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May 25, 2018

*Via Electronic Filing*

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

In re: Docket No. R-2017-2624240, *et al.*  
Pa. P.U.C., *et al.* v. The Newtown Artesian Water Company

Dear Secretary Chiavetta:

We are counsel to The Newtown Artesian Water Company in the above matter and are submitting, via electronic filing with this letter, the Company's Main Brief on Remand. Copies of the Main Brief on Remand are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

cc: Certificate of Service (w/encl.)  
Brenden E. Brett, Esquire (via email, w/encl.)

**Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Deputy Chief Administrative Law Judge  
Christopher P. Pell, Presiding**

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<b>Pennsylvania Public Utility Commission</b>	<b>:</b>	<b>Docket No. R-2017-2624240</b>
<b>Office of Consumer Advocate</b>	<b>:</b>	<b>Docket No. C-2017-2626954</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>The Newtown Artesian Water Company</b>	<b>:</b>	

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**MAIN BRIEF ON REMAND OF  
THE NEWTOWN ARTESIAN WATER COMPANY**

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Dated: May 25, 2018

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## I. STATEMENT OF THE CASE

### A. Procedural History

This proceeding concerns The Newtown Artesian Water Company's ("NAWC" or "Company") Supplement No. 126 to Tariff Water – Pa.P.U.C. No. 9 ("Supplement No. 126"), issued September 1, 2017, to become effective November 1, 2017. The tariff filing is docketed to R-2017-2624240.

Supplement No. 126, which is a non-general rate filing pursuant to Section 1308(b) of the Public Utility Code, 66 Pa. C.S. § 1308(b), proposes to increase NAWC's existing Distribution System Improvement Charge ("DSIC") cap to 7.5% of the amount billed to customers consistent with Section 1358 of the Public Utility Code, 66 Pa. C.S. § 1358. NAWC's DSIC is currently capped at 5%.

The Office of Consumer Advocate ("OCA") filed a Public Statement, a Notice of Appearance and a formal Complaint on September 29, 2017. The Complaint is docketed to C-2017-2626954.

By Order entered October 5, 2017, the Public Utility Commission ("Commission") instituted an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in Supplement No. 126 and, pursuant to Section 1308(b) of the Public Utility Code, 66 Pa. C.S. § 1308(b), suspended Supplement No. 126 by operation of law until May 1, 2018, unless otherwise directed by Order of the Commission.

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 the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

Deputy Chief Administrative Law Judge Christopher P. Pell was assigned to preside over the matter. A prehearing conference was held on November 8, 2017, at which a litigation schedule was adopted.

An evidentiary hearing was held on December 11, 2017 with Judge Pell presiding. NAWC actively participated in the hearings, presenting the testimony of Harold Walker, III, and George Forsyth. NAWC's Supplement No. 126 and supporting information also was admitted into the evidentiary record.

The OCA also actively participated in the hearing presenting the testimony of Jerome D. Mierzwa. The Bureau of Investigation and Enforcement ("I&E"), the Commission's prosecutory arm, did not participate.

By Recommended Decision, dated February 6, 2018, Judge Pell concluded, *inter alia*, that NAWC had failed to sustain its burden of proof that the increase to the DSIC cap from 5.0% to 7.5% is just and reasonable. NAWC filed Exceptions to the Recommended Decision. The OCA filed Replies to NAWC's Exceptions.

In an Opinion and Order entered April 26, 2018 ("Order entered April 26"), the Commission recognized that, after the close of the evidentiary record, NAWC had filed its *January 2018 DSIC Quarterly Filing* stating that it had exceeded the 5% cap and that its expenditures had already reached 5.44%. The Commission determined that this information may prove relevant to the disposition of this matter. The Commission gave NAWC the opportunity to voluntarily file a 90 day extension of Supplement No. 126.

The Commission further directed in its Order entered April 26 that, if NAWC voluntarily extended the effective date of Supplement No. 126 then the matter would be remanded to the Office of Administrative Law Judge to reopen the record for proceedings necessary for the introduction of additional relevant evidence limited to the single issue of whether NAWC has

exceeded its current 5% DSIC and will continue to exceed it, and whether this justifies the requested increase to a 7.5% cap. The Commission also directed that a Recommended Decision on Remand and any Exceptions to the Recommended Decision should be submitted for evaluation by the Commission no later than the July 12, 2018 public meeting.

On April 26, 2018, NAWC filed Supplement No. 133 to Tariff Water Pa. P.U.C. No. 9 voluntarily extending the effective date of Supplement No. 126 from May 1, 2018, until July 30, 2018. Thereafter, upon discussion with the Company and the OCA, Judge Pell, on May 1, 2018, issued a Prehearing Order Setting Procedural Schedule on Remand setting forth a procedural schedule for the remand proceeding.

On May 4, 2018, NAWC served the Testimony on Remand of Harold Walker, III, NAWC Statement No. 1 Remand, and the Testimony on Remand of George Forsyth, NAWC Statement No. 2 Remand. On May 11, 2018, OCA served the Testimony on Remand of Jerome D. Mierzwa, OCA Statement No. 1-RM. On May 15, 2018, NAWC served the Rebuttal Testimony on Remand of Harold Walker, III, NAWC Statement No. 1R Remand.

A telephonic hearing on remand was held on May 18, 2018. The testimony of Messrs. Walker, Forsyth and Mierzwa was admitted into the record. Upon agreement of the parties and with the approval of Judge Pell, the Company and the OCA waived cross examination.

NAWC submits this Main Brief on Remand addressing the limited issue as directed in the Order entered April 26, 2018. As set forth herein, NAWC's DSIC exceeds the Company's current DSIC cap of 5.0% and will continue to exceed the current DSIC cap of 5.0%. The foregoing justifies the Company's request to increase the DSIC cap to 7.5%.

**B. Burden of Proof**

Section 315 of the Public Utility Code, 66 Pa. C.S. § 315, provides that, 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.

The Commission must make all findings necessary to determine whether Supplement No. 126 is just and reasonable. A factfinder, under the Administrative Agency Law, is required to include findings necessary to resolve the issues raised by the evidence and relevant to the decision.<sup>1</sup>

As set forth herein, NAWC has met its burden in this remand proceeding. NAWC's DSIC exceeds 5% and will continue to exceed 5%. An increase in the DSIC cap to 7.5% is just and reasonable.

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<sup>1</sup> *Popowsky v. Pa. P.U.C.*, 683 A. 2d 958 (Pa. Commw. 1996).

## II. SUMMARY OF ARGUMENT

The Order entered April 26 remanded this matter to address the single issue of whether NAWC has exceeded its current 5% DSIC cap and will continue to exceed it, and whether this justifies the requested increase to a 7.5% cap.<sup>2</sup>

The evidence of record demonstrates that NAWC has exceeded the current 5% DSIC cap. NAWC's current DSIC calculation, effective May 1, 2018, is 5.48%. The substantial evidence of record also demonstrates that the DSIC will continue to exceed 5% as the Company moves forward with its Commission approved LTIP.

The Commission remanded this matter seeking assurances that NAWC's DSIC exceeds, and will continue to exceed, 5%. NAWC has provided the sought for assurances and the increase of the DSIC cap to 7.5% is justified.

A DSIC cap of 7.5% is just and reasonable, consistent with the Public Utility Code and consistent with recent and past pronouncements of the Commission acknowledging the benefits of a DSIC.

Supplement No. 126 should be allowed to go into effect on August 1, 2018.

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<sup>2</sup> In identifying the limited issue on remand, the Commission explained that it has already determined that NAWC fulfilled the sixth of the eight elements required in an LTIP filing that the replacement of aging infrastructure is or will be accelerated. Order entered April 26, slip op. at 35.

### III. ARGUMENT

The Commission in its Opinion and Order entered April 26, 2018, remanded this matter to address the single issue of whether NAWC has exceeded its current 5% DSIC cap and will continue to exceed it, and whether this justifies the requested increase to a 7.5% cap. These matters are addressed below.

#### A. NAWC's DSIC Exceeds the Current Cap of 5.0%

The Commission recognized, in its Order entered April 26, that NAWC had filed its *January 2018 DSIC Quarterly Filing*. The January 2018 Quarterly DSIC Filing, which was submitted to the Commission on January 22, 2018, with an effective date of February 1, 2018, was assigned to Docket No. M-2018-2643814.

Following the filing of the January Quarterly DSIC, NAWC submitted its *April 2018 DSIC Quarterly Filing*. The April 2018 Quarterly DSIC Filing, which was submitted to the Commission on April 20, 2018, with an effective date of May 1, 2018, was assigned to Docket No. M-2018-3001339.

NAWC's Quarterly DSIC filings effective February 1, 2018 at M-2018-2643814 and effective May 1, 2018 at M-2018-3001339 exceed the current 5.0% cap. The DSIC calculation also increased from the February submission to the May submission.<sup>3</sup>

The Company's February 1, 2018 DSIC tariff supplement, DSIC calculation and Commission Secretarial Letter at M-2018-2643814 accepting the calculation are included in the record as Schedule 1 of Exhibit HW -1 Remand.<sup>4</sup> The DSIC rate would have been 5.44% of billed revenue, effective February 1, 2018, if the Company's DSIC rate were not capped at 5%.<sup>5</sup>

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<sup>3</sup> NAWC St. No. 1 Remand at 2.

<sup>4</sup> NAWC St. No. 1 Remand at 2 and at Exhibit HW-1 Remand, Schedule 1.

<sup>5</sup> NAWC St. No. 1 Remand at 2.

The Company's May 1, 2018 DSIC calculation and Commission Secretarial Letter at M-2018-3001339 accepting the calculation are presented in Schedule 2 of Exhibit HW-1 Remand.<sup>6</sup> The DSIC rate would have been 5.71% of billed revenue, effective May 1, 2018, if the Company's DSIC rate were not capped at 5%.<sup>7</sup>

NAWC used the actual cost of long-term debt to calculate the DSIC rates in the quarterly filings effective February 1, 2018 and May 1, 2018 and did not include short term debt in the calculations. The DSIC calculations excluding short term debt and using the actual cost of long term debt were 5.44%, effective February 1, 2018, and 5.71%, effective May 1, 2018.<sup>8</sup>

The DSIC rates effective February 1, 2018 and May 1, 2018 were calculated exclusive of private fire protection service. Subsequent to the submission of the February and May calculations, the Commission concluded in its Order entered April 26 that private fire protection customers should be charged the DSIC.<sup>9</sup>

The inclusion of private fire protection service in the DSIC calculation has no material impact on the February and May calculations. As shown in Exhibit HW-1 Remand, Schedule 3, the Company's DSIC rate of 5.44%, effective February 1, 2018, would have been 5.25% if the Company included private fire protection service in the calculation.<sup>10</sup>

Similarly, and, perhaps, because it is the currently effective DSIC calculation, more significantly, as shown in Exhibit HW-1 Remand, Schedule 4, the Company's DSIC rate of

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<sup>6</sup> NAWC St. No. 1 Remand at 2 and at Exhibit HW-1 Remand, Schedule 2.

<sup>7</sup> NAWC St. No. 1 Remand at 2.

<sup>8</sup> NAWC St. No. 1 Remand at 3.

<sup>9</sup> NAWC St. No. 1 Remand at 3.

<sup>10</sup> NAWC St. No. 1 Remand at 4 and at Exhibit HW-1 Remand, Schedule 3.

5.71%, effective May 1, 2018, would have been 5.48% if the Company included private fire protection service customers in the calculation.<sup>11</sup>

The DSIC surcharge, in other words, remains above 5.0% with private fire protection service included in the DSIC calculations. Significantly, with the inclusion of private fire protection service, the DSIC calculation would have increased from 5.25% to 5.48% from February 1, 2018 to May 1, 2018.<sup>12</sup>

NAWC considered The Tax Cuts and Job Act of 2017 (“TCJA”) in preparing its February 2018 and May 2018 DSIC calculations. NAWC, appropriately, *did not include* the new TCJA federal tax rate in the February DSIC calculation since all the investment and related expenses occurred in 2017, before the TCJA went into effect.<sup>13</sup>

NAWC’s use of the pre-TCJA federal tax rate in the February calculation is, moreover, consistent with Section 1357(b)(1) of the Public Utility Code which directs that the pre-tax return will be calculated using the federal income tax rate “as of the last day of the three-month period ending one month prior to the effective date of the DSIC.” The pre-TCJA federal tax rate was in effect on December 31, 2017, the last day of the three-month period ending one month prior to the February 1, 2018 effective date of the January 2018 DSIC filing.<sup>14</sup>

More significant than the February 2018 DSIC calculation in regard to the TCJA tax rate is the currently effective May 2018 DSIC calculation. NAWC *did include* the new TCJA federal tax rate in the May calculation of 5.71% as shown on Schedule 2 of Exhibit HW-1 Remand. All the investment and related expenses for the May calculation occurred in 2018, after the TCJA

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<sup>11</sup> NAWC St. No. 1 Remand at 4 and at Exhibit HW-1 Remand, Schedule 4.

<sup>12</sup> NAWC St. No. 1 Remand at 4.

<sup>13</sup> NAWC St. No. 1 Remand at 4.

<sup>14</sup> The Company, however, calculated a hypothetical DSIC calculation in Exhibit HW-1 Remand, Schedule 5, demonstrating that the DSIC rate, effective February 1, would have been 4.96% if the Company had included the new tax rate in the calculation. To be clear, it would not be proper to include the new Federal income tax rates in the February filing. NAWC St. No. 1 Remand at 5.

went into effect. The new TCJA federal tax rates were in effect on March 31, 2018, the last day of the three-month period ending one month prior to the May 1, 2018 effective date of the April 2018 DSIC filing.<sup>15</sup>

In sum, the substantial evidence of record demonstrates that NAWC's DSIC is above 5%. The current DSIC calculation, effective May 1, 2018, is 5.48%, excluding short term debt, using the actual cost of long term debt, including private fire protection service and reflective of the new TCJA federal tax rate.

**1. Testimony of OCA Witness Mierzwa**

**a. The January 2018 DSIC Calculation (Effective February 1, 2018)**

OCA witness Mierzwa testified that the January 2018 DSIC calculation of 5.44% (which was effective February 1, 2018) is incorrect. Mr. Mierzwa calculated a hypothetical January 2018 DSIC of 4.70%. Company witness Walker provided rebuttal to Mr. Mierzwa explaining that Mr. Mierzwa's testimony is misleading as it is contrary to the Commission approved formula for calculating the DSIC and contrary to the Public Utility Code.<sup>16</sup>

As a first matter, Mr. Mierzwa stated that the January 2018 DSIC calculation did not include private fire protection revenue. As previously explained, the Commission had not addressed private fire protection revenue when the January calculation was submitted. NAWC, nevertheless, provided a recalculation of the January 2018 DSIC calculation in NAWC Statement No. 1 Remand, Exhibit HW-1 Remand, Schedule 3, which demonstrates that, even if private fire protection revenue had been included in the calculation, the January calculation

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<sup>15</sup> NAWC St. No. 1 Remand at 5.

<sup>16</sup> OCA St. No. 1-RM at 2-3.

remained above 5.0%. With private fire protection revenue included, the DSIC calculation effective February 1 was 5.25%.<sup>17</sup>

As a second matter, Mr. Mierzwa stated that a prior period DSIC undercollection of 0.07 percent should have been excluded from the January 2018 DSIC calculation. Contrary to Mr. Mierzwa's testimony, the prior period undercollection *must* be included in the DSIC calculation. The Commission approved formula for the DSIC calculation, which includes the "e" reconciliation factor (in this case an undercollection) is presented at page 28 of the Company's tariff:<sup>18</sup>

**Formula:**

The formula for calculation of the DSIC surcharge is as follows:

$$\text{DSIC} = \frac{(\text{DSI} \times \text{PTRR}) + \text{Dep} + e}{\text{PQR}}$$

**Where:**

DSI = the original cost of eligible distribution system improvement projects.

PTRR = the pre-tax return applicable to eligible distribution system improvement projects.

Dep = Depreciation expense related to eligible distribution system improvement projects.

e = the amount calculated under the annual reconciliation feature as described below.

PQR = Projected quarterly revenue including any revenue from acquired companies that are new being charged the rates of the acquiring company.

As a third matter, Mr. Mierzwa *correctly recognized* that Section 1357(b)(1) of the Code directs that the pre-tax return will be calculated using the federal income tax rates "as of the last day of the three-month period ending one month prior to the effective date of the DSIC and subsequent updates," but then Mr. Mierzwa *incorrectly* stated that the Company's use of the

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<sup>17</sup> NAWC St. No. 1R Remand at 1-2.

<sup>18</sup> NAWC St. No. 1R Remand at 2.

statutorily required rate was incorrect. The Company used the federal tax rate that was in effect on December 31, 2017, the last day of the three-month period ending one month prior to the February 1, 2018 effective date of the January 2018 DSIC filing. The Company's use of the tax rate *required* by Section 1357(b)(1) is correct and also consistent with the tax rates used in all other companies' DSIC filings made at that same time.<sup>19</sup>

**b. The April 2018 DSIC Calculation (Effective May 1, 2018)**

Although he presented a hypothetical recalculation of the January 2018 DSIC, Mr. Mierzwa did not recalculate the Company's April 2018 DSIC. He testified, instead, that the Company *correctly* reflected the TCJA in the April DSIC.<sup>20</sup> He cited *but* did not dispute Mr. Walker's calculation of an April DSIC of 5.48% reflective of private fire protection service.<sup>21</sup>

Mr. Mierzwa "notes" that the April 2018 DSIC includes a prior period undercollection of 0.24% which, he states, is not reflective of NAWC's current DSIC capital expenditures.<sup>22</sup> He did not net the 0.24% against the 5.48% and, if he had, the April 2018 DSIC would have remained above 5%. Mr. Mierzwa's suggestion that the 0.24% undercollection is not part of the DSIC calculation is contrary to the Commission approved tariff formula for calculating the DSIC as explained above in Section III.A.1.a.

**c. Conclusion**

In conclusion, it is noteworthy to emphasize what Mr. Mierzwa expressed with certainty. He testified, in that regard, that "[w]hat is *certain* is that since NAWC implemented the DSIC mechanism 20 years ago, the Company's calculated DSIC has exceeded the 5 percent cap in only

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<sup>19</sup> NAWC St. No. 1R Remand at 3. In Schedule 1 to NAWC Statement No. 1R Remand, Mr. Walker presented tax rates used by Aqua Pennsylvania, Inc.; Aqua Pennsylvania Wastewater, Inc.; Columbia Water Company; Peoples Natural Gas Company; SUEZ Water Pennsylvania Inc.; UGI Central Penn Gas, Inc.; and The York Water Company.

<sup>20</sup> OCA St. No. 1-RM at 4.

<sup>21</sup> OCA St. No. 1-RM at 4.

<sup>22</sup> OCA St. No. 1-RM at 4.

two quarters.”<sup>23</sup> The two quarters are the quarters effective February 1, 2018 and May 1, 2018. In those two quarters, NAWC’s DSIC exceeded 5%. There seems to be no dispute, even by Mr. Mierzwa, that NAWC’s current DSIC exceeds 5%.

**B. NAWC’s DSIC Will Continue to Exceed 5.0%**

Section 1356 of the Public Utility Code provides that a utility with an approved distribution system improvement charge and LTIP shall file an Annual Asset Optimization Plan (“AAOP”). NAWC filed its AAOP for the year ended December 31, 2017 on April 3, 2018. A copy of the AAOP is included in the evidentiary record as Attachment A to NAWC Statement No. 2 Remand and as Schedule 6 to NAWC Statement No. 1 Remand, Exhibit HW-1.<sup>24</sup>

The projected expenditures for 2018 presented in the AAOP demonstrate that the Company’s DSIC related investment will continue to exceed its current DSIC rate cap of 5% given the fact the Company’s current DSIC calculation as of May 1, 2018 is already in excess of 5%. Stated differently, NAWC’s calculated DSIC will continue to increase and exceed the current 5% cap as the Company continues to make further DSIC eligible capital improvements.<sup>25</sup>

NAWC Statement No. 1 Remand, Exhibit HW-1, Schedule 7 presents the estimated year end DSIC rate assuming the Company makes the DSIC related capital expenditures projected for 2018 in the AAOP and for 2019, 2020 and 2021 assuming the Company makes the projected DSIC related capital expenditures in its approved LTIP. The DSIC rate calculations shown on Schedule 7 include private fire protection service customers.<sup>26</sup>

As shown on Schedule 7, the Company’s current DSIC rate, effective May 1, 2018, of 5.48% is projected to increase to: 6.30% after the 2018 DSIC related infrastructure is completed;

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<sup>23</sup> OCA St. No. 1-RM at 4, lines 10 through 12 (emphasis added).

<sup>24</sup> NAWC St. No. 1 Remand at 5.

<sup>25</sup> NAWC St. No. 1 Remand at 5.

<sup>26</sup> NAWC St. No. 1 Remand at 6.

to 8.87% after the 2019 DSIC related infrastructure is completed; to 10.47% after the 2020 DSIC related infrastructure is completed; and to 11.49% after the 2021 DSIC related infrastructure is completed. The information shown on Schedule 7 demonstrates that the Company's DSIC related investment will continue to exceed its current DSIC rate cap of 5%.<sup>27</sup>

**1. Testimony of OCA Witness Mierzwa**

OCA witness Mierzwa testified that it is uncertain whether the DSIC will continue to exceed 5% because projected capital expenditures may be overstated. We submit that this is nonsensical. With the current DSIC calculation in excess of 5%, the DSIC will continue to be above 5% as NAWC continues to move forward with its capital improvement program and its Commission approved LTIIP. It matters not if projects are completed under budget. Even if under budget, the additional dollars of DSIC eligible investment will continue to cause the DSIC, which is already above 5%, to increase further.

**C. NAWC's Current DSIC Exceeds 5.0% and Will Continue to Exceed 5.0% Justifying the Requested Increase to a 7.5% Cap**

The Commission in its Order entered April 26 remanded this matter seeking assurances that NAWC's DSIC exceeds 5% and will continue to exceed 5%. NAWC has provided the sought for assurances and, thus, we submit that the increase of the DSIC cap to 7.5% is justified.<sup>28</sup> With the DSIC capped at 5% and a current DSIC calculation greater than 5%, NAWC is under recovering costs incurred in furtherance of its Commission approved LTIIP. NAWC submits that this under recovery is neither just nor reasonable. The DSIC cap should be increased to 7.5%.

In further regard to justifying the cap increase, we note that the Commission issued a press release on May 3, 2018 addressing "Drinking Water Week" in Pennsylvania, a copy of

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<sup>27</sup> NAWC St. No. 1 Remand at 6.

<sup>28</sup> NAWC St. No. 1 Remand at 6.

which is included as Schedule 8 to Exhibit HW-1 Remand. Citing Commissioner Sweet, the press release explains that "water is far too valuable a resource to be taken for granted - after all, it is the only utility commodity that we physically ingest. ... From prudent ratemaking, to daily oversight, to working with utilities to strengthen water system viability, the Commission is continually taking an active role to ensure safe and reliable service."<sup>29</sup>

Continuing to cite Commissioner Sweet, the press release comments specifically on the DSIC mechanism:<sup>30</sup>

“The PUC’s Distribution System Improvement Charge (DSIC) mechanism has proven to be a valuable tool in accelerating the replacement of existing aging facilities. ... Needed replacement projects that would be put on hold until a future base rate proceeding can now be jumpstarted by using a DSIC surcharge on customers’ bills to accelerate the replacement.”

The recent press release and Commissioner Sweet’s comments are consistent with legislative intent and the benefits of a DSIC as historically recognized by the Commission. In 2007, Commissioner Fitzpatrick commented favorably about the DSIC mechanism when the Commission approved Pennsylvania American Water Company’s request for a 7.5% cap:

I support the well-reasoned Motion of Chairman Holland in this case. As the Motion recognizes, both Pennsylvania and the United States face a major problem with aging infrastructure. The General Assembly created a tool to combat this problem in the water industry when it authorized water companies to institute a distribution system improvement charge (DSIC). Based upon the record in this proceeding, it is clear that allowing Pennsylvania American Water Company to raise its DSIC cap from 5% to 7.5% of billed revenues is consistent with the purpose of the General Assembly in establishing a DSIC.

The parties that opposed raising the DSIC cap in this proceeding used logic that is inconsistent with establishing a DSIC in the first place--they plainly do not favor allowing a utility to collect expenditures outside of base rate proceedings. While the policy that utility expenditures will only be recovered in setting base rates still applies in most situations, the General Assembly has created an exception for expenditures by water utilities for distribution system

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<sup>29</sup> NAWC St. No. 1 Remand at 7.

<sup>30</sup> NAWC St. No. 1 Remand at 7.

infrastructure. Our decision today is consistent with the legislative intent in establishing the DSIC mechanism.<sup>31</sup>

Subsequent to the PAWC proceeding, the General Assembly enacted Act 11 of 2012 including Section 1358(a)(2). Unlike the statutory circumstances in 2007, current statutory law expressly allows a DSIC cap of 7.5% for water utilities.<sup>32</sup>

The Commission has approved and allowed United Water Pennsylvania Inc. (“United”),<sup>33</sup> Aqua Pennsylvania, Inc. (“Aqua”)<sup>34</sup> and Pennsylvania American Water Company (“PAWC”)<sup>35</sup> to increase their DSIC caps from 5.0% to 7.5%. There is no basis upon which these requests of other Pennsylvania water utilities to increase their DISC cap, ultimately approved by the Commission, can continue to be distinguished from the request of NAWC to increase its DSIC cap. The evidence presented by NAWC in this remand proceeding demonstrates that NAWC’s DSIC exceeds 5% and will continue to exceed 5%.

NAWC has a Commission approved LTIP with projected DSIC eligible capital expenditures of \$4,251,000 for 2017 through 2021, totaling approximately 41% of existing rate base. Compliance with the approved LTIP will be facilitated by increasing the DSIC cap to 7.5%. It will do this by allowing the Company to recover the fixed costs (depreciation and pre-tax return) of completed DSIC eligible LTIP projects until they, ultimately, are reflected in base rates in the Company’s next base rate case.<sup>36</sup> The evidence presented by NAWC in this remand

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<sup>31</sup> *Petition of Pennsylvania-American Water Company*, Docket No. P-00062241 (Opinion and Order adopted July 11, 2007 and entered August 14, 2007, concurring statement of Commissioner Terrance J. Fitzpatrick).

<sup>32</sup> Section 1358(a)(2) of the Public Utility Code, 66 Pa. C.S. § 1358(a)(2).

<sup>33</sup> *Petition of United Water Pennsylvania Inc. for Approval of a Tariff Supplement to Revise its Maximum Distribution System Improvement Charge to 7.5% of Billed Revenues*, Docket No. P-2013-2389331 (Order entered December 19, 2013).

<sup>34</sup> *Pa. P.U.C., et al. v. Aqua Pennsylvania, Inc.*, Docket No. R-2008-2079310 (Opinion and Order entered July 23, 2009).

<sup>35</sup> *Petition of Pennsylvania-American Water Company*, Docket No. P-00062241 (Opinion and Order adopted July 11, 2007 and entered August 14, 2007).

<sup>36</sup> NAWC St. No. 1R at 3-4; Tr. 30.

proceeding demonstrates that NAWC's DSIC exceeds 5% and will continue to exceed 5% as NAWC moves forward with its Commission approved LTIP.

The benefits are not one-sided. As presented in the Commission approved LTIP, the Company has pipe in need of replacement in the near term future. Customer benefits include a decline in the number of main breaks and service interruptions, increased fire protection and an improvement in water quality through replacement, lining, cleaning and tie-ins.<sup>37</sup> Increasing the DSIC cap to 7.5% will "jumpstart" these needed replacement projects as the Commission recognized in its recent press release discussed above.<sup>38</sup>

Increasing the DSIC cap to 7.5%, notably, will occur without impeding existing customer safeguards. The General Assembly has included legislated safeguards within the DSIC process to ensure that the DSIC is appropriately monitored and that ratepayers are adequately protected. Safeguards assure that NAWC's DSIC is reflecting only DSIC eligible projects and that NAWC is not over-earning. Ultimately, the DSIC represents only the dollar-for-dollar recovery of prudent expenses incurred for improving reliability to customers.<sup>39</sup>

In sum, the DSIC eligible projects projected as part of the Commission approved LTIP will further the continued provision of reasonable and adequate service while "jumpstarting" needed replacement projects. Increasing the DSIC cap to 7.5% is justified so that they may continue to be reflected in the DSIC calculation until the next base rate case.<sup>40</sup>

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<sup>37</sup> NAWC St. No. 1 at 5.

<sup>38</sup> NAWC St. No. 1 at 5.

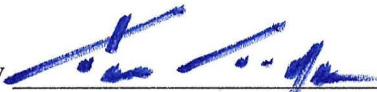
<sup>39</sup> NAWC Exhibit I, Supporting Information for Supplement No. 126 at 4.

<sup>40</sup> NAWC St. No. 1R at 2.

#### IV. CONCLUSION WITH REQUESTED RELIEF

NAWC's DSIC exceeds 5% and will continue to exceed 5%. The proposed increase in the DSIC cap to 7.5% is fully justified as it is supported by the evidence of record, allowed by clear and unambiguous statutory law, consistent with well-established Commission precedent and just and reasonable. The Commission should approve NAWC's Supplement No. 126 increasing the DSIC cap to 7.5% of billed revenue.

Respectfully submitted,

By 

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Dated: May 25, 2018

## **PROPOSED FINDINGS OF FACT**

### **Description of the Company**

1. NAWC is a public utility subject to the regulatory jurisdiction of the Commission. NAWC owns and operates a water system serving 10,554 customers in Newtown Borough, Newtown Township, and the northern portion of Middletown Township, Bucks County. Its water distribution system includes approximately 130 miles of mains, 1,000 hydrants, 3,200 valves and 10,300 meters. Order entered April 26, slip op. at 11.

### **NAWC's Approved DSIC Mechanism**

2. NAWC has had an approved DSIC mechanism in its tariff since 1998 and since that time has replaced 24,606 feet of primarily older undersized main, accounting for more than 3.5% of its total distribution system pipe. Order entered April 26, slip op. at 11.

3. The DSIC has been capped at 5% of billed revenue since it became effective in 1998. Order entered April 26, slip op. at 11.

4. The DSIC is used, with Commission approval and as allowed by the General Assembly, to recover depreciation and pre-tax return on DSIC eligible property between rate cases. Order entered April 26, slip op. at 11.

### **NAWC's DSIC Exceeds 5%**

5. NAWC's current DSIC calculation exceeds 5%. The current DSIC calculation, effective May 1, 2018, is 5.48%, excluding short term debt, using the actual cost of long term debt, including private fire protection service and reflective of the new TCJA federal tax rate. NAWC St. No. 1 Remand at 3-4.

6. NAWC's prior quarterly DSIC calculation, effective February 1, 2018, also exceeded 5%. The prior DSIC calculation, effective February 1, 2018, is 5.25%, excluding short

term debt, using the actual cost of long term debt, including private fire protection service and reflective of the pre-TCJA federal tax rate. NAWC St. No. 1 Remand at 3-4.

#### **The DSIC Will Continue to Exceed 5%**

7. Section 1356 of the Public Utility Code provides that a utility with an approved distribution system improvement charge and LTIIP shall file an Annual Asset Optimization Plan (“AAOP”).

8. The projected expenditures for 2018 presented in the AAOP demonstrate that the Company’s DSIC related investment will continue to exceed its current DSIC rate cap of 5% given the fact the Company’s current DSIC calculation as of May 1, 2018 is already in excess of 5%. NAWC St. No. 1 Remand at 5.

9. With the capital expenditures projected in the AAOP for 2018 and in the approved LTIIP for 2019, 2020 and 2021, the DSIC will increase to: 6.30% after 2018; to 8.87% after 2019; to 10.47% after 2020; and to 11.49% after 2021. NAWC St. No. 1 Remand at 6.

#### **Increasing the Cap to 7.5% Is Justified**

10. The Commission in its Order entered April 26 remanded this matter seeking assurances that NAWC’s DSIC exceeds, and will continue to exceed, 5%. NAWC has provided the sought for assurances. NAWC St. No. 1 Remand at 6.

11. With the DSIC capped at 5% and a current DSIC calculation greater than 5%, NAWC is under recovering costs incurred in furtherance of its Commission approved LTIIP.

12. The Commission issued a press release on May 3, 2018 addressing “Drinking Water Week” in Pennsylvania. Citing Commissioner Sweet, the press release explains that “water is far too valuable a resource to be taken for granted - after all, it is the only utility commodity that we physically ingest. ... From prudent ratemaking, to daily oversight, to

working with utilities to strengthen water system viability, the Commission is continually taking an active role to ensure safe and reliable service." NAWC St. No. 1 Remand at 7.

13. Continuing to cite Commissioner Sweet, the press release comments specifically on the DSIC mechanism:

“The PUC’s Distribution System Improvement Charge (DSIC) mechanism has proven to be a valuable tool in accelerating the replacement of existing aging facilities. ... Needed replacement projects that would be put on hold until a future base rate proceeding can now be jumpstarted by using a DSIC surcharge on customers’ bills to accelerate the replacement.”

NAWC St. No. 1 Remand at 7.

14. The recent press release and Commissioner Sweet’s comments are consistent with legislative intent and the benefits of a DSIC as historically recognized by the Commission.

15. The Commission has approved and allowed United Water Pennsylvania Inc., Aqua Pennsylvania, Inc. and Pennsylvania American Water Company to increase their DSIC caps from 5.0% to 7.5%. There is no basis upon which these requests of other Pennsylvania water utilities to increase their DISC cap, ultimately approved by the Commission, can continue to be distinguished from the request of NAWC to increase its DSIC cap. The evidence presented by NAWC in this remand proceeding demonstrates that NAWC’s DSIC exceeds 5% and will continue to exceed 5%.

16. NAWC has a Commission approved LTIIP with projected DSIC eligible capital expenditures of \$4,251,000 for 2017 through 2021, totaling approximately 41% of existing rate base. Compliance with the approved LTIIP will be facilitated by increasing the DSIC cap to 7.5%. It will do this by allowing the Company to recover the fixed costs (depreciation and pre-tax return) of completed DSIC eligible LTIIP projects until they, ultimately, are reflected in base rates in the Company’s next base rate case. NAWC St. No. 1R at 3-4; Tr. 30. The evidence

presented by NAWC in this remand proceeding demonstrates that NAWC's DSIC exceeds 5% and will continue to exceed 5% as NAWC moves forward with its Commission approved LTIIP.

17. The benefits are not one-sided. As presented in the Commission approved LTIIP, the Company has pipe in need of replacement in the near term future. Additional customer benefits include a decline in the number of main breaks and service interruptions, increased fire protection and an improvement in water quality through replacement, lining, cleaning and tie-ins. NAWC St. No. 1 at 5. Increasing the DSIC cap to 7.5% will "jumpstart" these needed replacement projects.

18. Increasing the DSIC cap to 7.5%, notably, will occur without impeding existing customer safeguards. The General Assembly has included legislated safeguards within the DSIC process to ensure that the DSIC is appropriately monitored and that ratepayers are adequately protected. Safeguards assure that NAWC's DSIC is reflecting only DSIC eligible projects and that NAWC is not over-earning. Ultimately, the DSIC represents only the dollar-for-dollar recovery of prudent expenses incurred for improving reliability to customers. NAWC Exhibit I, Supporting Information for Supplement No. 126 at 4.

19. The DSIC eligible projects projected as part of the Commission approved LTIIP will further the continued provision of reasonable and adequate service while "jumpstarting" needed replacement projects. Increasing the DSIC cap to 7.5% is justified so that they may continue to be reflected in the DSIC calculation until the next base rate case. NAWC St. No. 1R at 2.

## PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding.
2. The Order entered April 26 remanded this matter to address the single issue of whether NAWC has exceeded its current 5% DSIC cap and will continue to exceed it, and whether this justifies the requested increase to a 7.5% cap.
3. The evidence of record demonstrates that NAWC has exceeded the current 5% DSIC cap. NAWC's current DSIC calculation, effective May 1, 2018, is 5.48%. NAWC St. No. 1 Remand at 3-4.
4. The substantial evidence of record also demonstrates that the DSIC will continue to exceed 5% as the Company moves forward with its Commission approved LTIP. NAWC St. No. 1 Remand at 5-6.
5. NAWC has submitted substantial evidence and provided the sought for assurances that its DSIC exceeds 5% and will continue to exceed 5%.
6. An increase in the DSIC cap to 7.5% is justified. A DSIC cap of 7.5% is just and reasonable, consistent with the Public Utility Code and consistent with recent and past pronouncements of the Commission acknowledging the benefits of a DSIC.
7. With the DSIC capped at 5% and a current DSIC calculation greater than 5%, NAWC is under recovering costs incurred in furtherance of its Commission approved LTIP.
8. This under recovery is neither just nor reasonable. The DSIC cap should be increased to 7.5%.
9. Supplement No. 126 is allowed to go into effect on August 1, 2018.

**PROPOSED ORDERING PARAGRAPH**

1. Supplement No. 126 is approved as just and reasonable and is allowed to go into effect on August 1, 2018.

**Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Chief Deputy Administrative Law Judge  
Christopher P. Pell, Presiding**

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<b>Pennsylvania Public Utility Commission</b>	<b>:</b>	<b>Docket No. R-2017-2624240</b>
<b>Office of Consumer Advocate</b>	<b>:</b>	<b>Docket No. C-2017-2626954</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>The Newtown Artesian Water Company</b>	<b>:</b>	

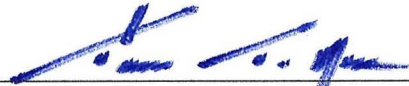
**CERTIFICATE OF SERVICE**

I hereby certify that I have this 25<sup>th</sup> day of May, 2018, served a true and correct copy the Main Brief on Remand of The Newtown Artesian Water Company, upon the persons and in the manner indicated below:

**VIA EMAIL SERVICE BEFORE NOON WITH SERVICE OF PAPER COPY BY FIRST  
CLASS MAIL, POSTAGE PREPAID**

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