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June 6, 2014

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. P-2013-2366873, *et al.*
Petition of Little Washington Wastewater Company – DSIC

Dear Secretary Chiavetta:

We are counsel to Little Washington Wastewater Company in the above matter and, in accordance with the Public Utility Commission's secretarial letter dated April 29, 2014, as amended by action of the Office of Special Assistants on May 12, 2014 extending the due dates for the filing of Exceptions and Replies to Exceptions, enclosed via electronic filing are the Company's Replies to the Exceptions of the Office of Consumer Advocate. Copies of the Company's Replies to Exceptions are being served upon the persons and in the manner set forth on the certificate of service attached to them.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
ra-OSA@pa.gov (w/encl.)
Mary McFall Hopper, Esquire (w/encl.)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Little Washington Wastewater Company (LWWC) for Approval of its Long-Term Infrastructure Improvement Plan	: : :	P-2013-2366873
Petition of Little Washington Wastewater Company (LWWC) for Approval of a Distribution System Improvement Charge	: : :	P-2013-2366873
Office of Consumer Advocate	: :	
v.	: :	C-2013-2369886
Little Washington Wastewater Company	:	

**REPLIES OF LITTLE WASHINGTON WASTEWATER COMPANY
TO THE EXCEPTIONS OF THE OFFICE OF CONSUMER ADVOCATE**

AND NOW, comes Little Washington Wastewater Company (“LWWC” or “Company”), by its attorneys, and submits the following Replies to the Exceptions of the Office of Consumer Advocate in the above captioned proceeding.

I. INTRODUCTION

In the Introduction to its discussion of its Exceptions, the OCA describes the Recommended Decision as well-reasoned. The Recommended Decision, however, is contrary to Public Utility Commission (“Commission”) precedent, contrary to law and contrary to the evidence of record.

As addressed in the Company’s Exceptions, the Recommended Decision is contrary to the Commission’s Final Implementation Order entered August 2, 2012 at Docket No. M-2012-2293695 (“*Final Implementation Order*”) and the Commission’s Order entered May 22, 2014, in

Petition Of Columbia Gas Of Pennsylvania, Inc. For Approval Of A Distribution System Improvement Charge, Docket No. P-2012-2338282 (“*Columbia DSIC Opinion and Order*”).¹

As also addressed in the Company’s Exceptions, the Recommended Decision is contrary to law in that it *wrongly* concludes that Act 11 requires the adjustment for accumulated deferred income taxes (“ADIT”) proposed by the OCA;² that the statutory earnings cap does not protect customers against the levying of unjust and unreasonable rates;³ and that adjustments proposed by the OCA to the DSIC calculation will not needlessly complicate the DSIC process.⁴

The Recommended Decision is also contrary to evidence submitted by LWWC confirming that the Company’s DSIC is consistent with the *Final Implementation Order* and the model tariff;⁵ that the Company has included the statutorily required customer protections, including the earnings cap, in its DSIC tariff language;⁶ and that the adjustments proposed by the OCA would needlessly complicate the DSIC process.⁷

The Recommended Decision should be rejected and the ADIT and state income tax adjustments proposed by the OCA to the Company’s DSIC calculation formula should be denied.

¹ LWWC Exceptions Nos. 1, 2, 3, 4 and 5.

² LWWC Exception No. 2.

³ LWWC Exceptions Nos. 3 and 5.

⁴ LWWC Exceptions Nos. 4 and 5.

⁵ LWWC Exceptions Nos. 1 and 5; Little Washington Wastewater Company St. No. 1 at 4; Little Washington Wastewater Company St. No. 1S, Appendix A, Original Pages Nos. 10DSIC 1 and 10DSIC2.

⁶ LWWC Exceptions Nos. 3 and 5; Little Washington Wastewater Company St. No. 1S, Appendix A, Original Page No. 10DSIC2, Section III – Safeguards.

⁷ LWWC Exceptions Nos. 4 and 5; Little Washington Wastewater Company Sts. Nos. 1R at 2-4 and 1REJ at 2-3.

II. REPLIES TO THE EXCEPTIONS OF THE OFFICE OF CONSUMER ADVOCATE

REPLY TO OCA EXCEPTION NO. 1 The Commission has not amended or revoked any water utility DSIC or water utility DSIC practice or procedure and, thus, as specifically addressed in Act 11, existing water utility DSICs continue in effect without change. The OCA should address any water DSIC position it may have in a water DSIC proceeding.

In its Exception No. 1, the OCA states, for “purposes of clarifying the record” and in regard to *water* DSICs proceedings, that its position is that *water* utilities with DSICs approved under Section 1307(g) of the Public Utility Code must meet the requirements of Act 11.⁸ The OCA acknowledges that this “clarifying” exception concerning *water* DSICs does not address a matter before the Commission in this *wastewater* proceeding.⁹

The OCA’s Exception No. 1 should be denied. Initially, we emphasize the OCA’s acknowledgment that its Exception No. 1 does not address a matter before the Commission in this *wastewater* proceeding. Since its clarifying Exception No. 1 is not germane to this *wastewater* proceeding, it is inappropriate to raise it here. The OCA should address any *water* DSIC position it may have in a *water* DSIC proceeding. The OCA’s Exception No. 1 is neither relevant nor material to this proceeding.

Secondly, contrary to what the OCA seems to be suggesting in its Exception No. 1, Act 11 did not change any of the practices and procedures for existing *water* utility DSICs.¹⁰ In fact,

⁸ OCA Exceptions at 4.

⁹ OCA Exceptions at 4.

¹⁰ The OCA states, in its Exception No. 1, that “it does not hold the position that Act 11 does not require an existing, approved water DSIC to comply with Act 11.” Rather, the OCA states, “it is [its] position that Act 11 includes water utilities with existing DSICs and those utilities must meet the requirements of the Act.” OCA Exceptions at 3.

Section 1358(a)(2), cited by the OCA in its Exception No. 1, addresses *water* utility DSICs that predate Act 11 stating as follows:

All proceedings, orders and other actions of the commission related to a distribution system improvement charge granted to a water utility and all practices and procedures of a water utility operating under a distribution system improvement charge prior to the effective date of this paragraph *shall* remain in effect unless specifically amended or revoked by the commission.¹¹

The Commission has not “specifically amended or revoked” any existing *water* utility DSIC or water utility DSIC practice or procedure and, thus, by statute, those water utility DSICs, including the *water* utility DSIC of LWWC’s affiliate, Aqua Pennsylvania, Inc., continue in effect without change. Again, the OCA’s Exception No. 1 should be denied.

REPLY TO OCA EXCEPTION NO. 2 The OCA’s DSIC calculation adjustments, which were rejected in the *Columbia DSIC Opinion and Order* and, also, in the *Final Implementation Order*, should, likewise, be rejected here.

In its Exception No. 2, the OCA states, again, for clarification purposes,¹² that it does not agree that the Commission would have been justified in determining the outcome of its Complaint based solely on the *Final Implementation Order*. It states that it is its view that the *Final Implementation Order* is in the nature of a policy statement setting forth how the Commission intends to interpret Act 11 in future adjudications and rulemakings but that it is not a binding norm that has the force of law.¹³ It states that this proceeding is its first opportunity for due process to develop a record in regard to LWWC’s DSIC calculation.¹⁴

¹¹ 66 Pa. C.S. § 1358(a)(2) (emphasis added).

¹² OCA Exceptions at 6.

¹³ OCA Exceptions at 5.

¹⁴ OCA Exceptions at 6.

Two points deserve mention in regard to the OCA's Exception No. 2. First, this proceeding is not the OCA's first opportunity for due process. As set forth above and in the Company's Exceptions, the Commission recently addressed the OCA's DSIC calculation adjustments in the *Columbia DSIC Opinion and Order*.¹⁵ There, the Commission arrived at conclusions, including conclusions of law, contrary to the position of the OCA, concerning the plain language of Act 11, the statutory earnings cap and the complexity of the OCA's adjustments. These Commission conclusions and the decision to reject the OCA's adjustments in the *Columbia DSIC Opinion and Order* are instructive and have direct application to this proceeding. The OCA offered no explanation in its Exceptions why the clear language and conclusions from the *Columbia DSIC Opinion and Order*, which was entered on May 22, 2014, prior to the filing of Exceptions in this proceeding, should not apply here.

Second, as set forth above, the OCA offers its view that the *Final Implementation Order*, as a "policy statement," sets forth how the Commission intends to interpret Act 11 in "future adjudications" but that the *Final Implementation Order* is not a binding norm that has the force of law.¹⁶ In its *Columbia DSIC Opinion and Order* – a "future adjudication"¹⁷ – the Commission interpreted Act 11 consistent with the *Final Implementation Order* and rejected the OCA's ADIT and state income tax adjustments. In doing so, the Commission acted apparently consistent with the OCA's view of the *Final Implementation Order* as a "policy statement" – an expression of how the Commission intends to interpret Act 11 in "future

¹⁵ To be clear, the Recommend Decision in the Columbia Gas proceeding denied the OCA's DSIC calculation adjustments and the Recommended Decision was approved by the Commission.

¹⁶ OCA Exceptions at 5.

¹⁷ The *Columbia DSIC Opinion and Order* entered May 22, 2014 is a "future adjudication" in respect to the *Final Implementation Order* entered August 2, 2012.

adjudications.” In its *Columbia DSIC Opinion and Order*, the Commission, as previously stated, arrived at conclusions, including conclusions of law, contrary to the position of the OCA concerning the plain language of Act 11, the statutory earnings cap and the complexity of the OCA’s adjustments. These Commission conclusions and the decision to reject the OCA’s DSIC adjustments in the *Columbia DSIC Opinion and Order* are instructive and have direct application to this proceeding. The OCA’s DSIC calculation adjustments, which were rejected in the *Columbia DSIC Opinion and Order* and, also, in the *Final Implementation Order*, should, likewise, be rejected here.

The OCA’s Exception No. 2 should be denied.

III. CONCLUSION

The OCA's Exceptions should be denied. The Disposition, Findings of Fact, Conclusions of Law and Proposed Ordering Paragraphs presented in the Recommended Decision in support of the recommended adoption of the OCA's ADIT and state income tax adjustments should be rejected for all the reasons set forth in the Company's Exceptions and Main and Reply Briefs. The OCA's ADIT and state income tax adjustments should be denied. LWWC has met its burden of proof and its DSIC calculation formula should be approved without modification (other than the modification presented in the Joint Stipulation Addressing Application of Distribution System Improvement Charge to Contract Customers and Woodloch Pines).

Respectfully submitted,

LITTLE WASHINGTON WASTEWATER COMPANY

By 

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Company*

Date: June 6, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

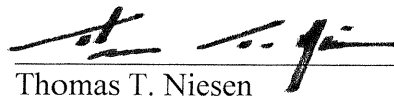
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CERTIFICATE OF SERVICE

I hereby certify that I am this 6th day of June 2014, serving a true and correct copy of the Replies of Little Washington Wastewater Company to the Exceptions of the Office of Consumer Advocate upon the persons below via first class mail, postage prepaid:

Honorable Susan D. Colwell
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