

COMMONWEALTH OF PENNSYLVANIA



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May 25, 2018

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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 Main Brief on Remand in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Erin L. Gannon".

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Enclosures:

cc: Honorable Christopher P. Pell
Certificate of Service
*249947

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 Main Brief on Remand, 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 25th day of May 2018.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF ON REMAND OF THE
OFFICE OF CONSUMER ADVOCATE

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DATED: May 25, 2018

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I. STATEMENT OF THE CASE

The Office of Consumer Advocate (OCA) hereby submits this Main Brief on Remand regarding the Distribution System Improvement Charge (DSIC) cap increase proposed by Newtown Artesian Water Company (NAWC or the Company).

A. Procedural History

In this proceeding, NAWC filed a tariff proposing to increase its DSIC cap from 5 percent to 7.5 percent of billed revenues. The OCA recommended that the Public Utility Commission (PUC or Commission) deny the proposed DSIC cap increase. The OCA also recommended several corrections and modifications to the Company's existing and proposed calculation of its DSIC and application of the DSIC earnings cap.

On February 9, 2018, Administrative Law Judge Christopher P. Pell (ALJ Pell) issued a Recommended Decision denying NAWC's proposed DSIC cap increase. R.D. at 26-31. The ALJ also recommended that the Company change its DSIC tariff, DSIC calculation and earnings reports to correct the problems the OCA identified. R.D. at 56-71.

On April 26, 2018, the Commission entered an Order in this Proceeding. The Commission held that based on the evidence in the record, NAWC did not demonstrate sufficient evidence to support an increase to its DSIC cap. Order at 34. With one exception, the Commission adopted the OCA's additional recommendations. Order at 42-43. The Commission, however, noted that after the record closed in this proceeding, NAWC had made a DSIC quarterly filing stating that the Company had exceeded the 5 percent cap. Order at 34; see also NAWC Exh. HW-1 Remand, Sch. I (January 2018 DSIC Filing). The Commission determined that the information contained in the January 2018 DSIC Filing may prove to be relevant to the disposition of this matter. The Commission gave NAWC the opportunity to voluntarily file an extension of its rate suspension,

so the matter could be remanded to the Office of Administrative Law Judge to reopen the record for the introduction of additional relevant evidence, subject to the examination of the OCA and the introduction of its own evidence. Order at 34-35. On April 26, 2018, the Company filed Tariff Supplement No. 133 to Tariff Water – Pa. PUC No. 9, which extended the effective date of its tariff proposing to increase the DSIC cap to July 30, 2018. Pursuant to the Commission’s April 26, 2018 Order, the proceeding on remand is limited to the single issue of whether NAWC has exceeded its current 5 percent DSIC cap and will continue to exceed it, and whether this justifies the requested increase to a 7.5 percent cap. Order at 35.

Consistent with the procedural schedule adopted for the remand proceeding, the OCA issued two sets of interrogatories and served the Testimony on Remand of Jerome D. Mierzwa, OCA Statement No. 1RM. The OCA’s testimony, and the Direct and Rebuttal Testimony on Remand submitted by NAWC, was moved into the record during an evidentiary hearing held on May 18, 2018. The OCA now submits this Main Brief in support of its position that NAWC’s DSIC filings in January and April 2018 do not justify an increase to a 7.5 percent cap.

B. Burden of Proof

NAWC bears the burden of proof to establish the justness and reasonableness of every element of the proposed increase to its DSIC cap. As set forth in Section 315(a) of the Public Utility Code:

Reasonableness of rates – In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon the 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.

66 Pa. C.S. § 315(a). The Commonwealth Court interprets this principle as follows:

Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.

Lower Frederick Twp. v. Pa. PUC, 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (Pa. Commw. Ct. 1980) (citations omitted). See also Brockway Glass v. Pa. PUC, 63 Pa. Commw. 238, 437 A.2d 1067 (Pa. Commw. Ct. 1981).

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a prima facie case, the party with the burden must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” Burleson v. Pa. PUC, 461 A.2d 1234, 1236 (Pa. 1983) (Burleson). The Commission has specified that, in this proceeding, NAWC’s has the affirmative burden to show that the increase to the DSIC cap is necessary and in the public interest. Order at 32.

II. SUMMARY OF ARGUMENT

The remaining issue in this proceeding is whether the Commission should waive the statutory 5 percent DSIC cap and permit NAWC to increase its DSIC cap to 7.5 percent. In its April 26, 2018 Order, the Commission concurred with the ALJ that the Company has failed to meet its burden of proof that the increase to the DSIC cap is necessary and in the public interest. The Commission provided NAWC the opportunity to supplement the record with additional relevant evidence, however, and afforded the OCA the opportunity to examine that evidence and introduce its own. As discussed herein, the additional evidence introduced by the Company does not outweigh the substantial evidence showing the proposed cap waiver is not necessary or in the public interest.

NAWC is in a materially different position than other water utilities that were permitted to increase their DSIC cap above 5 percent. Its January 2018 DSIC Filing was the first time that

NAWC exceeded a 5 percent DSIC rate in the seven years since its last base rate case filing; indeed it was the first time the Company exceeded a 5 percent DSIC rate in the 20 years it has charged a DSIC. Unlike the other water utilities, NAWC has no plans to further accelerate infrastructure improvement if the cap is increased to 7.5 percent and has stated it will comply with its Long Term Infrastructure Improvement Plan (LTIIP) if the cap remains at 5 percent. Moreover, NAWC is the only water utility with a DSIC and a Purchased Water Adjustment Clause (PWAC) through which it automatically recovers approximately one-third of its annual operating expenses without filing a base rate case.

While NAWC has exceeded the 5 percent DSIC cap in two quarters since the initial close of the record, it has not established that it will continue to exceed the DSIC cap. The calculated DSIC rates for February and May 2018 are lower than claimed, because the Company failed to include Private Fire Protection revenues. Even the corrected rates are not an accurate reflection of current expenses and expenditures because the January 2018 DSIC Filing was calculated using 2017 income tax rates and both filings include prior period undercollections. Moreover, the Company's projections that it will continue to exceed the 5 percent cap are based on the assumption that with a 7.5 percent DSIC cap, the Company will not file a base rate case before 2021 – extending the interval between base rate cases to 10 years.

For these reasons and as discussed in the OCA's Briefs in the underlying proceeding, NAWC's current or projected DSIC rates do not show that increasing the DSIC cap is necessary or in the public interest. The Commission should maintain the existing 5 percent cap. NAWC will determine whether to file a base rate case if it has DSIC eligible costs that exceed that cap.

III. ARGUMENT

A. Whether the Company Has Exceeded Its 5 Percent Cap

In the underlying proceeding, the Commission determined that NAWC had not shown that increasing the DSIC cap was necessary or in the public interest. Order at 32. The evidence showed, *inter alia*, that NAWC had not exceeded a 5 percent DSIC rate since implementing a DSIC in 1998. R.D. at 5 (Finding of Fact #17). After the record closed, NAWC filed two quarterly updates indicating, that absent a 5 percent cap, its DSIC rate would be 5.44 percent and 5.71 percent, respectively.¹ The amount by which NAWC exceeded the cap is in dispute but the facts now show that NAWC exceeded the DSIC cap in those two quarters by some amount. The question before the Commission, however, is whether NAWC has shown that an increase to the DSIC cap is necessary and in the public interest. As discussed in Section C, exceeding the DSIC cap in two quarters does not outweigh the substantial evidence against waiving the statutory cap.

While NAWC calculated a DSIC rate above 5 percent in two quarters, the OCA introduced evidence in this proceeding on remand showing it was by a smaller margin than the Company claimed. In the underlying proceeding, the Commission found that NAWC had not properly calculated the DSIC rate and ordered the Company to recalculate its DSIC rate for the four-year period ending November 2017 and change its calculation going forward. Order at 42-43. NAWC made some but not all of those corrections in its DSIC rate for the first two quarters of 2018. With respect to the January 2018 DSIC Filing, the Company did not include Private Fire Protection customers in the calculation of the DSIC rate. NAWC St. 1 Remand at 3. As explained by the OCA's witness, Mr. Mierzwa:

¹ On January 22, 2018, NAWC filed a DSIC quarterly update with a February 1, 2018 effective date (January 2018 DSIC Filing). NAWC Exh. HW-1 Remand, Sch. 1 at 2. In addition, NAWC filed a DSIC quarterly update on April 20, 2018 with a May 1, 2018 effective date (April 2018 DSIC Filing). NAWC Exh. HW-1 Remand, Sch. 2 at 2.

A comparison of the revenues shown on Schedule 5, page 1, and Schedule 3, page 1, attached to Mr. Harold Walker, III's testimony indicates private fire protection revenues of \$46,575 should have been included in NAWC's January 2018 DSIC calculation. Reflecting these private fire protection revenues would have reduced NAWC's DSIC by [sic] to 5.25 percent, or by 0.19 percent.

OCA St. 1RM at 2 (footnote omitted); see also NAWC Exh. HW-1 Remand, Schs. 3 at 1, 5 at 1. Accordingly, the calculated DSIC rate for February 1, 2018, should be 5.25 percent rather than 5.44 percent. For the May 1, 2018 DSIC, the correction for Private Fire Protection reduces the calculated rate from 5.71 percent to 5.48 percent. OCA St. 1RM at 4; NAWC St. 1 Remand at 3.

Additionally, both 2018 DSIC Filings contain upward adjustments that are not reflective of the Company's actual DSIC expenses/expenditures and will change in future DSIC filings. The pretax rate of return used by the Company to calculate the January 2018 DSIC Filing did not reflect the changes resulting from the Tax Cuts and Jobs Act of 2017 (TCJA). OCA St. 1 RM at 3. While this is consistent with the statutory DSIC calculation,² the Company may have overcollected DSIC revenues for that quarter because the revenues will be taxed at the new, lower federal corporate tax rate. As stated by the OCA's witness:

Because the revenues from the February 1, 2018 DSIC rate will accrue to the Company in 2018, the Company will actually be taxed on that income at the 21 percent federal income tax rate. Therefore, based on the tax change calculations provided by Mr. Walker, the February 1, 2018 DSIC rate has a built-in overcollection of 0.48 percent that is not reflective of NAWC's current DSIC-related income tax liability.

OCA St. 1RM at 3 (citing NAWC Exh. HW-1 Remand, Sch. 5 at 1). Also, the calculated February 2018 DSIC rate includes an upward adjustment of 0.07 percent due to prior period undercollections. NAWC Exh. HW-1 Remand, Sch. 1 at 7. Prior period undercollections also raised the May 2018 DSIC rate by 0.25 percent (or 0.24 percent if you include Private Fire

² Section 1357(b)(1) of the Public Utility Code provides that pre-tax return will be calculated using the state and 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." 66 Pa. C.S. § 1357(b)(1).

Protection revenues). NAWC Exh. HW-1 Remand, Sch. 2 at 3, Sch. 4 at 1. These adjustments for prior period undercollections do not reflect NAWC's current DSIC capital expenditures. OCA St. 1RM at 3. In future quarters, the adjustments could be larger, smaller, or even serve to reduce the DSIC rate if there is a prior period overcollection. But for the possible tax-related overcollection in the January 2018 DSIC Filing and the prior period undercollections reflected in both quarters, the calculated February and May 2018 DSIC rates would be closer to 5 percent.³ This does not support a waiver of the 5 percent DSIC cap.

B. Whether the Company Will Continue to Exceed Its 5 Percent Cap

In addition to submitting evidence that the Company has exceeded a 5 percent DSIC rate in the first half of 2018, the Company provided a schedule intended to show that its DSIC rate will be higher than 5 percent through 2021 if NAWC does not file a base rate case before 2021 and its actual expenditures meet or exceed its projected expenditures. NAWC St. 1 Remand, Sch. 7. As stated above and discussed in Section C below, however, having a DSIC rate higher than 5 percent does not entitle a utility to a cap waiver. Each utility's request is evaluated on a case by case basis, based on review of the complete record, to determine whether a cap waiver is necessary and in the public interest. Order at 33-34.

NAWC's arguments that it will continue to exceed a 5 percent DSIC rate are based on assumptions that do not support a waiver of the DSIC cap. First, the DSIC rate projections contained in Schedule 7 assume that NAWC will not file a base rate case before 2021. OCA St. 1RM, Sch. JDM-1. It has already been seven years since the Company filed a base rate case.

³ In the Company's rebuttal testimony, its witness, Harold Walker III, claimed that the OCA's witness stated that the Company's use of the prior tax rate and inclusion of prior period under collections was incorrect. Mr. Walker mischaracterizes Mr. Mierzwa's testimony. Rather, the OCA's witness testified that the effects of the TCJA and inclusion of prior period under collections are not representative of the Company's current DSIC-eligible expenses and expenditures. See OCA St. 1RM at 3.

Lengthening that interval by waiving the DSIC cap is not consistent with the policy of the Commission or the intent of the statutory cap waiver provision. The DSIC cap serves to prevent extended periods between base rate proceedings. 66 Pa. C.S. § 1358(a); Petition of PAWC to Establish a DSIC, P-00961031, 1996 Pa. PUC LEXIS 182 at *21 (Aug. 26, 1996) (PAWC 1996).⁴

As stated by the Commission in its denial of Columbia Gas' Petition to increase its DSIC cap:

We agree that the 5% DSIC cap underscores the function of the DSIC, which is to supplement, rather than replace base rate proceedings.

Petition of Columbia Gas of Pa., Inc., P-2016-2521993, Opinion and Order at 50 (Dec. 22, 2016).

The OCA's witness testified regarding the value of base rate proceedings:

[Base rate proceedings] provide the opportunity for simultaneous review of all aspects of a utility's revenues, expenses and capital costs for the same period of time.

OCA St. 1 at 5.

To that end, the Commission has only utilized the cap waiver to provide relief where utilities were filing base rate cases on a frequent basis and still reaching the 5 percent DSIC cap.⁵ Specifically, the Commission has tried to achieve a reasonable balance between the "Company's efforts to make improvements to its distribution system while encouraging the Company to make reasonably frequent base rate filings." PAWC 2007 at *32. The Commission repeatedly found this balance where the approval of the DSIC cap increase would encourage reasonably frequent base rate cases of approximately two to three years. Id.; Aqua at *27-28; United Water at 6.

⁴ "We also note that the provision of a 5% of billed revenues cap on the maximum amount of any DSIC insures that the surcharge mechanism will not evade the Section 1308 base rate process and its intensive top-to-bottom review of all company revenue, expense, rate base and return claims." PAWC 1996 at *21.

⁵ See Pa. PUC v. Aqua Pennsylvania, Inc., R-2008-2079310, 2009 Pa. PUC LEXIS 263 at *27-28 (July 23, 2009) (Aqua); Petition of Pennsylvania-American Water Co. for Approval to Implement a Tariff Supplement to Tariff Water – Pa. P.U.C. No. 4 Revising the DSIC, P-00062241, 2007 Pa. PUC LEXIS 42 at *30-32 (July 11, 2007) (PAWC 2007); Petition of United Water Pa., Inc. for Approval of a Tariff Supplement to Revise its Maximum DSIC To 7.5% of Billed Revenues, P-2013-2389331, Order at 6 (Dec. 19, 2013) (United Water).

Second, the projections in Schedule 7 assume that the Company will spend the annual amounts forecasted in the remaining years of its LTIP (2018 through 2021). In 2017, however, which was the first year of its LTIP, the Company substantially overstated its LTIP projections. The Company's Annual Asset Optimization Plan for Year Ended December 31, 2017 (Optimization Plan), attached to NAWC witness Walker's testimony on remand, shows that projected LTIP expenditures for 2017 were \$1.03 million, but actual expenditures were only \$0.705 million. NAWC St. 2 Remand, Att. 1 at 3. This is a difference of \$324,374, or more than 30 percent. OCA St. 1 RM at 4. It is equally possible that the Company's projected expenditures in other years of the LTIP will be overstated.

If NAWC begins to spend as much as projected and exceeds a 5 percent DSIC rate, it has the ability to file a base rate case, roll its DSIC into base rates for recovery and reset the DSIC rate to zero by filing a base rate case. 66 Pa. C.S. § 1358(b)(1). A base rate case will also change the ratio of LTIP expenditures to rate base value and the total customer bill to which the DSIC is applied will likely be higher. OCA St. 1RM at 5; OCA St. 1SR at 5. This will increase the amount the Company can recover with a 5 percent DSIC cap.

Third, as stated in Section A, in any quarter, the DSIC rate is subject to adjustment for prior period undercollections or overcollections. In the latter case, this would have the effect of reducing the Company's DSIC rate below projections. Any resulting overcollections will have a downward effect of the DSIC rate in future quarters.

For the reasons above, NAWC's Schedule 7 does not show with certainty that the Company's DSIC rates will continue to exceed the 5 percent cap. Further, it is within NAWC's discretion to file a base rate case and reset the DSIC to zero. As stated by OCA witness Mierzwa, the only certainty "is that since NAWC implemented the DSIC mechanism 20 years ago, the

Company's calculated DSIC has exceeded the 5 percent cap in only two quarters." OCA St. 1RM at 4. Considered with all the evidence in the record, the possibility that NAWC could exceed a 5 percent rate prospectively is not sufficient to warrant an increase to the Company's DSIC cap.

C. Whether This Justifies the Requested DSIC Cap Increase

As stated in its recent Order, the Commission agreed "with the ALJ and the OCA that Section 1358(a)(2) does not establish that a 7.5% DSIC for all water utilities is presumptively reasonable." Order at 32. It further stated that, "approval of a DSIC-cap waiver is done on a case-by-case basis after consideration of all the evidence in the record." *Id.* at 33-34. The ALJ elaborated on this point in the Recommended Decision, stating:

Although Act 11 does provide a mechanism for a water utility's DSIC cap to be increased from 5% to 7.5%, it is not an automatic entitlement and does come with limitations... It is significant that the Commission noted water utilities who were previously granted a waiver up to 7.5% had demonstrated that they had accelerated their rate of infrastructure replacement and that an increase over the then-current DSIC cap was 'necessary and in the public interest.'

R.D. at 26-27; see also Implementation of Act 11 of 2012, M-2012-2293611, Final Implementation Order at 42 and n.5 (Aug. 2, 2012) (Final Implementation Order). The OCA respectfully submits that the evidence adduced by NAWC here does not change these conclusions and does not satisfy the Company's burden of showing that an increase to the DSIC cap is necessary and in the public interest.

Based on the totality of evidence in this record, it is clear that the Company's position is materially different from other water utilities that have been granted a waiver of the 5 percent DSIC cap. First, each of those utilities repeatedly and frequently exceeded the 5 percent cap. See n.7, supra. NAWC has exceeded its DSIC cap in only two quarters since the Company implemented a DSIC in 1998. See OCA St. 1 at 3, 5; NAWC Exh. HW-1 Remand, Schs. 1, 2.

Second, with a 5 percent DSIC cap, NAWC has not filed a base rate case for 7 years and, historically, has averaged 5 years between base rate filings. OCA St. 1 at 5. In contrast, Aqua, PAWC and United Water were filing base rate cases approximately every two years to three years with a 5 percent cap. Aqua at *27-28; PAWC 2007 at *30-32; United Water at 6. In the underlying proceeding, the ALJ recognized the distinction between NAWC's situation and that of other water utilities in rejecting the Company's argument that increasing the DSIC cap to 7.5 percent will lengthen its rate case filing frequency. R.D. at 29-30. The ALJ stated that this argument lacked merit based on the infrequency of NAWC's historical base rate filings, which at the time, averaged five years in between base rate cases. Id. The Commission agreed that lengthening the time between NAWC's base rate case filings was not reason to waive the 5 percent DSIC cap. Order at 33.

Third, the other water utilities provided evidence that the increase to the DSIC cap was necessary to accelerate infrastructure replacement. See Aqua (holding that an increase to the DSIC cap would allow Aqua to accelerate replacement of 1,500 miles of critical pipe); PAWC 2007 at *6, 24 (approving an incremental increase to PAWC's DSIC cap based, *inter alia*, on PAWC's claim that the increase would support its efforts to accelerate replacement of its older small-diameter mains); United Water at 3 (determining that an increase of the DSIC cap "will enable UWPA to accelerate further its main replacement program"). NAWC, however, maintains that it does not plan to further accelerate infrastructure improvements if it receives an increase to its DSIC cap. Tr. at 36. Rather, the Company states it will comply with its LTIIP regardless of whether the Commission approves its proposal. Id., see also NAWC St. 1 at 3. For this and the other reasons discussed above, NAWC's position is materially different from prior water utility proceedings where the Commission approved an increase to the DSIC cap.

Lastly, as stated by the Commission, NAWC already has other means to address regulatory lag in recovering its LTIIP investment:

We agree with the OCA that the Company has other means to address the potential regulatory lag in the financing of the LTIIP improvements. The OCA notes that NAWC has a Purchased Water Adjustment Clause through which it automatically recovers approximately one-third of its annual operating expenses without filing a base rate case. The OCA also suggests that the Company can utilize a fully forecasted future test year, which allows for prospective inclusion of distribution system improvement costs in rate base.

Order at 33. For example, utilizing the Fully Projected Future Test Year (FPFTY) in a base rate case filed in 2018 would allow the Company to collect expenditures for an additional year after the end of the future test year. 66 Pa. C.S. § 315(e). Doing so would allow NAWC to recover a larger portion of its projected LTIIP expenditures through base rates and lessen reliance on DSIC recovery. Based on the Company's DSIC rate history, it is possible that filing a base rate case and using a FPFTY could allow NAWC to recover the costs associated with its DSIC-eligible investment for years without reaching a 5 percent cap. OCA St. 1RM at 5.

In conclusion, if reaching the 5 percent DSIC cap is the only evidence required for waiver, the cap would function as a trigger, rather than a limitation. Instead, the Commission has recognized that a 7.5% DSIC for all water utilities is not presumptively reasonable. Order at 33, see pg. 5, supra. There must be sufficient evidence showing that waiver is necessary and in the public interest. As discussed above, the totality of evidence continues to weigh heavily against increasing NAWC's cap:

- NAWC's DSIC rates did not reach 5 percent for 6 years after it last established new base rates.⁶

⁶ The Order approving NAWC's last base rate increase was entered in October 2011, with new rates effective on one day's notice. Pa. PUC v. Newtown Artesian Water Co., R-2011-2230259, Order at 2 (Oct. 14, 2011). NAWC's actual DSIC rates for November 2013 through November 2017 are provided in Schedule JDM-6 attached to OCA Statement No. 1.

- Increasing the DSIC cap could delay the Company's next base rate filing by an additional two or three years (extending the 7 year interval to 10 years).
- NAWC has not shown that increased DSIC revenue is necessary for it to accelerate infrastructure replacement; it has no plans to accelerate its spending or rate of replacement from that approved in its LTIIP.
- The Company has several mechanisms at its disposal to address regulatory lag: the PWAC, the FPFTY and a DSIC of up to 5 percent.

The DSIC cap is the primary consumer safeguard to ensure that utilities cannot evade base rate review for extended periods. 66 Pa. C.S. § 1358(a)(1); see also PAWC 1996 at *21. NAWC has not shown that a higher DSIC cap is necessary and in the public interest. Consistent with the Commission's initial conclusion, the Company's DSIC should remain capped at 5 percent.

IV. CONCLUSION WITH REQUESTED RELIEF

For the reasons set forth above, Newtown Artesian Water Company has failed to show it is necessary and in the public interest to waive the Company's statutory DSIC cap. The OCA submits that NAWC's proposed 7.5 percent DSIC cap should be denied as filed.

Respectfully submitted,



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Dated: May 25, 2018
248336

Proposed Findings of Facts

1. Newtown Artesian Water Co. (NAWC or Company) is a public utility that provides water service to 10,554 customers in Newtown Borough, Newtown Township and the northern portion of Middletown Township in Bucks County. NAWC Exh. I, Resp. to Section 53.52(a)(2).
2. The Company's DSIC is currently capped at 5 percent. NAWC St. 1 at 2.
3. On January 22, 2018, NAWC filed a DSIC quarterly update with a February 1, 2018 effective date (January 2018 DSIC Filing). NAWC Exh. HW-1 Remand, Sch. 1 at 2.
4. The January 2018 DSIC Filing calculated a DSIC rate of 5.44 percent. NAWC Exh. HW-1 Remand, Sch. 1 at 2.
5. In its January 2018 DSIC Filing, the Company did not include Private Fire Protection customer revenues in its calculations. NAWC St. 1 Remand at 3.
6. Including Private Fire Protection customer revenues would reduce the calculated February 2018 DSIC rate to 5.25 percent. OCA St. 1RM at 2; NAWC Exh. HW-1 Remand, Sch. 3, at 1.
7. NAWC filed a DSIC quarterly update on April 20, 2018 with a May 1, 2018 effective date (April 2018 DSIC Filing). NAWC Exh. HW-1 Remand, Sch. 2 at 2.
8. The April 2018 DSIC Filing indicated that the calculated DSIC rate was 5.71 percent. NAWC Exh. HW-1 Remand, Sch. 2 at 2.
9. In its April 2018 DSIC Filing, the Company did not include Private Fire Protection customer revenues in its calculations. NAWC St. 1 Remand at 3.
10. Including Private Fire Protection revenues would reduce the calculated May 2018 DSIC rate to 5.48 percent. OCA St. 1RM at 4; NAWC St. 1 Remand at 3.
11. The pretax rate of return used in NAWC's January 2018 DSIC Filing did not reflect the changes resulting from the Tax Cuts and Jobs Act of 2017 (TCJA). OCA St. 1RM at 3.
12. The Company may have overcollected DSIC revenues for the quarter beginning February 1, 2018 because the revenues will be taxed at the new, lower federal corporate tax rate. OCA St. 1RM at 3.
13. The calculated DSIC rate in the January 2018 DSIC Filing includes an upward adjustment of 0.07 percent due to prior period undercollections. NAWC Exh. HW-1 Remand, Sch. 1 at 7.
14. The calculated DSIC rate in the April 2018 DSIC Filing includes an upward adjustment of 0.25 percent due to prior period undercollections. NAWC Exh. HW-1 Remand, Sch. 2 at 3.
15. Adjustments for prior period undercollections do not reflect NAWC's current DSIC capital expenditures. OCA St. 1RM at 3.

16. Since the Company implemented a DSIC in 1998, the Company has calculated a DSIC rate higher than 5 percent twice – in its January and April 2018 DSIC Filings. OCA St. 1 at 3, 5; NAWC Exh. HW-1 Remand, Schs. 1, 2.
17. NAWC has not filed a base rate case since 2011 and, historically, has averaged 5 years between base rate filings. OCA St. 1 at 5; Pa. PUC v. Newtown Artesian Water Co., R-2011-2230259, Order at 2 (Oct. 14, 2011).
18. NAWC maintains that it does not plan to further accelerate infrastructure improvements if it receives an increase to its DSIC cap. Tr. at 36.
19. The Company states it will comply with its LTIP whether or not the Commission approves its proposed DSIC cap increase. Tr. at 36; see also NAWC St. 1 at 3.
20. The Company's projected DSIC rates through 2021 are based on the assumption that NAWC will not file a base rate case before 2021. OCA St. 1RM, Sch. JDM-1.
21. Filing a base rate case will reset the Company's DSIC rate to zero. 66 Pa. C.S. § 1358(b)(1); NAWC Exh. HW-1 Remand, Sch. 7.
22. A base rate case will change the ratio of LTIP expenditures to rate base value and the total customer bill to which the DSIC is applied will likely be higher. OCA St. 1RM at 5; OCA St. 1SR at 5.
23. The Company's Annual Asset Optimization Plan for Year Ended December 31, 2017 shows that projected LTIP expenditures for 2017 were \$1.03 million and actual expenditures were only \$0.705 million. NAWC St. 2 Remand, Att. 1 at 3. This is a difference of \$324,374, or more than 30 percent. OCA St. 1RM at 4.
24. The Company has other means to address the potential regulatory lag in the financing of the LTIP improvements, including a Purchased Water Adjustment Clause and the Fully Projected Future Test Year. OCA St. 1 at 6; OCA St. 1SR at 7; 66 Pa.C.S. § 315(e).

Proposed Conclusions of Law

1. NAWC's proposed DSIC cap increase must be just, reasonable, and in conformity with regulations or orders of the Commission. 66 Pa. C.S. § 1301.
2. The burden of proving the justness, reasonableness, and lawfulness of every element of the proposed DSIC cap increase is on NAWC. 66 Pa. C.S. § 315(a); 66 Pa. C.S. § 1301.
3. The burden of proof does not shift to parties challenging a requested rate increase. Berner v. Pa. PUC, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955); Pa. PUC v. Equitable Gas Co., 57 PaPUC 423, 471 (1983); University of Pennsylvania v. Pa. PUC, 86 Pa. Commw. 410, 485 A.2d 1217 (1984).
4. NAWC has failed to prove that the proposed DSIC cap increase is just and reasonable. 66 Pa. C.S. § 315(a); 66 Pa. C.S. § 1301.

Proposed Ordering Paragraphs

It is hereby ORDERED THAT:

1. NAWC's proposal, contained in Supplement No. 126 to Tariff Water Pa. PUC. No. 9, to raise its Distribution System Improvement Charge cap from 5% to 7.5% is denied.
2. NAWC shall file tariffs, tariff supplements, or tariff revisions, containing rates, provisions, rules, and regulations, consistent with the findings herein and the Commission's Order entered on April 26, 2018 in this proceeding.
3. The Formal Complaint of the OCA at Docket No. C-2017-2626954 is sustained.