide customers with advance notice of system flushing. IPWSC will provide advance notice of system flushing to its commercial and residential development customers, all of which are billed on Billing Cycle A, by notice on the back of its billing postcards. IPWSC will provide advance notice of system flushing to mobile home park customers by placing a notice at the mobile park mail receptacles.

c. Water Pressure

i. Within 90 days after entry of the Commission Order approving this Joint Petition for Settlement, 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. At the end of that period, IPWSC will provide the pressure recorded data to the Joint Petitioners. 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 as pictured in Appendix C. IPWSC will make reasonable efforts to complete the project within 90 days after the conclusion of the 30-day monitoring period subject to adverse weather conditions.

ii. IPWSC will comply with Commission requirements regarding pressure surveys at 52 Pa. Code §65.6. In addition, IPWSC will use the pressure recording gauge discussed above to conduct the pressure surveys. IPWSC agrees that it will send the results of those surveys to Joint Petitioners as well as the Commission’s Bureau of Technical Utility Services.

iii. IPWSC will record complaints regarding low pressure in its log of customer complaints that it must keep in accordance with 52 Pa. Code §65.3.

d. 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.

e. Sulfur – Rotten Egg – Smell

i. IPWSC will provide information to any customer who contacts its office with a complaint of water smelling like rotten eggs. The information, which is presently available in IPWSC’s office, is attached to this Settlement as Appendix D.

ii. IPWSC will include language (to be agreed to by the Joint Petitioners) 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.

iii. IPWSC will record requests for sulfur – rotten egg – odor information in its log of customer complaints that it must keep in accordance with 52 Pa. Code §65.3.

f. Fire Hydrants

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

g. Water Hardness

i. 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. IPWSC will make the information attached to this Joint Petition for Settlement as Appendix E available to any customer who contacts the Company with a complaint related to hardness.

ii. IPWSC will record requests for water hardness information in its log of customer complaints that it must keep in accordance with 52 Pa. Code §65.3.

h. Membership in Pennsylvania Rural Water Association

IPWSC has joined the Pennsylvania Rural Water Association.

i. Stay Out

IPWSC will not file a general rate increase, as that term is defined in Section 1308(d) of the Public Utility Code, 66 Pa. C.S. §1308(d), prior to thirty (30) months after the entry date of the Commission’s Order approving this Joint Petition for Settlement. IPWSC may, however, file for a change in rates under Sections 1308(a) and (b) of the Public Utility Code, 66 Pa. C.S. §1308(a) and (b) (governing general rate relief), or Section 1308(e) of the Public Utility Code, 66 Pa. C.S. §1308(e) (governing extraordinary rate relief), if a legislative body or administrative agency orders or enacts changes in policy, regulation or statutes which directly and substantially affect IPWSC’s rates.

11. Other Provisions

a. 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 by approximately $18.83, or 45.0%, from $41.80 to $60.63. Under the Joint Petition, the quarterly cost of water service to such residential customer would increase by approximately $11.05, or 26.4%, from $41.80 to $52.85. The quarterly cost of water service to a residential customer using 10,000 gallons per quarter would increase by approximately $18.50, or 32.3%, from $57.20 to $75.70.

Other Settlement Provisions

Other specified terms of the Settlement include the following provisions: (1) the parties submit the Settlement without any admissions against prejudice to positions Imperial Point, BIE or OCA might adopt in subsequent litigation, including litigation of the instant case, if necessary; (2) the Settlement may not be cited as precedent; (3) the Settlement is contingent upon the Commission’s approval of all its terms and conditions; and (4) although the statutory parties do not agree to each claim and/or to each specific rate adjustment, the signatories do agree as to the amount of increase in the annual water revenue, coupled with other provisions included in the Settlement. In the event the Commission does not approve the Settlement, or modifies any of the terms and conditions, Imperial Point, BIE or OCA reserve the right to withdraw from the Settlement upon written notice (Settlement, ¶13). However, if the presiding officer recommends approval of the Settlement, Imperial Point, BIE or OCA waive the filing of Exceptions. They do not waive the filing of Exceptions to any recommended modifications, and reserve the right to file Reply Exceptions in the event any Exceptions are filed (Settlement, ¶14).

DISCUSSION

Commission policy encourages settlements[[1]](#footnote-1) which often eliminate or significantly reduce the time, effort, and expense of litigating a proceeding to its final conclusion. This time, effort and expense can be extensive and expensive if the proceeding, with the resulting Commission decision, includes review by the Pennsylvania appellate courts. Such savings directly benefit the individual parties to a proceeding, the Commission, and the utility’s ratepayers by reducing expenses the utility could claim in future rate cases.

In this proceeding, Imperial Point sought a rate increase designed to increase rates and to produce $61,321 in additional annual revenues. The cost of water service to a typical residential customer using 5,000 gallons per quarter would have increased from $41.80 to $60.63 per quarter under Imperial Point’s original proposal. As shown in Appendix A, the bill for a residential customer using 5,000 gallons of water per quarter, under the Settlement, will now be $52.85, or an increase of 26.4%. In addition, under the original proposal, a customer using 10,000 gallons per quarter would have seen an increase from $57.10 to $82.83, but under this Settlement, the customer’s bill will now be $75.70 per quarter, or an increase of 32.6%. Under these terms in the Settlement, the signatory parties provided for increased annual revenues totaling $46,800, or 22.1%.[[2]](#footnote-2)

Pursuant to the Settlement, Imperial Point will not file another general base rate case for a period of thirty months after the date on which the Commission’s Order approving the Settlement is entered, except for specifically-designated contingencies. This settlement provision is intended to provide a measure of rate stability.

Position of Imperial Point

Imperial Point avers the Settlement is consistent with the Commission’s regulations and is in the public interest because the Settlement minimizes cost prohibitive litigation and administrative burden. The utility points out that settlements in general lessen the time and expense the parties must expend litigating a case while also conserving administrative hearing resources. These savings directly benefit the individual parties to a proceeding but also benefit the Commission and all ratepayers of the utility, who otherwise would have to bear the financial burden such litigation necessarily entails. Avoiding further litigation expenses is in the public interest.

Imperial Point notes the parties all agree the Settlement is in the public interest because the Settlement contains three considerations traditionally recognized as matters that further the public interest in rate proceedings: (a) it minimizes cost prohibitive litigation and administrative burden; (b) it recognizes ratepayers’ concerns; and (c) it provides Imperial Point with additional and necessary cash flow. The utility notes the Settlement is a “black box,” which indicates the parties did not negotiate each and every revenue and expense line item but rather were able to agree upon a final revenue number based on each party’s individual revenue and expense analysis. Imperial Point avers it initially calculated its revenue requirement based on an overall rate of return of 8.72%, however, it voluntarily decided to reduce the rate of return down to 4.62% in an effort to mitigate the effect of its rate increase.

Imperial Point accepts the lower rate increase as a reasonable and appropriate resolution of this rate proceeding which increase Imperial Point believes should be sufficient to allow the utility to continue to provide reasonable and adequate service and to implement the Settlement commitments earlier than would be the case if this rate proceeding had been fully litigated.[[3]](#footnote-3) Under the totality of the circumstances presented in this case, Imperial Point believes this cost avoidance is in its interest and in the interest of its customers, and will provide Imperial Point with additional and necessary cash flow.

The utility points out the Settlement addresses matters of water quality and quantity raised by ratepayers at the public input hearing, and addressing ratepayer concerns is traditionally a recognized part of the public’s interest in settlements. Imperial Point avers it accepts these terms as reasonable and appropriate efforts to address ratepayers’ concerns and submits the Settlement is consistent with the public interest.

Lastly, Imperial Point avers it agreed to a thirty (30) month rate case stay out, which provides ratepayers with a specified level of rate security that would not exist absent the stay out and if the matter had been fully litigated. A rate case “stay out” is a traditionally recognized part of the public’s interest in settling a rate proceeding.

Position of BIE

BIE submits the Settlement represents a balance of the interests of Imperial Point and its customers. BIE maintains the Settlement is in the public interest and requests it be approved by the presiding officer and the Commission without modification for the following issues and reasons:

* 1. *Revenue Requirement,* Joint Petition ¶ 10(a): The Settlement permits Imperial Point to establish rates that produce additional annual operating revenue of $46,800. This proposed increase is in lieu of the requested $61,321; therefore, the Settlement rates represent a $14,521 decrease from the original request. Under the utility’s rate relief contained in Supplement No. 16, a typical residential customer using 5,000 gallons of water per quarter would have experienced an $18.83 quarterly increase, from $41.80 to $60.63, or 45%. Under the Settlement rates, that customer will experience an $11.05 quarterly increase, from $41.80 to $52.85, or 26.4%.

BIE avers it analyzed Imperial Point’s ratemaking claims contained in the filing including, but not limited to, operating and maintenance expenses, rate base, cost of common equity, and rate design. Upon completion of this review, BIE maintains the proposed $46,800 increase significantly moderates the increase for the ratepayers and results in just and reasonable rates as mandated by the Public Utility Code. Accordingly, the proposed rate increase is in the public interest because ratepayers will continue to receive safe and reliable service at reasonable rates while allowing sufficient additional revenues to meet the operating expenses and provide a reasonable rate of return.

* 1. *System Flushing,* Joint Petition ¶ 10(b): The parties agree Imperial Point will continue to flush its system at least two times per year and will provide customers with advanced notice of the flushing in the manner described in the Settlement. Regular flushing of the distribution lines is important to prevent dirty water. In addition, regular flushing may reduce the sulfur odor and water pressure problems mentioned by ratepayers at the public input hearing, because flushing reduces mineral build up and the concentration of bacteria.

* 1. *Water Pressure,* Joint Petition ¶ 10(c): To address the concerns raised by customers at the public input hearing regarding low water pressure, Imperial Point agreed to install a continuous pressure recording gauge to monitor water pressure for 30 days at a specified location and will provide the recorded data to OCA and BIE. If the recorded data shows the water pressure is below Commission standards (contained in 52 Pa. Code §65.6), Imperial Point will make reasonable efforts to add a 6-inch line in the designated location within 90 days, which would increase the volume of water available to customers residing in that section of the mobile home park. Further, Imperial Point will use the continuous pressure recording device to conduct pressure surveys of its system in accordance with Commission regulations and will share the results of those surveys with OCA, BIE and the Commission’s Bureau of Technical Utility Services. Multiple customers identified water pressure as a concern at the public input hearing; therefore, these settlement terms are in the public interest as they are designed to identify whether the system’s water pressure is in compliance with the Commission’s pressure regulations, increase the water pressure if not in compliance with those regulations, and ensure Imperial Point will regularly conduct pressure surveys of its system.
  2. *Sulfur-Rotten Egg-Smell*, Joint Petition ¶ 10(e): Customers testified their water contains a rotten egg smell. This sulfur smell may be caused by a chemical reaction in electric hot water heaters with the anode that functions to prevent corrosion of the tank. Imperial Point will provide customers complaining of this smell with the information attached to the Settlement as Appendix D, which informs customers with electric hot water heaters of the steps they can take to reduce or eliminate the odor.
  3. *Pennsylvania Rural Water Association*, Joint Petition ¶ 10(h): As part of the Settlement, Imperial Point joined the Pennsylvania Rural Water Association (PRWA). The PRWA provides technical support and training to its members; therefore, membership to this organization can provide valuable services and benefits to Imperial Point.
  4. *Stay Out,* Joint Petition ¶ 10(i): With the exceptions noted in the Joint Petition, Imperial Point agreed to refrain from filing a general rate increase less than thirty months from the entry date of the Commission Order approving this Settlement. This stay out provision benefits Imperial Point’s customers because it provides an extensive period of rate stability.
  5. *Rate Design*: The Settlement provides the customer charge for a 3/4-inch residential and commercial customer will increase from $26.50 per quarter to $30.00 per quarter, in lieu of the requested $38.43 quarterly customer charge. The $3.50 quarterly increase contained in the Settlement, instead of the proposed $11.93 quarterly increase, is in the public interest because the Settlement permits Imperial Point to recover an appropriate level of customer costs (i.e. meters, meter reading expense, and billing) to serve its ratepayers but moderates the customer charge increase for the customers.
  6. BIE represents all other issues have been satisfactorily resolved through discovery and discussions with Imperial Point and are incorporated in the Settlement. The very nature of a settlement requires compromise on the part of all parties. This particular agreement exemplifies this principle. The balance of the issues have been carefully discussed and negotiated in this agreement. Line-by-line identification of the ultimate resolution of the disputed issues is not necessary as BIE represents the Settlement maintains the proper balance of the interests of all parties. BIE is satisfied no further action is necessary and considers its investigation of this rate filing complete.

After a thorough review of Imperial Point’s filing and supporting information, BIE contends in its Statement in Support of the Settlement the Commission should approve the Settlement because it is just and reasonable, and in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense.

Position of OCA

OCA submits it finds the terms and conditions of the Settlement to be in the public interest for the following issues and reasons:

1. *Revenue*: The proposed Settlement provides for an overall annual revenue increase not in excess of $46,800, or approximately 22.1%. Settlement ¶ 10.(a), Appendix B. Based on OCA’s analysis of the filing, the proposed increase under the Settlement represents an amount which, in OCA’s view, would be within the range of the likely outcomes in the event of full litigation of the case.

Under the original rate request, the quarterly bill for a residential customer using 5,000 gallons of water per quarter would have increased from $41.80 to $60.63 per quarter, or by 45%. However, under the Settlement, the bill for a residential customer using 5,000 gallons of water per quarter would be $52.85, or an increase of only 26.4%. Originally, a customer using 10,000 gallons per quarter would have seen an increase from $57.10 to $82.83, but under the Settlement, the customer’s bill would be $75.70 per quarter, or an increase of 32.6%.

1. *System Flushing*: OCA points out Imperial Point agrees to continue to flush its system at least two times per year and to provide advance notice to its residential and commercial customers by notice on the back of the bill postcards as part of Billing Cycle A while customers in the mobile home park (on Billing Cycles B and C) will be notified by notices posted at the mobile home park mail receptacles. OCA suggests this provision will ensure regular flushing of the distribution system continues and customers will receive advance notice. This commitment should help to ensure that customers will not experience lower quality of water at the tap due to distribution system issues
2. *Water Pressure*: OCA notes the utility agrees to install a continuous pressure recording gauge at the blow off at 562 Shadybrook Circle. The gauge must be installed within 90 days after the entry date of an order in this case and will remain in place for 30 days. Imperial Point will provide the pressure data to the Joint Petitioners. If the recorded data shows that pressure is below the levels in the Commission’s regulations, then Imperial Point agrees to add a 6-inch line into Shadybrook Circle and tie it into an existing 2-inch line. Imperial Point also agrees to comply with the regulations regarding pressure surveys of its system. The results of the pressure surveys will be sent to Joint Petitioners. Imperial Point also will record complaints regarding low pressure in its log of customer complaints. Settlement ¶ 10.(c) iii.

OCA contends these provisions will enable the Joint Petitioners to address the low pressure issues raised at the public input hearing, by measuring, over an extended time, the pressure provided and having a plan to address any pressure issues if not consistent with the regulations. The commitment to conduct the pressure surveys and send the results to the Joint Petitioners will allow OCA to determine if there are pressure issues going forward. The inclusion of the pressure complaints received and noted in the customer complaint log will also give OCA information about the pressure at the tap going forward.

Furthermore, Imperial Point agrees it will attempt to maintain pressure totaling at least 20 psi to all customers if its hydrants are used for firefighting purposes because it is important that pressure be maintained in the system during instances where hydrants may be used.

1. *Sulfur-Rotten Egg-Smell:* Under the Settlement, when a customer with a sulfur odor or rotten egg odor contacts the utility, then Imperial Point will provide a fact sheet to the customer with information on how to address it within the customer’s home. OCA notes Imperial Point also agrees to include language in its upcoming Consumer Confidence Report to inform customers with electric water heaters of steps they can take within their homes and to record customer contacts regarding this issue in its log of customer complaints.

These provisions will enable the Joint Petitioners to address the sulfur odor/rotten egg odor issues raised at the public input hearing by providing information to customers with electric water heaters who might be experiencing this problem. Having the language in the Consumer Confidence Report will mean that all customers will get the information without having to contact Imperial Point. In addition, the inclusion of the sulfur/rotten egg odor complaints in the customer complaint log will give OCA information about the issue going forward.

1. *Pennsylvania Rural Water Association*, Joint Petition ¶ 10(h): OCA pointed out Imperial Point agreed to join the Pennsylvania Rural Water Association and had completed that requirement prior to the Settlement. OCA averred this step by the utility would hopefully permit Imperial Point to access additional information, expertise, and resources, which in turn would permit the utility to provide better customer service.
2. *Stay Out*: OCA points out Imperial Point cannot file for another general rate increase prior to thirty months after the entry date of the final order in this proceeding. This proposed stay out provision should prevent another rate increase before the fourth quarter of 2016, assuming Imperial Point files as soon as the stay out expires and assuming the next case is fully litigated. Thus, the ratepayers will be assured of some level of rate stability.
3. *Water Hardness:* OCA points out a recent test showed the water had a hardness level of 329 mg/liter or 19.22 grains of hardness. The Settlement includes information which will be provided to customers who contact Imperial Point with a complaint related to hardness and, in addition, Imperial Point will include requests for water hardness information in its log of customer complaints.

OCA contends these provisions will enable the Joint Petitioners to provide information to customers regarding the hardness of the water, which was an issue raised at the public input hearing, by providing information to customers and possible steps ratepayers may want to take. In addition, the inclusion of the water hardness complaints in the customer complaint log will give OCA information about the issue going forward.

After a thorough review of Imperial Point’s filing and supporting information, OCA contends the Commission should approve the Settlement because it is a fair and reasonable resolution that will reduce rate case expense and conserve resources.

Conclusion

Upon reviewing the terms and conditions of the Settlement, and the Statements in Support thereof by Imperial Point, BIE and OCA, including the Supplemental Statement in Support filed by Imperial Point, I agree with the parties. The Settlement submitted in this case represents a fair, just, lawful, and reasonable resolution of this proceeding.

If approved, the Settlement will result in an increase of approximately $46,800 in additional annual operating revenues, which amount is significantly less than the $61,321 originally requested by Imperial Point. All signatory parties agree the proposed increase is necessary in order to ensure Imperial Point can recoup the costs of providing water service to its ratepayers. The data provided by the signatory parties and within the Joint Settlement Agreement itself further support the signatory parties’ assertions that the increase is needed in order to cover reasonable and just costs.

Furthermore, the Settlement specifies steps Imperial Point will take in order to improve water pressure and to provide ratepayers with helpful advice and information if ratepayers complain about water that smells like sulfur and/or water that is too hard.

In addition, Imperial Point will be unable to file for another rate increase for thirty months after the Commission’s approval herein. Stay out provisions give ratepayers a specified level of rate security by indicating the **minimum** amount of time before which a utility can return to seek a rate increase. Stay out provisions are not an indication of how quickly a utility will return to seek an increase but how long before they will be allowed to return. The Commission’s rules encourage utilities to stay out and only to request a rate increase when the cost of providing water service has increased sufficiently to justify the costs of seeking the increased rates.

I agree with Imperial Point’s Supplemental Statement in Support and further note all signatory parties to the Settlement Agreement aver the Settlement fairly and justly satisfied their concerns even though no one party had all of its issues and/or concerns satisfied by the agreement. This Settlement is the result of negotiations between Imperial Point, BIE and OCA which arose after much discovery and discussion. The concerns of all the parties, including the concerns of the Commission and the ratepayers, have been balanced and met as reasonably as the circumstances will permit. Therefore, I find the Settlement is fair and just and reasonable.

**RECOMMENDED ORDER**

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement submitted by Imperial Point Water Service Company, the Office of Consumer Advocate, and the Bureau of Investigation and Enforcement, at Docket No. R-2012-2315536, is approved.

2. That Imperial Point Water Service Company, having agreed to do so, not put into effect its Supplement No. 16 to Water – Pa. P.U.C. No. 2, as filed on October 31, 2012.

3. That Imperial Point Water Service Company may file a tariff or tariff supplement containing the rates, rules and regulations consistent with Appendix A to the Joint Petition for Settlement, designed to produce additional annual operating revenues of approximately $46,800.

4. That the said tariff or tariff supplement may be filed on less than statutory notice, and may be filed to become effective for service rendered on and after the date on which the Commission’s Order in this case is entered.

5. That upon acceptance and approval by the Commission of the tariff or tariff supplement as being consistent with this Order, the Commission’s inquiry and investigation at Docket No. R-2012-2315536 shall be terminated and the record and docket marked closed.

6. That the following complaints filed against Supplement No. 16 to Tariff Water – Pa. P.U.C. No. 2 are dismissed consistent with this Recommendation:

Office of Consumer Advocate C-2013-2344260

Otylia L. Schenker C-2012-2340419

Georgiann Tressler C-2013-2341458

George Maslar C-2013-2348063

Date: June 25, 2013 /s/

Katrina L. Dunderdale

Administrative Law Judge

1. 52 Pa. Code §5.231(a). [↑](#footnote-ref-1)
2. See Settlement ¶ 10.(a), Appendix B. [↑](#footnote-ref-2)
3. The public interest is furthered when a utility is provided with sufficient revenue to meet its obligations under 66 Pa. C.S. §1501 which is to provide safe, reliable and adequate service. The courts have long recognized, 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. Orlosky v. Pa. Public Utility Comm., 171 Pa. Superior. Ct. 409, 89 A.2d 903 (1952). [↑](#footnote-ref-3)