

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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November 6, 2017

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17101

Re: Pa. Public Utility Commission  
v.  
Newtown Artesian Water Company  
Docket No. R-2017-2624240

Dear Secretary Chiavetta:

Attached for electronic filing, please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Erin L. Gannon".

Erin L. Gannon  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 83487  
E-Mail: [EGannon@paoca.org](mailto:EGannon@paoca.org)

Enclosure

cc: Honorable Christopher P. Pell  
Certificate of Service

\*241288

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :  
v. : Docket No. R-2017-2624240  
Newtown Artesian Water Company :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 6<sup>th</sup> day of November 2017.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Richard Kanaskie  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

John Evans  
Small Business Advocate  
Office of Small Business Advocate  
300 North Second Street  
Harrisburg, PA 17101

Thomas T. Niesen, Esquire  
Thomas, Niesen, & Thomas, LLC  
212 Locust Street, Suite 600  
Harrisburg, PA 17101

/s/ Erin L. Gannon

Erin L. Gannon  
Senior Assistant Consumer Advocate  
PA Attorney I.D. #83487  
Email: [EGannon@paoca.org](mailto:EGannon@paoca.org)

Christine Maloni Hoover  
Senior Assistant Consumer Advocate  
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Phone: (717) 783-5048  
Fax: (717) 783-7152  
Date: November 6, 2017

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

|  |   |                           |
|--|---|---------------------------|
| Pennsylvania Public Utility Commission | : |                           |
| v.                                     | : | Docket No. R-2017-2624240 |
| Newtown Artesian Water Company         | : | C-2017-2626954            |

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PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333 and in accordance with the requirements of the Prehearing Conference Order issued by Administrative Law Judge (ALJ) Christopher P. Pell on October 20, 2017, the Office of Consumer Advocate (OCA) provides the following information:

**I. BACKGROUND**

On September 1, 2017, Newtown Artesian Water Company (NAWC or Company), filed Supplement No. 126 to Water-PA P.U.C. No. 9 to become effective November 1, 2017. The tariff supplement proposes to increase NAWC's existing Distribution System Improvement Charge (DSIC) cap from 5% to 7.5%. The Office of Consumer Advocate (OCA) filed a Formal Complaint on September 29, 2017, which was docketed at C-2017-2626954.

By Order entered October 5, 2017, the Pennsylvania Public Utility Commission (Commission) instituted an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in NAWC's proposed tariff supplement and suspended the supplement until May 1, 2018. The Commission further ordered that the investigation shall

include consideration of the lawfulness, justness, and reasonableness of the existing rates, rules, and regulations of NAWC. The matter was assigned to ALJ Pell.

The OCA now files this Prehearing Memorandum to set forth the procedure and issues that the OCA submits are relevant to this proceeding.

## II. ISSUES

NAWC's proposed modification to its DSIC presents several important issues of law and fact. As stated by the Commission in its Order suspending the tariff supplement, the proceeding should address the lawfulness, justness and reasonableness of the rates, rules, and regulations contained in NAWC's proposed tariff and "shall include consideration of the lawfulness, justness, and reasonableness of the existing rates, rules, and regulations of Newtown Artesian Water Company." October 5, 2017 Suspension Order at 2. The OCA has identified the following preliminary concerns:

1. NAWC's request must be carefully considered to determine that the proposed increase to a 7.5% DSIC cap is consistent with the provisions of the DSIC statute. 66 Pa. C.S. §§ 1350, et seq.
2. NAWC must show that its proposal to charge a DSIC rate of up to 7.5% is just and reasonable and non-discriminatory for purposes of Section 1301 and 1304. 66 Pa. C.S. §§ 1301, 1304.
3. Act 40 took effect on August 11, 2016 and applies to all cases where the final order is entered into after its effective date. 66 Pa. C.S. § 1301.1. NAWC's current and proposed DSIC calculation may not be consistent with the requirements of Section 1301.1 with regard to federal and state income tax deductions and credits.<sup>1</sup>
4. The Company's proposal to exempt Private Fire customers and revenues from the application and calculation of the DSIC rate may not be consistent with applicable law.

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<sup>1</sup> This issue is pending before the Commission with regard to the DSICs proposed by Metropolitan-Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. at Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931 and P-2015-2508948.

The OCA continues to review NAWC's filing and this list should not be considered inclusive or binding. The OCA reserves the right to address any additional issues that arise during the course of this proceeding.

### **III. WITNESSES**

The OCA intends to present the Direct, Rebuttal and Surrebuttal testimony, as may be necessary, of Jerome D. Mierzwa regarding the accounting and policy issues identified above. Mr. Mierzwa will present testimony in written form and will also attach various exhibits, documents, and explanatory information, which will assist in the presentation of the OCA's case.

His contact information is as follows:

Jerry Mierzwa  
Exeter Associates, Inc.  
10480 Little Patuxent Parkway, Suite 300  
Columbia, MD 21044  
Telephone: (410) 992-7500  
Email: [jmierzwa@exeterassociates.com](mailto:jmierzwa@exeterassociates.com)

The OCA specifically reserves the right to call additional witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that an additional witness is necessary for any portion of its case, it will notify all parties of record immediately.

### **IV. SERVICE ON THE OCA**

The OCA will be represented in this proceeding by Senior Assistant Consumer Advocates Erin L. Gannon and Christine Maloni Hoover.<sup>2</sup> Two copies of all documents should be served on the OCA as follows:

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<sup>2</sup> For purposes of the telephonic Prehearing Conference, Erin Gannon will speak as the lead attorney.

Erin L. Gannon  
Christine Maloni Hoover  
Senior Assistant Consumer Advocates  
Office of Consumer Advocate  
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[choover@paoca.org](mailto:choover@paoca.org)

In order to expedite the resolution of this proceeding, the OCA requests that copies of all interrogatories, testimony, and answers to interrogatories be mailed directly to the expert witness(es) responsible for the area of the case, as well as mailing a copy to counsel for the OCA. The OCA also requests that emails containing any interrogatory responses be emailed directly to the expert witness(es) and to JoAnn Spiroff, OCA Clerk Typist.

Jerome Mierzwa      [jmierzwa@exeterassociates.com](mailto:jmierzwa@exeterassociates.com)  
JoAnn Spiroff      [JSpiroff@paoca.org](mailto:JSpiroff@paoca.org)

## V. SCHEDULE

It is the OCA's understanding that the schedule below is acceptable to the Presiding Officer and all parties.

|   |   |
|---|---|
| NAWC Direct   | November 6, 2017                                    |
| OCA Direct  | November 20, 2017                                   |
| NAWC Rebuttal   | November 29, 2017                                   |
| OCA Surrebuttal   | December 6, 2017                                    |
| NAWC Rejoinder outline  | Best efforts to provide before<br>December 11, 2017 |
| Hearings for cross-examination of all witnesses, oral rejoinder | December 11 and 12, 2017                            |
| Close of Record   | December 15, 2017                                   |
| Main Briefs Due   | January 4, 2018                                     |
| Reply Briefs Due  | January 16, 2018                                    |

## VI. PROPOSED REVISED RULES FOR DISCOVERY

The OCA proposes that the Commission's rules and regulations, 52 Pa. Code §5.321, *et seq.*, be modified as follows:

1. The response period for replying to written interrogatories, requests for production and requests for admissions is within seven (7) calendar days of receipt;
2. Objections to written interrogatories, requests for production and requests for admissions are to be communicated orally to the party serving the interrogatory within three (3) calendar days of receipt and in writing within five (5) calendar days of receipt. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections;
3. If the objections are not resolved, counsel will alert the presiding officer by e-mail of the need for a ruling, and a conference call will be scheduled. The presiding officer will make a ruling over the telephone and not reduce it to writing unless requested to do so;
4. Interrogatories, requests for production and requests for admissions that are objected to, but are not made the subject of a request for ruling by the Presiding Officer will be deemed withdrawn;
5. Requests for admission will be deemed admitted unless answered within seven (7) calendar days of receipt or objected to within five (5) calendar days of receipt;
6. All discovery-related service is to be made electronically, with hard copies to follow by first-class mail; and
7. Any discovery-related pleading such as discovery requests, objections or motions served on a Friday after 12 p.m. or on any business day preceding a holiday recognized by the Commission will be deemed to have been served on the following business day for purposes of tracking responsive due dates.

After the due date for OCA Direct Testimony, the OCA proposes that the following modifications will replace those above:

1. The response period for replying to written interrogatories, requests for production and requests for admissions is within five (5) calendar days of receipt;
2. Objections to written interrogatories, requests for production and requests for admissions are to be communicated orally to the party serving the interrogatory within one (1) business day of receipt and in writing within two (2) business days of receipt. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections; and

3. Requests for admission will be deemed admitted unless answered within five (5) calendar days of receipt or objected to within two (2) business days of receipt.

## **VII. PUBLIC INPUT HEARINGS**

The OCA is not aware of any specific consumer requests for public input hearings in this matter to date. However, if the OCA becomes aware of substantial consumer interest, the OCA will promptly notify the Administrative Law Judge and parties to request a public input hearing.

## **VIII. SETTLEMENT**

The OCA will participate fully in all settlement discussions.

Respectfully Submitted,



Erin L. Gannon  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 83487  
E-Mail: EGannon@paoca.org

Counsel for:  
Tanya J. McCloskey  
Acting Consumer Advocate

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DATE: November 6, 2017

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