

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2019-3006904
Office of Consumer Advocate	:	C-2019-3008684
Office of Small Business Advocate	:	C-2019-3008912
	:	
v.	:	
	:	
Newtown Artesian Water Company	:	

RECOMMENDED DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

The Newtown Artesian Water Company (NAWC, Newtown, the company) filed a tariff supplement seeking approval of a rate change that would increase annual operating revenue by \$934,154. The Commission suspended the proposed tariff supplement until December 1, 2019 and assigned this matter to the Office of Administrative Law Judge for investigation and hearing.

The parties have reached a settlement. The settlement rates proposed are expected to increase annual operating revenue by approximately \$780,000. If approved, the approximate increase for customers would be 13.1% for residential, 18.1% for commercial, 15.8% for industrial, 17.7% for public, 16.6% for private fire and 15.7% for public fire. The residential rates of the two rate areas served by NAWC will be equalized to \$102.33 per quarter.

NAWC agrees in the settlement that the company will not file another base rate case before November 30, 2021 unless there is a Commission Order or there are relevant regulatory or tax changes. This decision recommends that the Commission adopt the proposed

Settlement terms in the Joint Petition for Settlement (JP) without modification because it is in the public interest and supported by substantial evidence.

HISTORY OF THE PROCEEDING

On March 1, 2019, Newtown Artesian Water Company, Utility Code 212070, filed Supplement No. 136 To Water – Pa. P.U.C. No. 9 to become effective May 1, 2019. The subject tariff supplement would have increased Newtown’s total annual operating revenues for water service by approximately \$934,154, or 16.9%.

The Bureau of Investigation and Enforcement of the Commission (I&E) is participating in this matter pursuant to 66 Pa. C.S. § 308.2.¹ On March 21, 2019, the Office of Consumer Advocate (OCA) filed a formal complaint at Docket No. C-2019-3008684. The Office of Small Business Advocate (OSBA) subsequently filed a formal complaint on April 2, 2019, at Docket No. C-2019-3008912.

Pursuant to the Public Utility Code, 66 Pa. C.S. § 1308(d), on April 11, 2019, the Commission suspended the filing by operation of law until December 1, 2019, unless permitted by Commission Order to become effective at an earlier date.

On April 11, 2019, a Prehearing Conference Order was issued. A telephonic prehearing conference was scheduled for and held on April 26, 2019, to set a hearing date and procedural schedule for this matter. Counsel for NAWC, OCA, OSBA and I&E participated in the Prehearing Conference.

Subsequent to the Prehearing Conference, a final Petition for Protective Order was presented by the parties. There were no objections to the final version and the Protective Order was issued on May 1, 2019.

¹ 66 Pa. C.S. § 308.2(a)(11) provides that Commission established bureaus may "[t]ake appropriate enforcement actions, including rate proceedings, service proceedings and application proceedings, necessary to [e]nsure compliance with this title, commission regulations and orders."

A Prehearing Order was issued on May 2, 2019, setting the procedural schedule. By Evidentiary Hearing Notice dated May 22, 2019, evidentiary hearings were scheduled for July 10-11, 2019, in Harrisburg, Pennsylvania.

On July 1, 2019, the parties reported that they had reached a settlement in principle. The parties were advised that they had until the Reply brief due date, August 16, 2019, to submit settlement documents.

On July 10, 2019, the hearing was convened for the purpose of identification and admission of testimony and exhibits in support of the settlement. The testimony and exhibits admitted and served upon the Secretary's Bureau are:

NAWC-

NAWC Statement No. 1 - Direct Testimony of Constance E. Heppenstall, including Appendices A through D;

NAWC Statement No. 1-S - Supplemental Direct Testimony of Constance E. Heppenstall, including Appendices A and B;

NAWC Statement No. 1-R - Rebuttal Testimony of Constance E. Heppenstall, including Attachments CEH-1-R through CEH-5-R;

NAWC Statement No. 2 - Direct Testimony of Harold Walker, III, including Exhibit HW-1;

NAWC Statement No. 2-R - Rebuttal Testimony of Harold Walker, III, including Schedule 1;

NAWC Statement No. 3 - Direct Testimony of John J. Spanos, including Exhibits JJS-1, JJS-2 and JJS-3;

NAWC Statement No. 3-R - Rebuttal Testimony of John J. Spanos; and

NAWC Statement No. 4 - Direct Testimony of Daniel J. Angove.

I&E –

I&E Statement No. 1: Direct Testimony of John Zalesky

I&E Exhibit No. 1: Exhibit to accompany the Direct Testimony of John Zalesky

I&E Statement No. 1-SR: Surrebuttal Testimony of John Zalesky

I&E Statement No. 2: Direct Testimony of Christopher M. Henkel

I&E Exhibit No. 2: Exhibit to accompany the Direct Testimony of Christopher M. Henkel

I&E Statement No. 2-SR: Surrebuttal Testimony of Christopher M. Henkel

I&E Exhibit No. 2-SR: Exhibit to accompany the Surrebuttal Testimony of Christopher M. Henkel

I&E Statement No. 3: Direct Testimony of Joseph Kubas

I&E Exhibit No. 3: Exhibit to accompany the Direct Testimony of Joseph Kubas

I&E Statement No. 3-SR: Surrebuttal Testimony of Joseph Kubas

I&E Statement No. 4: Direct Testimony of Holly Gilliland

I&E Statement No. 4-SR: Surrebuttal Testimony of Holly Gilliland

Verification Statements – Zalesky, Henkel, Kubas, Gilliland

OSBA-

OSBA Rebuttal Testimony and Exhibits of Brian Kalcic, labelled OSBA Statement No. 1-R with Exhibits BK-1R and BK-2R

OCA-

Revised OCA Statement No. 1

Revised Direct Testimony of Stacy Sherwood

- Appendix A
- Revised Appendix B
 - Revised Schedule SLS-1
 - Revised Schedule SLS-2
 - Revised Schedule SLS-3

- Schedule SLS-4
 - Schedule SLS-5
 - Schedule SLS-6
 - Schedule SLS-7
 - Schedule SLS-8
 - Schedule SLS-9
 - Schedule SLS-10
 - Schedule SLS-11
 - Schedule SLS-12
 - Schedule SLS-13
 - Schedule SLS-14
 - Schedule SLS-15
 - Schedule SLS-16
 - Revised Schedule SLS-17
- Appendix C
 - OCA Set I-1
 - OCA Set I-5
 - TUS Set I-R-9
 - OCA Set I-10
 - OCA Set I-12
 - TUS Set I-R-8
 - TUS Set I-R-16
 - I&E-RE-34
 - I&E-RE-1
 - I&E-RE-36
- OCA Statement No. 2
 - Direct Testimony of Aaron L. Rothschild
 - Appendix A
 - Schedules
 - Schedule ALR 1
 - Schedule ALR 2
 - Schedule ALR 3
 - Schedule ALR 4
 - Schedule ALR 5
 - Schedule ALR 6
 - Schedule ALR 7

On August 1, 2019, the parties submitted a Joint Petition for Settlement of Rate Investigation signed by NAWC, OCA, I&E and OSBA.² The settlement included the following attachments:

² On August 13, 2019, NAWC submitted a revised Page 1 of Appendix B – Proof of Revenue, recalculating the percentages in Column 12 using Pro Forma Fully Projected Future Test Year Revenue at Present Rates as the base number in the percentage calculation.

- Appendix A Settlement Supplement
- Appendix B Proof of Revenue
- Appendix C Statement in Support of Settlement - NAWC
- Appendix D Statement in Support of Settlement - I&E
- Appendix E Statement in Support of Settlement - OCA
- Appendix F Statement in Support of Settlement - OSBA³

The parties request that the Commission "act as soon as possible to approve this Joint Petition and grant NAWC special permission to file a tariff supplement in the form [attached to Settlement as Appendix A] to become effective for service on one day's notice, following entry of a Commission Order approving the Settlement; provided, however, that the effective date of the tariff supplement will be no sooner than October 1, 2019, which is the first day of the Fully Projected Future Test Year ("FPFTY") ending September 30, 2020." JP at 2-3.

The record closed on August 15, 2019.

For the reasons discussed below, this decision recommends that the Commission approve the Joint Petition for Settlement (JP) without modification .

FINDINGS OF FACT

1. NAWC is a Pennsylvania public utility that provides water service to the public in Newtown Borough, the Township of Newtown and the Township of Middletown, Bucks County, Pennsylvania. NAWC St.S at 1.

2. NAWC provides water service to two rate areas, namely Indian Rock Rate Area and the Newtown Artesian Rate Area. NAWC St.S at 6.

3. On March 1, 2019, NAWC filed Supplement No. 136 to Tariff Water-Pa. P.U.C. No. 9 ("Supplement No. 136") to be effective May 1, 2019, seeking to increase NAWC's annual operating revenue by \$934,154, or by 16.9%, based on a fully projected future test year ending September 30, 2020.

³ Statements in Support of Settlement are references herein as "St.S."

4. OSBA is authorized and directed to represent the interests of small business consumers of utility service in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50.

5. OSBA filed a formal complaint against Supplement No. 136 on April 2, 2019, Docket No. C-2019-3008912.

6. I&E is a Commission bureau that represents the public interest in ratemaking and service matters and enforces compliance with the Pennsylvania Public Utility Code and Commission regulations and Orders. *Implementation of Act 129 of 2008 Organization of Bureau and Offices*, Docket No. M-2008-20071852 (Order entered August 11, 2011); I&E St. No. 3 p. 1.

7. The OCA is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

8. OCA filed a formal Complaint against supplement No. 136 on March 21, 2019, Docket No. C-2019-3008684.

9. The parties engaged in extensive discovery throughout the proceeding.

10. The active parties submitted testimony in support of their respective positions, including direct testimony, rebuttal testimony, and surrebuttal testimony.

11. The Parties agreed to a settlement that fully resolves all issues and filed a Joint Petition for Settlement that includes an annual operating revenue increase of approximately \$780,000, or 14.2%.

12. The Parties agree that the Settlement is in the public interest as a reasonable resolution of their interests and should be approved.

DISCUSSION

A. Applicable Legal Principles

The parties have reached a settlement. Commission policy promotes and encourages settlements. 52 Pa.Code § 5.231; *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Final Order entered October 4, 2004). Settlements lessen the time and expense the parties must expend litigating a case and conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Final Order entered October 4, 2004).

In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. C S Water & Sewer Assoc.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985). As the Commission has stated:

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote and serve the public interest. Because the Joint Petitioners request the Commission enter an order in this proceeding approving the Partial Settlement without modification, they share the burden of proof to show that the terms and conditions of the Partial Settlement are in the public interest.

Pa. Pub. Util. Comm'n v. PECO Energy Co., Docket No. R-2018-3000164 (Order entered Dec. 20, 2018) at 15 (citations omitted).

Nevertheless, utility rates must be "just and reasonable." 66 Pa.C.S. § 1301. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923) cited in

Pennsylvania Public Utility Commission Aqua Large Users Group Office of Consumer Advocate Office of Small Business Advocate Pennsylvania American Water Company Athens Borough John Bahnweg, et al.; v.; Aqua Pennsylvania, Inc., Docket No. R-2018-3003558, et al (order entered May 9, 2019) 2019 Pa. PUC LEXIS 170, *12 (Pa. P.U.C. May 9, 2019).

In determining what constitutes a fair rate of return, the Commission follows the criteria set forth in *Bluefield, supra*, and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). As the United States Supreme Court stated in *Bluefield*:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

Bluefield, 262 U.S. at 693.

The Parties note that this is a "black box" settlement. NAWC St.S at 4; OCA St.S at 5; I&E St.S at 6. In such settlements, the parties cannot reach agreement on every element of the revenue requirement calculations. The Commission has found such settlements acceptable and important to reaching consensus in rate cases, stating:

We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the

company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases.

Pa. Pub. Util. Comm'n v. Peoples TWP LLC, PUC Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013), at p. 27 (citations omitted).

However, "black box" settlements must contain enough information to allow the Commission to determine that revenue requirement calculations and accompanying tariffs are in the public interest and to properly balance the interests of ratepayers and utility stockholders. *See Pa. Pub. Util. Comm'n v. Pennsylvania Power Co.*, 55 Pa. PUC 552, 579 (1982); *Pa. Pub.Util. Comm'n v. National Fuel Gas Dist. Corp.*, 73 Pa. PUC 552, 603-605 (1990).

The Joint Petition will be examined in accordance with the above principles.

B. Terms and Conditions of Proposed Settlement

The terms of the proposed settlement are as follows:⁴

13. Joint Petitioners agree that this rate proceeding can be settled without the need for formal litigation. The terms and conditions comprising this Joint Petition, to which Joint Petitioners agree, are as follows:

(a) Revenue Increase, Rate Design and Scale Back

Joint Petitioners respectfully request that the Commission act as soon as possible to approve this Joint Petition and grant NAWC special permission to file a tariff supplement in the form attached hereto as Appendix A, to become effective for service on one day's notice, following entry of a Commission Order approving the Settlement; provided, however, that the effective date of the tariff supplement will be no sooner than October 1, 2019, which is the first day of the Fully Projected Future Test Year ("FPFTY") ending September 30, 2020.

The settlement rates presented in Appendix A are designed to produce additional annual revenue of \$780,000, in lieu of the originally proposed rate increase of \$940,163,

⁴ Paragraph designations as in the JP are maintained for consistency.

and are based upon a pro forma level of residential usage of 464,665 thousand gallons, commercial usage of 136,799 thousand gallons, industrial usage of 46,717 thousand gallons and public usage of 24,613 thousand gallons for a total usage of 672,793 thousand gallons for the FPFTY period ending September 30, 2020.

The settlement rates presented in Appendix A eliminate separate rates for the Company’s Newtown Artesian and Indian Rock Rate Areas and are designed based on a scale back initially proposed by I&E and modified by agreement with the OSBA. The scale back is supported by NAWC, I&E and OSBA. The OCA does not join in the scale back but does not oppose it.

(b) PWAC Calculation Template and Other Tariff Changes

For the purpose of calculating its Purchased Water Adjustment Charge (“PWAC”), NAWC shall use the “baseline item” values as follows. The values are as presented in proposed Tariff Page No. 31 of Supplement No. 136, revised to reflect 672,793 as the Baseline 1,000 Gallons of Water Sales.

FROM TARIFF PAGE	EFFECTIVE	/	/2019
Baseline Purchase Water Cost (per thousand gallons)			\$3.356
BCWSA (Customer)	\$0.018		
BCWSA (Consumption)	\$3.454		
PA-AM (Consumption)	\$2.797		
Baseline 1,000 Gallons Purchase Water			443,832
BCWSA	367,487		
PA-AM	76,345		
Baseline Water Sales (per thousand gallons)			672,793

Other tariff changes proposed in Supplement No. 136 are reflected in the Appendix A tariff supplement and it is agreed that the other tariff changes will go into effect as filed.

(c) DSIC

The Distribution System Improvement Charge (“DSIC”) shall be established at 0% of billed revenues effective with the effective date of settlement rates.

As of the effective date of settlement rates, NAWC will be eligible to include plant additions in the Distribution System Improvement Charge once the total account balances of total depreciable plant exceed \$48,029,675.60, which is the level of investment projected by the Company at September 30, 2020 (*i.e.*, the end of the FPFTY) per Table No. 4 (NAWC Statement No. 3, Exhibit JJS-3, p. I 7). The foregoing provision is included solely for purposes of calculating the DSIC and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in a FPFTY filing.

For purposes of calculating its DSIC, NAWC shall use the equity return rate for water utilities contained in the Commission’s most recent Quarterly Report on the Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for water utilities contained in the most recent Quarterly Earnings Report consistent with 66 Pa. C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa. C.S. § 1358(b)(1).

For purposes of calculating its DSIC, NAWC shall use the depreciation accrual rates projected by the Company at September 30, 2020. (*i.e.*, the end of the FPFTY) per Table No. 1 (NAWC Statement No. 3, Exhibit JJS-3, p. I-3) as follows:

	Depreciation Rate
Mains	2.07%
Services	1.75%
Meters	1.44%
Hydrants	2.29%

The Joint Petitioners acknowledge that issues regarding the impact of 66 Pa. C.S. § 1301.1 on the treatment of federal and state income tax deductions in calculating DSIC charges are the subject of a Commonwealth Court Order that requires a remand to the Commission. *McCloskey v. Pennsylvania Public Utility Commission*, Case Nos. 697 C.D. 2018 and 1183 C.D. 2018 (“*McCloskey*”). The Company will not contest the right of a party to raise issues regarding the impact of 66 Pa. C.S. § 1301.1 on the

treatment of federal and state income tax deductions in calculating DSIC charges by filing a complaint against the Company's first quarterly DSIC charge filed after the final resolution of *McCloskey* or by filing a pleading to initiate a generic proceeding.

(d) Reporting on Plant Additions

NAWC will provide the Bureau of Technical Utility Services, I&E, OCA and OSBA with an update to Table No. 4 (NAWC Statement No. 3, Exhibit JJS-2, p. V-8) for the years 2018-2019 no later than January 2, 2020, and Table No. 4 (NAWC Statement No. 3, Exhibit JJS-3, p. I-7) for the years 2019-2020 no later than January 4, 2021, to be filed under this docket number. The updated tables will include actual capital expenditures, plant additions, and retirements by month for the twelve months ending September 30, 2019 and September 30, 2020, respectively.

(e) Tax Cuts and Jobs Act

The Settlement Rates fully account for the impacts of the Tax Cuts and Jobs Act of 2017 ("TCJA") and no further expense adjustments, refunds or credits are required.

The TCJA reduces the Federal Income Tax Rate ("FIT"). The settlement revenue requirement calculation reflects the reduced FIT rate of 21% in the TCJA starting with the effective date of new rates.

The TCJA also impacts reserves for deferred income tax liabilities. NAWC calculated the impact of the TCJA on its deferred tax liability at December 31, 2017 to be \$1,156,209 ("excess ADIT"). NAWC also calculated the amortization period for returning the excess ADIT of 1 to 42 years depending on the ADIT component.

ADIT Regulatory Liability is made up of 4 items

	<u>Amount</u>	<u>Years</u>
Depreciation	\$1,130,984	42.19
Defer - Well #7	2,661	1
Defer - Devonshire	1,228	3
Defer - Tanner well	21,337	6
	<hr/>	
	\$1,156,209	
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The amount of excess ADIT to be amortized (credited) on an annual basis (approximately \$33,433) is incorporated into the settlement revenue requirement calculation starting with the effective date of new rates. The annual amortization is calculated as follows:

Depreciation	\$26,807
Defer - Well #7	\$2,661
Defer – Devonshire	\$409
Defer - Tanner well	\$3,556
	<hr/>
Total FPFTY amortization	\$33,433
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NAWC will track the amortization of the excess ADIT against the beginning balance of \$1,156,209 so that the remaining excess ADIT balance can be determined in NAWC's next case. The remaining unamortized excess ADIT balance will continue as a reduction to rate base in all future proceedings until the full amount is returned to ratepayers.

(f) Amortizations

Except as provided in Subparagraph (e) above, no amortizations are accepted or incorporated in the settlement revenue requirement calculation.

(g) Stay – Out

NAWC agrees that it will not file for another base rate case before November 30, 2021; provided, however, that the foregoing provision shall not prevent NAWC from filing a tariff or tariff supplement proposing a general increase in rates in compliance with Commission orders or in response to fundamental changes in regulatory policies or federal tax policies affecting the Company's rates.

Other Provisions

14. Under the presently suspended Supplement No. 136, the quarterly cost of water service to a typical Newtown Artesian Rate Area residential customer with a 5/8-inch meter and typical usage of 12,000 gallons per quarter would have increased by \$15.90, from \$88.73 to \$104.63 per quarter, or by 17.9%. The total bill for an Indian Rock Rate Area residential customer with a 5/8-inch meter and typical usage of 12,000 gallons per quarter would have increased by \$9.88, from \$94.75 to \$104.63 per quarter, or by 10.4%.

15. Under the Joint Petition, the quarterly cost of water service to a typical Newtown Artesian Rate Area residential customer with a 5/8-inch meter and typical usage of 12,000 gallons per quarter will increase from \$88.73 to \$102.33 per quarter or by 15.3%. The total bill for an Indian Rock Rate Area residential customer with a 5/8-inch meter and typical usage of 12,000 gallons per quarter will increase from \$94.75 to \$102.33 per quarter or by 8.0%.

The parties also agree in the JP that it is an appropriate resolution of the rate case because it minimizes litigation and administrative burden, recognizes ratepayer concerns and provides NAWC with necessary funds. The parties also agree that this settlement is made without admission or prejudice to any subsequent litigation, including any litigation should the Commission not approve the settlement, or it is withdrawn.

Joint Petitioners agree that the JP does not expressly or implicitly represent approval of any specific claim or claims made in this proceeding and agree not to contend otherwise in any subsequent proceeding. If the Commission does not approve the JP or modifies the terms, this JP may be withdrawn by any Joint Petitioner upon written notice to the Commission and all parties within three business days by any of the Joint Petitioners. Further, the parties also agreed that if the Recommended Decision adopts the Joint Petition without modification, they will all waive the filing of Exceptions.

C. Analysis

Although the parties have reached a settlement, a consideration of whether the increase therein is "just and reasonable" is still required. 66 Pa.C.S. § 1301. Additionally, a determination must be made as to whether the revenue requirement calculations and

accompanying tariffs are in the public interest and whether there is a proper balance between the interests of the parties. *See Pa. Pub. Util. Comm'n v. Pennsylvania Power Co, supra.*

1. Revenue Requirement

The company's last rate increase was in 2011. NAWC St.S at 4. NAWC initiated this action seeking a rate increase of \$934,154. As OCA notes, this increase was based in part on NAWC's projected declining residential customer usage. OCA St.S at 4. OCA questioned the calculations, contending that the decline in sales should be calculated for the future test year and the FPFTY by subtracting an amount equal to a three-year average decline in consumption for each rate class rather than only adjust usage for the residential class on an annualized gain/loss of customers to project future sales volumes. *See OCA St. 1 at 9-10. OCA St.S. at 5.*

After extensive discovery and negotiations by all parties, the settlement amount reached is approximately \$780,000. This is an increase of approximately 14.2% over present revenues and is based upon a pro forma level of residential usage of 464,665 thousand gallons, commercial usage of 136,799 thousand gallons, industrial usage of 46,717 thousand gallons and public usage of 24,613 thousand gallons for a total usage of 672,793 thousand gallons for the FPFTY period ending September 30, 2020. JP at 3. Under the settlement, increases are 13.1% for residential, 18.1% for commercial, 15.8% for industrial, 17.7% for public, 16.6% for private fire and 15.7% for public fire. Revised JP Appendix B at 1. ⁵

The quarterly cost of water service to a typical Newtown Artesian Rate Area residential customer will increase from \$88.73 to \$102.33 per quarter or by 15.3%. The total bill for a typical Indian Rock Rate Area residential customer will increase from \$94.75 to \$102.33 per quarter or by 8.0%. JP at 8. This is less than requested in the initial filing, which would have increased the cost to a typical Newtown Artesian area residential customer by \$15.90, from \$88.73 to \$104.63 per quarter, or by 17.9% and that of the typical Indian Rock Rate Area residential customer which would have increased by \$9.88, from \$94.75 to \$104.63 per quarter,

⁵ Under the original proposal, calculated based on Future Test Year 9/30/2019, rates would have increased 15.4% for residential, 20.9% for commercial, 18.4% for industrial, 19.2% for public, 21.1% for private fire and 24.2% for public fire. NAWC St. 1 at 8.

or by 10.4%. OCA St.S at 2. The result is that the residential customers will have the same rates in both areas served.

I&E supports the JP after analyzing the NAWC operating and maintenance expenses, rate base, taxes, cash working capital, rate structure, capital structure and cost of debt and equity. I&E St.S at 6. I& E also avers that under this JP, the ratepayers will continue to receive safe and reliable service at just and reasonable rates and NAWC will be allowed to earn a reasonable return on investment while meeting operating and capital expenses. I&E St.S at 8.

OCA notes that based on its analysis of the filing, company responses and testimony by the parties, the revenue increase is a result within the range of likely outcomes in the event of full litigation. OCA concludes the rate increase is in the public interest and in the interest of NAWC's ratepayers. OCA St.S at 6. OSBA indicates that its support for the JP is, in part, because the resulting rate increase is more modest than initially proposed by NAWC. OSBA St.S at 2.

Additionally, as part of the JP, NAWC has agreed not to file another base rate case before November 30, 2021. Joint Petition at 13(g). With a less than initially proposed rate increase, the settlement equalizes the residential rates of the two areas served by NAWC and includes a fair revenue requirement. Given that there is no disagreement that NAWC is in need of an increase to provide reliable service and that the increases reached in the settlement will not substantially burden any class of ratepayers more than others, the increase under the settlement terms is reasonable.

2. Scale Back of Rates

In agreement with a proposal of I&E, under the settlement, NAWC, I&E and OSBA support a scale back of rates. OCA does not join in support of the scale back but does not oppose it.

One goal of the scale back is to equalize rates and more evenly distribute any increases. Under the initially proposed rate increase, rate consolidation would have increased

proposed Indian Rock hydrant rates by 17.2% and Newtown hydrant rates by 41.0%. To mitigate the Newtown hydrant rate increase, I&E initially proposed that any scale back first be allocated to public and private fire hydrant rates in both Newtown and Indian Rock service areas if the Commission granted a revenue increase to Newtown of \$874,635 or less. That would have resulted in a 1% increase for the Indian Rock hydrant rates and 21.5% Newtown hydrant rates. I&E also recommended that any further scale back reduce usage rates from \$6.827 per thousand gallons to \$6.705 per thousand gallons with any remaining scale back reducing proposed rates proportionally so that the percentage increase is the same for the customer charges and usage rates in the residential class. I&E St. No. 3, pp. 4-5; I&E St. No. 3, pp. 6-8.

OSBA objected to the scale back proposal regarding fire hydrant rates, concerned that it would provide “far greater than proportional rate relief to the fire service classes, such that both classes would receive increases well below the system average”. OSBA St. No. 1-R, p. 3. The settlement reached includes fire hydrant rates of \$101.75 per quarter for both Newtown and Indian Rock, and the usage rates are scaled back so that the rates are the same for each class and service area. I&E St.S at 9; JP Appendix B at 4, 14. OSBA notes that under the JP, NAWC’s fire service classes are assigned appropriate rate increases. OSBA St.S at 2. The compromise on hydrant rates prevents one area bearing more than double an increase than the other and one class benefiting from rate relief more than the other. Additionally, as OSBA notes, under this agreement, commercial customers will receive approximately the same percentage rate increase as the similarly situated residential customer in both Newtown and Indian Rock. OSBA St.S at 2.

Scaling back the rates in the JP allowed equalization of the rates of the two areas served by NAWC, discussed above. NAWC states that this has been a goal in previous rate cases. NAWC St.S at 4. Having one rate rather than two rate areas will simplify billing and unify rates for all customers (NAWC St.S at 4).

3. Tariff Changes

The parties have agreed to various changes in the tariff. See I&E St.S at 9-10. The Purchased Water charges from Pennsylvania American Water Company and Bucks County

Water and Sewer Authority are addressed in the current NAWC tariff as approved by the Commission in Pa. P.U.C. v. *The Newtown Artesian Water Company*, Docket No. R-2009-2117550, Order entered April 15, 2010. In the instant settlement, all parties agree to the revisions in the NAWC calculation template to reflect current water sales levels. Tariff Page No. 31 will be revised to reflect 672,793 as the Baseline 1,000 Gallons of Water Sales.

Also, the parties have also agreed to amend the language on page 31 of the tariff to update the change in the PWAC notification process. Appropriate information will be included on the first bill following a PWAC change and bill insert. The parties have also agreed to a clarification of the method of recovery of any PWAC E-Factor, or over/under collection on Page 33 of the supplement. NAWC St. 1 at 11-12; Settlement at 13(b).

4. Distribution System Improvement Charge

Although the NAWC DSIC is capped at 5%, NAWC's DSIC calculation as of August 1, 2019 was 6.69%. See Commission Docket No. M-2019-3011704, Letter of Secretary Chiavetta dated July 30, 2019. NAWC will continue its system improvements under its Commission approved Long Term Infrastructure Improvement Plan (LTIIP).⁶

In this settlement, NAWC will not recover plant investments through the DSIC that are already included in base rates. OCA St.S at 7. As of the effective date of settlement rates pursuant to 66 Pa. C.S. § 1358(b)(1), the parties have agreed that the DSIC will be reset to zero and that NAWC will be eligible to include future plant additions in the DSIC once the total account balance of total depreciable plant exceeds \$48,029,675.60. This amount is the depreciable plant balance as of September 30, 2020, based on the results of a service life study and in consideration of projected retirements for the future test year and fully projected future test year. NAWC St. No.1, Appendix C at 2 and NAWC St. No.3, Exhibit JJS-1.

⁶ NAWC is continuing system improvements under a Commission approved LTIIP. These include: the main replacement on North Chancellor Street and related services; the main replacement on South Chancellor Street and related services; the replacement of over 700 meters; and the replacement of eight hydrants. NAWC St. No.1; NAWC St.S at 2-3.

This approach is consistent with 66 Pa. C.S. § 315(e). However, the calculation here will not be determinative for future ratemaking purposes of the projected additions to be included in rate base in FPFTY filing. NAWC St.S at 8. The total account balance of total depreciable plant is expected to exceed \$48,029,675.60 at the end of the FPFTY. NAWC St.S at 9; JP at 13(c).

The parties also have acknowledged that until the DSIC is reset pursuant to 66 Pa. C.S. § 1358(b)(1), and that for purposes of calculating its DSIC, NAWC shall use the equity return rate for water utilities contained in the Commission's most recent Quarterly Report on the Earnings of Jurisdictional Utilities and will update the equity return rate each quarter consistent with any changes to the equity return rate for water utilities contained in the most recent Quarterly Earnings Report. As the parties note, this is consistent with Section 1357(b)(3) of the Public Utility Code. *Id.*

The parties have agreed to use the depreciation accrual rates projected by the Company at September 30, 2020 (i.e., the end of the FPFTY) for the purpose of calculating NAWC's DSIC. These values are:

Facilities	Depreciation Rate
Mains	2.07%
Services	1.75%
Meters	1.44%
Hydrants	2.29%

NAWC St. No.3, Exhibit JJS-3 at 1-3; NAWC St.S at 9.

NAWC has also agreed that it will not contest the right of a party to raise issues regarding the impact of Section 1301.1 on the treatment of federal and state income tax deductions in calculating DSIC charges by filing a complaint against the Company's first quarterly DSIC charge filed after the final resolution of *McCloskey* or by filing a pleading to initiate a generic proceeding. I&E St.S at 11.

5. Plant Additions

NAWC has agreed to update its report of plant additions for the future test year and fully projected future test year to I&E, OCA, OSBA and the Commission's Bureau of Technical Utility Services. The reports will show how closely projected investments in future facilities comport with actual investment during the future test year periods. This report will include actual capital expenditures, plant additions and retirements for the 12 months ending September 30, 2019, NAWC's Future Test Year, and September 30, 2020, NAWC's Fully Projected Future Test Year. The updated information will be provided no later than January 2, 2010 and January 4, 2021, respectively. JP at 13(d). As noted by OCA, this provision is consistent with Section 315(e) of the Code. OCA St.S at 8.

6. Tax Cuts and Jobs Act of 2017

The Tax Cuts and Jobs Act of 2017 (TCJA) reduced the Federal Income Tax Rate and impacted the reserves for deferred income tax liabilities. The Joint Settlement takes these changes into consideration.

The parties have agreed that the amount of excess Accumulated Deferred Income Taxes (ADIT) to be amortized, or credited, on an annual basis, approximately \$33,433, is incorporated into the settlement revenue calculation beginning with the effective date of new rates. The 21% reduced Federal Income Tax Rate of the TCJA will be reflected in the settlement revenue requirement calculation starting with the effective date of new rates. JP at 13(e).

To allow the remaining excess ADIT balance to be determined in NAWC's next rate case, NAWC will track the amortization of excess ADIT against the beginning balance of \$1,156,209, the NAWC calculated impact of the TCJA on its deferred tax liability as of December 31, 2017. The value of this component of rate base will continue to be reduced in future proceedings until the full amount of the unamortized ADIT balance is returned to ratepayers.

I&E asserts that the settlement rates and settlement supplement fully account for the impacts of the TCJA and therefore no further expense adjustments, refunds or credits are required. *See* I&E St.S at 15. The TCJA provisions of the settlement appear reasonable.

RECOMMENDATION

A review of the settlement supports a finding that the settlement is in the public interest. As OSBA, OCA I&E and NAWC note, the settlement saves substantial litigation costs and resources. *See* NAWC St.S. at 2,3; I&E St.S at 16. Parties were able to reach reasonable and workable compromises regarding DSIC calculations, tariff changes and the Purchased Water Adjustment Charge without lengthy and expensive litigation. As OCA notes, the settlement appears within the realm of reasonable outcomes if the matter had been fully litigated. OCA St.S at 6.

Additionally, as discussed above, the terms of the settlement are in the public interest as well as that of the ratepayers. NAWC avers that it is in immediate need of rate relief and this is not disputed. *See* NAWC St S at 4. Its last rate increase was in 2011. Additional funds will assist NAWC in maintaining and updating its infrastructure which will only benefit the ratepayer and the public in general by providing adequate water service. NAWC St.S. at 5. Rate parity concerns raised by I& E are addressed in the settlement. I&E St.S. at 5.

Also, the settlement rates do not include amortization of expenses from prior rate case or DSIC filing expenses. The settlement also limits the amount of the rate increase, a benefit to rate payers and the public interest. *See* I&E St.S at 14-15.

The scale back in rates equalizes rates of the NAWC customers. As NAWC notes, rather than one set of customers paying more for service or subsidizing the other, balanced, unified rates are in the public interest. NAWC St.S. at 6. Plant addition reports to be provided by NAWC will affirm the company's investment in infrastructure and ensure compliance with 66 Pa. C.S. § 315(e). The TCJA terms of the settlement also assure that amounts due ratepayers as a result of the TCJA are returned to them. This is also in the public interest. I&E St.S at 14.

Additionally, of central concern to OSBA was that the commercial customers would bear the greatest brunt of increased rates when rates are consolidated. OSBA St.S at 1. The "more modest" increase for commercial customers achieved as a result of the settlement clearly benefits the public as well as the ratepayers. *Id.*

Avoiding expensive litigation where possible is in the public interest. Additionally, parties agree that the settlement increase will provide enough funds for NAWC to provide safe, adequate, reliable, and continuous service. OCA St.S at 6; I&E St.S at 7-8; NAWC St.S at 5.

Finally, it is in the interest of ratepayers and the public that NAWC ratepayers have security as far as rates for the two years and that NAWC will not file a base rate case during that period, as assured by the settlement terms. See NAWC St. 1-S. at 11.

For all of the foregoing reasons, I recommend that the Commission adopt the proposed terms in the Joint Petition for Settlement without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. §§ 1301 and 1308.

2. In a rate case, the burden of proof to show that the proposed rates are just and reasonable is on the public utility. 66 Pa. C.S. § 315(a).

3. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. Gas and Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa. Cmwlth. 1975).

4. In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works and Improvement Co. v. Public Service*

Comm'n of West Virginia, 262 U.S. 679 (1923) and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

5. The policy of the Commission policy is to promote settlements.
52 Pa.Code §§ 5.231(a) and 69.401.

6. Despite the Commission policy to promote settlements, the Commission's determination to approve the proposed settlement is whether the proposed terms and conditions foster, promote and serve the public interest. *Pa. Pub. Util. Comm'n. v. PECO Energy Co.*, Docket No. R-2018-3000164 (Order entered Dec. 20, 2018), at 15.

7. The proposed Joint Settlement submitted by the Joint Petitioners is in the public interest.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Newtown Artesian Water Company Supplement No. 136 to Tariff Water – Pa. P.U.C. No. 9 filed on March 1, 2019 shall not be placed in effect.

2. That the Joint Petition for Settlement of Rate Investigation at Docket No. R-2019-3006904, filed, by Newtown Artesian Water Company, Office of Consumer Advocate, Office of Small Business Advocate, and the Commission's Bureau of Investigation and Enforcement be approved without modification.

3. That Newtown Artesian Water Company be permitted to file a tariff supplement incorporating the terms of the Joint Petition for Settlement and changes to rates, rules and regulations as set forth in the *pro forma* tariff attached to the Joint Petition for Settlement as Appendix A, to become effective upon at least one (1) days' notice after entry of

