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April 25, 2019

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-2019-3006904
Pa. P.U.C. 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 Prehearing Memorandum in connection with the Call-In Telephonic Prehearing Conference to be held on April 26, 2019. Copies of the Prehearing Memorandum 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, Esq. (via email, w/encl.)

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Darlene D. Heep, Presiding**

Pennsylvania Public Utility Commission	:	Docket No. R-2019-3006904
Office of Consumer Advocate	:	Docket No. C-2019-3008684
Office of Small Business Advocate	:	Docket No. C-2019-3008912
	:	
v.	:	
	:	
The Newtown Artesian Water Company	:	

**PREHEARING CONFERENCE MEMORANDUM OF
THE NEWTOWN ARTESIAN WATER COMPANY**

AND NOW, comes The Newtown Artesian Water Company (“NAWC”), by its attorneys, and submits the following in connection with the Prehearing Conference to be held on April 26, 2019:

History of the Proceeding

This proceeding involves NAWC’s Supplement No. 136 to Tariff Water-Pa. P.U.C. No. 9 (“Supplement No. 136”) filed on March 1, 2019. Supplement No. 136 would increase NAWC’s annual water revenue by \$934,154 effective May 1, 2019.

Complaints against the rate filing were filed by the Office of Consumer Advocate (“OCA”) on March 21, 2019, at Docket No. C-2019-3008684, and by the Office of Small Business Advocate on April 2, 2019, at Docket No. C-2019-3008912.

By Order entered April 11, 2019, at Docket No. R-2019-3006904, the Pennsylvania Public Utility Commission (“Commission”) suspended Supplement No. 136 and instituted an

investigation into the reasonableness of the proposed tariff change. The matter was assigned to Administrative Law Judge Darlene D. Heep.

NAWC's Counsel to Be Included on the Service List

The name, postal and email addresses and telephone and fax numbers for NAWC's counsel to be included on the service list are as follows:

Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
Voice: 717.255.7641
Fax: 717.236.8278
Email: tniesen@tntlawfirm.com

NAWC's Interest In This Proceeding

NAWC's interest in this proceeding is its Supplement No. 136 and the rates, rules and regulations presented in its Tariff No. 9.

The Issues NAWC Intends to Raise and Pursue

The fundamental issue in this proceeding is whether the rates, rules and regulations proposed by NAWC in Supplement No. 136 are fair, just, reasonable, non-discriminatory and lawful. NAWC is unable to determine at this time all of the issues and sub-issues which will be raised by the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and any other participants to the proceeding. Reference should be made to their respective Pre-Hearing Conference Memoranda for any issues they may be in a position to identify at this time. Nevertheless, it is reasonable to expect that the following general issues will be raised in the proceeding:

- A. Is NAWC's rate base claim reasonable?

- B. Is NAWC's rate of return claim reasonable?
- C. Are NAWC's claims for operating revenues, expenses, depreciation and taxes reasonable?
- D. Is NAWC's proposed rate design fair, reasonable, non-discriminatory and lawful?

It is NAWC's position that Supplement No. 136 and the supporting information submitted with it establish that each of the foregoing issues should be answered in the affirmative. NAWC submits that the rates, rules and regulations proposed in Supplement No. 136 are fair, just, reasonable, non-discriminatory and lawful and should be allowed to go into effect as proposed.

NAWC's Witnesses and Areas of Testimony

NAWC intends to present the following witnesses:

<u>Statement</u>	<u>Witness</u>	<u>General Subject Matter</u>
1	Constance E. Heppenstall Senior Project Manager, Rate Studies Gannett Fleming Valuation and Rate Consultants, LLC Valley Forge Corporate Center 1010 Adams Avenue Audubon, PA 19403-2402 610.650.8101	Revenue Requirement and Rate Design; Supplement No. 136 to Tariff Water - Pa. P.U.C. No. 9 and Rate Study and Data in Support of Supplement No. 136
2	Harold Walker, III Manager, Financial Studies Gannett Fleming Valuation and Rate Consultants, LLC Valley Forge Corporate Center 1010 Adams Avenue Audubon, PA 19403-2402 610.650.8101	Rate of Return

- | | | |
|---|---|--|
| 3 | John J. Spanos
President
Gannett Fleming Valuation and Rate
Consultants, LLC
Valley Forge Corporate Center
1010 Adams Avenue
Audubon, PA 19403-2402
610.650.8101 | Depreciation Study including
Depreciation Studies as of
September 30, 2018, September
30, 2019 and September 30, 2020
identified in the Rate Study as
Exhibit JJS-1, Exhibit JJS-2 and
Exhibit JJS-3 |
| 4 | Daniel J. Angove
General Manager
Newtown Artesian Water Company
201 North Lincoln Avenue
Newtown, PA 18940 | Company Operations |

NAWC requests that any contact with Ms. Heppenstall, Mr. Walker, Mr. Spanos or Mr. Angove be arranged through NAWC Counsel.

NAWC respectfully reserves the right to present additional witnesses, rebuttal and other testimony and exhibits as the matter progresses.

Proposed Plan and Schedule of Discovery

Discovery is ongoing. Since the filing of Supplement No. 136 and supporting information on March 1, 2019, NAWC has been served with Rate Study, Rate Base and Revenue and Expense Interrogatories from the Bureau of Investigation and Enforcement and Sets I and II Interrogatories from the Office of Consumer Advocate. NAWC has responded to discovery in a timely manner and submits that the Other Parties should be in a position to conclude their initial discovery by May 18, 2019. NAWC proposes a 5 calendar day answer period for discovery directed by it to the testimony of the Other Parties.

Litigation Schedule

A proposed litigation schedule is attached. It is patterned after the schedule presented in the Prehearing Conference Order dated April 11, 2019, with dates for service of testimony, but with evidentiary hearings moved one day to July 10 and 11, 2019 from July 9 and 10, 2019.

Protective Order

Information provided in response to discovery includes information marked CONFIDENTIAL. A proposed Protective Order for the handling of Confidential and Proprietary Information is attached.

Respectfully submitted,

By 

Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101

*Attorney for
The Newtown Artesian Water Company*

Dated: April 25, 2019

LITIGATION SCHEDULE

May 28, 2019	Due date for the filing and in-hand service of the prepared Direct Testimony of Other Parties
June 18, 2019	Due date for the filing and in-hand service of Rebuttal Testimony
July 1, 2019	Due date for the filing and in-hand service of Surrebuttal Testimony
July 9, 2019	Outline of NAWC's Oral Rejoinder Testimony By Noon
July 10 and 11, 2019	Evidentiary Hearings
August 1, 2019	Due date for the filing and in-hand service of Main Briefs
August 16, 2019	Due date for the filing of Reply Briefs

PROPOSED PROTECTIVE ORDER

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Darlene D. Heep, Presiding**

Pennsylvania Public Utility Commission	:	Docket No. R-2019-3006904
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	:	
v.	:	
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The Newtown Artesian Water Company	:	

PROTECTIVE ORDER

On March 1, 2019, The Newtown Artesian Water Company filed Supplement No. 136 to Tariff Water-Pa. P.U.C. No. 9 (“Supplement No. 136”) proposing an increase in annual revenue of \$934,154 effective May 1, 2019.

By Order entered April 11, 2019, at Docket No. R-2019-3006904, the Pennsylvania Public Utility Commission suspended Supplement No. 136 and instituted an investigation into the reasonableness of the proposed tariff change.

At the Prehearing Conference on April 26, 2019, the Company proposed that a Protective Order issue to address the handling of Confidential and Proprietary Information. The Bureau of Investigation and Enforcement (“I&E”), the Pennsylvania Office of Consumer Advocate (“OCA”) and the Pennsylvania Office of Small Business Advocate (“OSBA”) did not oppose the request.

The following Order is adopted:

ORDER

THEREFORE,

IT IS ORDERED:

1. That a Protective Order is granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which are filed with the Pennsylvania Public Utility Commission (“Commission”), produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. That materials subject to this Protective Order are all correspondence, documents, data, information, excerpts, summaries, studies, methodologies and other materials (including materials derived therefrom) which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, formal and informal discovery procedures, testimony or oral examination, or provided as a courtesy to a party to this proceeding, which are claimed to be of a proprietary or confidential nature and which are designated “CONFIDENTIAL” or “PROPRIETARY INFORMATION” or “CONFIDENTIAL AND PROPRIETARY” or “PRIVILEGED AND CONFIDENTIAL” (hereinafter collectively referred to as “Proprietary Information”).

3. That, in addition, the parties may designate extremely sensitive Proprietary Information as “HIGHLY CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL MATTER” (hereinafter referred to as “Highly Confidential Information”) and thus secure the additional protections set forth in this Protective Order pertaining to such material.

4. That Proprietary Information and Highly Confidential Information produced in this proceeding shall be made available, solely for use in this proceeding, to the Commission and its Staff, the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”)

and additional parties, if any. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Proprietary Information and Highly Confidential Information shall be permitted only in accordance with this Protective Order.

5. That Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures:

a. Proprietary Information. To the extent required for participation in this proceeding, a party's counsel, upon execution of the attached Appendix A, may afford access to Proprietary Information made available by another party ("the producing party") to the party's expert(s) and staff. Any information provided under this provision may be used only for and to the extent that it is necessary for participation in this proceeding. Any person obtaining information disclosed through this provision may not use that information to gain any commercial advantage and any person obtaining information may not forward it to any person to gain commercial advantage.

b. Highly Confidential Information. Where information is asserted to be Highly Confidential Information, it will be made available for inspection and review as provided for in this Protective Order and copying only as specified herein. The producing party shall permit counsel for I&E, OCA and OSBA (individually "public advocate" and collectively the "public advocates") and other counsel to take custody of a copy of such Highly Confidential Information, provided that it shall not be copied, except for counsel, and the public advocates' in-house staff, independent consultants, or non-lawyer representatives, in accordance with the protocols set forth below and shall be returned as provided for in this Protective Order. Such Highly Confidential Information may be provided by a public advocate to its eligible in-house staff without the need for execution of Appendix A. Additionally, such Highly Confidential Information may be

provided by a public advocate or other counsel to its eligible independent consultants (as defined in 52 Pa. Code § 5.365(d)) or other non-lawyer representatives who are assisting counsel with these proceedings, provided that such consultants and non-lawyer representatives execute and return the attached Appendix A to the producing party pursuant to Paragraph 6 of this Protective Order.

c. No other persons may have access to the Proprietary or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive, or who is afforded access to any Proprietary or Highly Confidential Information, shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

6. Prior to making Proprietary or Highly Confidential Information available to any independent consultant or non-lawyer representatives, counsel shall, except as specifically exempted under Paragraph 5(b) of this Protective Order, deliver a copy of this Protective Order to such person and shall receive a written acknowledgment from that person in the form attached to this Protective Order and designated as Appendix A. Counsel shall promptly deliver to the producing party a copy of the executed Appendix A.

7. A producing party shall designate data or documents as constituting or containing Proprietary or Highly Confidential Information by affixing an appropriate proprietary stamp or type-written designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary or Highly Confidential Information, the producing party shall designate only the specific data or pages of documents which constitute or contain Proprietary or Highly Confidential Information.

8. Any public reference to Proprietary or Highly Confidential Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary or Highly Confidential Information to fully understand the reference and not more. The Proprietary or Highly Confidential Information

shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

9. Part of any record of this proceeding containing Proprietary or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery, and including reference thereto as mentioned in Ordering paragraph 8 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary or Highly Confidential Information is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to Order of the Administrative Law Judge, the Commission or appellate court. Unresolved challenges arising under paragraph 10 shall be decided on petition by the presiding officer or the Commission as provided by 52 Pa.Code § 5.365(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, *etc.*, to the extent that such guidance is available.

10. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary or Highly Confidential Information; to question or challenge the admissibility of Proprietary or Highly Confidential Information; to refuse or object to the production of Proprietary or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary or Highly Confidential Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary or Highly Confidential Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary or Highly Confidential, the party claiming that the information is Proprietary or Highly Confidential retains the burden of demonstrating that the designation is necessary and appropriate.

11. This Protective Order shall continue to be binding throughout and after the conclusion of this proceeding.

12. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary or Highly Confidential Information, shall be immediately returned upon request to the party furnishing such Proprietary or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary or Highly Confidential Information have been destroyed.

Dated: April __, 2019

Darlene D. Heep
Administrative Law Judge

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Darlene D. Heep, Presiding**

Pennsylvania Public Utility Commission	:	Docket No. R-2019-3006904
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	:	
v.	:	
	:	
The Newtown Artesian Water Company	:	

ACKNOWLEDGMENT

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the receiving party). The undersigned has read the Protective Order dated April _____, 2019, and understands that it deals with the treatment of Proprietary and Highly Confidential Information. The undersigned agrees to be bound by, and to comply with, the terms and conditions of said Protective Order. In the case of an independent expert, the undersigned represents that he/she has complied with the provisions of paragraph 5 of the Protective Order prior to submitting this Acknowledgement.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE: _____

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
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	:
v.	:
	:
The Newtown Artesian Water Company	:

CERTIFICATE OF SERVICE

I hereby certify that I have this 25^h day of April, 2019, served a true and correct copy of The Newtown Artesian Water Company's Prehearing Conference Memorandum, upon the persons and in the manner indicated below:

VIA EMAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

The Honorable Darlene D. Heep
Administrative Law Judge
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Pennsylvania Public Utility Commission
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Philadelphia, PA 19107
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