

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG, PA 17120**

Public Meeting held July 11, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Pennsylvania Public Utility Commission

v.

Nantmeal Warwick Sewer Company, Inc.

Docket Nos.
R-2023-3043497
C-2023-3043807

Public Version

ORDER

BY THE COMMISSION:

On October 12, 2023, Nantmeal Warwick Sewer Company, Inc. (Nantmeal), Utility Code 230086, filed Tariff Supplement No. 2 to Tariff Wastewater - Pa. P.U.C. No. 1 (Supplement No. 2) with the Pennsylvania Public Utility Commission (Commission) to become effective January 1, 2024. Supplement No. 2 would increase Nantmeal's total annual operating revenues for wastewater service by approximately \$20,418, or 45.8%. On December 18, 2023, Nantmeal filed Tariff Supplement No. 3 to Tariff Wastewater – Pa. P.U.C. No. 1 with the Commission to suspend the application of rates in Supplement No. 2 until August 1, 2024.

By this Order, we shall permit Nantmeal's proposed Supplement No. 2 to become effective August 1, 2024. We also will direct Nantmeal to file copies of certain contracts and agreements with the Commission for any necessary approvals under Chapters 19 and 21 of the Pennsylvania Public Utility Code (Code), 66 Pa.C.S. Chapters 19 and 21

(relating to Securities and Obligations and Relations with Affiliated Interests, respectively), as described in Sections V and VI of this Order.

I. AFFECTED ENTITIES AND BACKGROUND

Nantmeal is a regulated public utility company, duly organized and existing under the laws of the Commonwealth with a mailing address of 26 East Main Street, P.O. Box 20, Elverson, Pennsylvania 19520. Nantmeal furnishes wastewater service to approximately 51 customers in portions of Elverson Borough and West Nantmeal, East Nantmeal, and Warwick Townships, Chester County. Nantmeal's voting securities are owned by Merle W. Stoltzfus (50.1%) and David J. Stoltzfus (49.9%) (together, the Stockholders).¹

Nantmeal's sister company, Elverson Water Company, Inc. (Elverson), Utility Code 210011, provides water service in the same Chester County municipalities. Together, Elverson and Nantmeal share common ownership with Stoltzfus Enterprises Ltd. (the Service Company, and together with Nantmeal and Elverson, the Stoltzfus Companies). Thus, the Stoltzfus Companies and the Stockholders are affiliated interests pursuant to the definition of "affiliated interest" in Sections 2101(a)(1) and (3) of the Code, 66 Pa.C.S. §§ 2101(a)(1) and (3).

By Commission Order entered August 9, 2001, at Docket No. A-230086 (*2001 Order*), the Commission directed Nantmeal to submit an affiliated interest agreement (AIA) to the Commission reflecting the relationships between the Stoltzfus Companies.² Then, on February 21, 2002, the Commission approved two related AIAs by separate

¹ See, *Class A, B and C Wastewater Company PUC Annual Report*, filed by Nantmeal on May 2, 2024, Page 9.

² See, *Application of Nantmeal Warwick Sewer Company, Inc. for a Certificate of Public Convenience as a wastewater collection, treatment and disposal supplier to the public in portions of Elverson Borough, West Nantmeal Township, East Nantmeal Township and Warwick Township, Chester County, Pennsylvania*, Ordering Paragraphs 5 and 6.

Orders.³ These AIAs are discussed further in Section V, below, with other affiliated interest matters.

On January 23, 2003, the Commission entered an Order at Docket No. A-230086 (*2003 Order*) that permitted Nantmeal's initial rates. The *2003 Order* also directed Nantmeal to file with the Commission copies of its annual federal tax returns and its quarterly income statements and balance sheets, until directed otherwise by the Commission.⁴ As discussed further in Section VII, below, this Order will end these filing requirements.

On June 30, 2012, Nantmeal filed Tariff Supplement No. 1 to Tariff Wastewater – Pa. P.U.C. No. 1 (Supplement No. 1) and supporting data with the Commission at Docket No. R-2012-2312632 (2012 Rate Case). Supporting data filed with the 2012 Rate Case included an executed copy of an AIA between Nantmeal and the Service Company dated January 1, 2012 (2012 Service Company AIA). By Commission Order entered September 27, 2012 (*2012 Rate Case Order*), the Commission permitted Supplement No. 1 to become effective.⁵ However, the *2012 Rate Case Order* did not separately address Commission approval of the 2012 Service Company AIA under Chapter 21 of the Code. The 2012 Service Company AIA is discussed further in Section V, below.

II. HISTORY OF THE PROCEEDING

On October 12, 2023, Nantmeal filed Supplement No. 2 with the Commission to become effective January 1, 2024. Nantmeal provided proofs of publication and service of Supplement No. 2 to the appropriate entities. On October 25, 2023, the Office of

³ See, *Affiliated Interest Agreement between Nantmeal Warwick Sewer Company, Inc. and Elverson Water Company*, Order entered February 21, 2002, at Docket No. G-00010919, and *Affiliated Interest Agreement between Nantmeal Warwick Sewer Company, Inc. and Stoltzfus Enterprises, Ltd.*, Order entered February 21, 2002, at Docket No. G-00010920.

⁴ See, *Compliance Tariff and supporting documentation of Nantmeal Warwick Sewer Company, Inc. filed October 21, 2002 in accordance with the Application and Petition docketed at A-230086*, Order entered January 23, 2003, at Docket No. A-230086, Ordering Paragraph 5.

⁵ See, *Pennsylvania Public Utility Commission v. Nantmeal Warwick Sewer Company, Inc.*, Order entered September 27, 2012, at Docket No. R-2012-2312632.

Small Business Advocate (OSBA) filed a formal complaint against Supplement No. 2 at Docket No. C-2023-3043807 and a notice of appearance at Docket No. R-2023-3043497.

By Commission Order entered December 7, 2023 (*Suspension Order*), and pursuant to Section 1308(d) of the Code (Section 1308(d)), 66 Pa.C.S. § 1308(d) (relating to General rate increases), Supplement No. 2 was suspended by operation of law until August 1, 2024, unless permitted by Commission Order to become effective at an earlier date. This *Suspension Order* instituted an investigation into the lawfulness, justness, and reasonableness of Nantmeal's existing and proposed rates, rules, and regulations, and assigned this case to the Commission's Office of Administrative Law Judge (OALJ) for the prompt scheduling of such hearings as may be necessary and issuance of a Recommended Decision.

On December 8, 2023, the Commission issued a Prehearing Conference Notice establishing an initial call-in prehearing conference for this matter for December 21, 2023, and assigned Administrative Law Judge Charece Z. Collins (ALJ Collins) as the presiding officer. A Prehearing Conference Order was also issued on December 8, 2023, setting the rules and expectations for the conference.

On December 18, 2023, Nantmeal filed Tariff Supplement No. 3 to Tariff Wastewater – Pa. P.U.C. No. 1 with the Commission suspending the application of rates in Supplement No. 2 until August 1, 2024.

On December 19, 2023, OSBA filed a Petition to Withdraw its formal complaint. In its Petition, OSBA noted that after it filed its formal complaint, OSBA had been in communication with Nantmeal and was able to resolve OSBA's initial concern. Therefore, OSBA asked that the Commission withdraw OSBA's formal complaint. Also, on December 19, 2023, the Commission issued a Cancellation Notice for the December 21, 2023, prehearing conference.

By an Order dated January 16, 2024 (*January 2024 Order*), ALJ Collins granted OSBA's Petition to Withdraw its formal complaint and found that a hearing was not necessary in this matter.⁶ The *January 2024 Order* directed that this case be reassigned to the Commission's Bureau of Technical Utility Services (TUS) for review and investigation, consistent with the Commission's *Suspension Order*. No exceptions were filed for the *January 2024 Order*, no additional formal complaints were filed, and no hearings were held.

On February 14, 2024, the Commission served a copy of TUS Data Request Set 1 on Nantmeal. On February 26, 2024, Nantmeal filed its responses to TUS Data Request Set 1 with the Commission.

III. SUPPLEMENT NO. 2

Supplement No. 2 revised existing Page Nos. 1, 2, and 4. Revisions consisted of administrative changes on Page Nos. 1 and 2 and proposed rate increases on Page No. 4. Supplement No. 2 increased quarterly customer charges for all customers from \$81 to \$106, or by approximately 30.9%. Also, consumption charges for all customers increased from \$6 to \$11 per 1,000 gallons, or by approximately 83.3%. Finally, Nantmeal's return check charge increased from \$30 to \$40, and the service termination or resumption charge increased from \$30 to \$60.

In supporting data filed with Supplement No. 2 as Short Form Schedules A through G, Nantmeal provided financial data for its 12-month historic test year period ending June 30, 2023, including a Balance Sheet, an Income Statement, and a Statement of Revenues. Nantmeal calculated that Supplement No. 2 would increase its total annual operating revenues for wastewater service by approximately \$20,418, or 45.8%, from

⁶ By this Order, OSBA's formal complaint at Docket No. C-2023-3043807 shall be marked closed. *See*, Ordering Paragraph 9.

\$44,553 to \$64,971. Nantmeal also claimed annual expenses of \$179,018 and an annual net operating income/(loss) of (\$114,047) under proposed rates.⁷

The Commission notes that Nantmeal claimed an annual depreciation expense of \$96,053. However, in Nantmeal's 2012 Rate Case, the Commission allowed Nantmeal to recover an annual depreciation expense of \$3,508, or approximately \$92,545 less than Nantmeal's claimed depreciation expense under Supplement No. 2.⁸ Nantmeal indicated in supplemental information filed with the Commission that there have been no changes to its Utility Plant in Service since that time.

Nantmeal's supporting data for Supplement No. 2 included a copy of a Notice of Proposed Rate Changes. According to that notice, the typical wastewater bill for a residential customer using 11,300 gallons per quarter would increase from \$148.80 to \$230.30 per quarter, or by 54.8%. Also, the typical wastewater bill for a non-residential customer using 91,200 gallons per quarter would increase from \$628.20 to \$1,109.20 per quarter, or by 76.6%. Supporting data also included an executed copy of an AIA between Nantmeal and the Service Company dated January 1, 2023 (2023 Service Company AIA). The 2023 Service Company AIA is further discussed in Section V, below.

Nantmeal averred that its rate increase is due to increases in operating costs, price increases due to inflation, and increased testing requirements. Also, Nantmeal provided copies of certain Notes Payable Agreements as Confidential Exhibit 4 and a Loan Receivable Agreement as Confidential Exhibit 6 (collectively, the Debt AIAs). The Debt AIAs are discussed in Section V, below. Nantmeal also provided a copy of a Mid Penn Bank Loan agreement (the Bank Loan Agreement) as Confidential Exhibit 5, which is discussed in Section VI, below.

⁷ \$64,971 revenues - \$179,018 expenses = (\$114,047) income/(loss).

⁸ See, *Pennsylvania Public Utility Commission v. Nantmeal Warwick Sewer Company, Inc.*, Order entered September 27, 2012, at Docket No. R-2012-2312632, Appendix A.

IV. SUPPLEMENT NO. 2 DISCUSSION

Nantmeal’s request for a general rate increase is governed by Section 1308(d) of the Code, which provides the procedures for changing rates, the time limitations for the suspension of new rates, and the time limitations on the Commission’s actions. Among other things, Section 1308(d) requires the Commission to render a final decision granting or denying, in whole or in part, the general rate increase requested by a public utility, within a general time frame not to exceed seven months from the proposed effective date of the public utility’s proposed tariff supplement. 66 Pa.C.S. § 1308(d) (relating to voluntary changes in rates). Unless the utility voluntarily extends the suspension period, the Commission’s non-action within this timeframe means, by operation of law, the utility’s proposed general rate increase will go into effect, as proposed, at the end of such period. *Id.* Specifically, if a matter that is suspended is found not unlawful and the Commission directs that its Suspension Order be vacated or the case dismissed, the affected public utility shall issue a supplement or revised page announcing the vacation of the Suspension Order and provide by proper publication for the application of the lawful schedules, and otherwise comply with such Orders of the Commission. 52 Pa. Code § 53.74 (relating to vacation of suspension).

Pursuant to the just and reasonable standard, a utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers as well as a reasonable rate of return on its investment.”⁹ Section 1301(a) of the Code mandates that, “[e]very rate made, demanded, or received by any public utility [...] shall be just and reasonable, and in conformity with [the] regulations or orders of the [C]ommission.” 66 Pa.C.S. § 1301(a) (relating to just and reasonable rates). The Commonwealth Court has found that there is no single way to arrive at just and reasonable rates, and “[t]he [Commission] has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider

⁹ See, *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002).

in setting or evaluating a utility's rates."¹⁰ Further, the Commonwealth Court has determined that the Commission is required to investigate all general rate increase filings. *Id.* Pursuant to Section 315(a), the burden of proof to establish the justness and reasonableness of every element of a public utility's rate increase request rests solely upon the public utility in all Section 1308(d) proceedings. 66 Pa. C.S. § 315(a) (relating to burden of proof).

Investigation and analysis of Supplement No. 2 and the supporting data indicates that Supplement No. 2 does not appear to be unlawful, unjust, unreasonable, or contrary to the public interest. Therefore, we will permit Nantmeal's proposed Supplement No. 2 to become effective August 1, 2024. In accordance with 52 Pa. Code § 53.74, we will direct that the Commission's *Suspension Order* be vacated on August 1, 2024.¹¹ Also, we direct that within 10 days after the effective date of Supplement No. 2, Nantmeal shall file a tariff supplement, which shall bear no effective date, with the Commission and post the tariff supplement at the offices of Nantmeal announcing that the Commission's suspension of Supplement No. 2 was vacated on August 1, 2024, and providing proper publication of Nantmeal's lawful rates.¹²

V. CHAPTER 21 DISCUSSION

Pursuant to Section 2102(b) of the Code, 66 Pa.C.S. § 2102(b), it is the duty of every public utility to file with the Commission a verified copy of any AIA. Nantmeal's AIAs approved by the Commission on February 21, 2002, include the Elverson AIA and the Service Company AIA, at Docket Nos. G-00010919 and G-00010920, respectively. The Elverson AIA allows Elverson to give Nantmeal metering information (i.e., water usage data) at a rate of \$4 per meter reading. The Service Company AIA allows the Service Company to furnish Nantmeal with administrative and operating services for

¹⁰ See, *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996). See also, *McCloskey v. Pa. Pub. Util. Comm'n*, 225 A.3d 192 (Pa. Cmmw. Ct. 2020)

¹¹ See, Ordering Paragraph 2.

¹² See, Ordering Paragraph 3.

compensation, including that the “[Service Company] shall coordinate financial arrangements as necessary for the furnishing of [Nantmeal]’s entire capital needs from other than internally generated sources.”¹³ Nantmeal must pay the Service Company the actual cost of the services provided, including fringe benefits and overheads.

As noted in Section I, above, Nantmeal’s 2012 Rate Case included a copy of its 2012 Service Company AIA. The 2012 Service Company AIA allows the Service Company to provide Nantmeal with certain services and property for compensation. In exchange, services provided to Nantmeal by the Service Company must be provided at or below market rates for such services.

In addition, Nantmeal included with Supplement No. 2 a copy of its 2023 Service Company AIA. The 2023 Service Company AIA would allow the Service Company to provide Nantmeal with certain services for compensation. These services must be provided at reasonable rates comparable to those commonly charged for similar services within the industry. Further analysis of the 2023 Service Company AIA will be completed pursuant to our comprehensive review of Nantmeal’s AIAs, discussed below.

In supplemental information filed with the Commission, Nantmeal provided copies of the Debt AIAs as Confidential Exhibits 4 and 6.

[BEGIN CONFIDENTIAL]

¹³ See, the 2012 Service Company AIA, at Page 2, as an example.

[END CONFIDENTIAL]

The Commission wishes to ensure that Nantmeal's compliance with its duties under Chapter 21 is perfected in a cost-effective, efficient, and facilitative manner that allows Nantmeal to review its historic and anticipated transactions with its affiliated interests and to determine the necessary and appropriate approvals from the Commission pursuant to Chapter 21 for such transactions. Therefore, we will direct that, within 180 days of the entry date of this Order, Nantmeal shall file copies of all contracts and arrangements with affiliated interests that it is required to file with the Commission pursuant to Section 2102(b) of the Code, 66 Pa.C.S. § 2102(b).¹⁴ If any transactions with affiliated interests have already occurred that are not under the auspices of a Commission-approved affiliated interest agreement, Nantmeal shall request Commission

¹⁴ See, Ordering Paragraph 5.

approval, *nunc pro tunc*, of the contracts or arrangements related to said transactions and identify the periods of time where such services were provided. These AIAs, including the 2023 Service Company AIA, will then be reviewed by the Commission.

VI. CHAPTER 19 DISCUSSION

Pursuant to Section 1901(a) of the Code, 66 Pa.C.S. § 1901(a), every public utility must file with and receive from the Commission a notice of registration prior to issuing or assuming securities. Further, pursuant to Section 1901(c) of the Code, 66 Pa.C.S. § 1901(c), assumption of securities includes any act of a public utility assuming primary or contingent liability for the payment of any principal or interest of any indebtedness created or incurred by any other person or corporation.

In supplemental information filed with the Commission, Nantmeal provided a copy of the Bank Loan Agreement as Confidential Exhibit 5.

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

The Commission wishes to ensure that Nantmeal's compliance with its duties under Chapter 19 is perfected in a cost-effective, efficient, and facilitative manner that allows Nantmeal to review its historic and current transactions that involve issuing or assuming securities and to determine the necessary and appropriate approvals from the Commission pursuant to Chapter 19 for such transactions.¹⁵ Therefore, we will direct that, within 180 days of the entry date of this Order, Nantmeal shall file with and seek from the Commission notice of registration for all issued and assumed securities that it is required to file with the Commission pursuant to Section 1901(a) of the Code, 66 Pa.C.S. § 1901(a).¹⁶ If any securities have already been issued or assumed that were not granted a notice of registration from the Commission, Nantmeal shall request notice of registration, *nunc pro tunc*, of said securities.

VII. OTHER CONSIDERATIONS

By the Commission's 2003 Order, we directed Nantmeal to file with the Commission copies of its annual federal tax returns and its quarterly income statements and balance sheets, until directed otherwise by the Commission. Upon review, we find that this requirement is no longer necessary and that ending this requirement should marginally reduce administrative costs for both Nantmeal and the Commission, including the costs to compile, submit, and review this data. Nantmeal's financial data is available through its annual financial reports filed with the Commission, and additional data may

¹⁵ As discussed in Section V of this Order, a contract or arrangement for Nantmeal to assume one or more affiliated interests' loan obligations may require additional approval under Chapter 21.

¹⁶ See, Ordering Paragraph 6.

be requested in the context of an appropriate proceeding as necessary. Therefore, after the entry date of this Order, Nantmeal is no longer required to comply with Ordering Paragraph 5 of the Commission's Order entered January 23, 2003, at Docket No. A-230086.¹⁷

VIII. CONCLUSION

Investigation and analysis of this proposed tariff supplement and the supporting data indicates that the proposed tariff supplement does not appear to be unlawful, unjust, unreasonable, or contrary to the public interest. As such, the proposed tariff supplement should be permitted to become effective August 1, 2024. However, this does not constitute a determination that this tariff supplement is lawful, just, and reasonable; rather, this is a determination that suspension or further investigation does not appear to be warranted at this time; **THEREFORE,**

IT IS ORDERED:

1. That Nantmeal Warwick Sewer Company, Inc.'s proposed Tariff Supplement No. 2 to Tariff Wastewater - Pa. P.U.C. No. 1 is hereby permitted to become effective August 1, 2024.
2. That the Commission's *Suspension Order* entered December 7, 2023, at Docket No. R-2023-3043497 shall be vacated on August 1, 2024.
3. That within ten (10) days following the effective date of Supplement No. 2 to Tariff Wastewater – Pa. P.U.C. No. 1, pursuant to 52 Pa. Code § 53.74, Nantmeal Warwick Sewer Company, Inc. shall e-file (or file) a tariff supplement, which shall bear no effective date, with the Commission and post the tariff supplement at the offices of Nantmeal Warwick Sewer Company, Inc. announcing that Supplement No. 2 to Tariff

¹⁷ See, Ordering Paragraph 7.

Wastewater – Pa. P.U.C. No. 1 was permitted to become effective August 1, 2024. A sample copy of this tariff supplement is provided in Attachment A of this Order.

4. That this Order is without prejudice to any formal complaints timely filed against the proposed tariff supplement.

5. That within one-hundred and eighty (180) days of the entry date of this Order, Nantmeal Warwick Sewer Company, Inc. shall file copies of all contracts and arrangements with affiliated interests that it is required to file with the Commission pursuant to Section 2102(b) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 2102(b). If any transactions with affiliated interests have already occurred that are not under the auspices of a Commission-approved affiliated interest agreement, Nantmeal Warwick Sewer Company, Inc. shall request Commission approval, *nunc pro tunc*, of the contracts or arrangements related to said transactions and identify the periods of time when such services were provided.

6. That within one-hundred and eighty (180) days of the entry date of this Order, Nantmeal Warwick Sewer Company, Inc. shall file with and seek from the Commission notice of registration for all issued and assumed securities that it is required to file with the Commission pursuant to Section 1901(a) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1901(a). If any securities have already been issued or assumed that were not granted a notice of registration from the Commission, Nantmeal Warwick Sewer Company, Inc. shall request notice of registration, *nunc pro tunc*, of said securities.

7. That as of the entry date of this Order, Nantmeal Warwick Sewer Company, Inc. is no longer required to comply with Ordering Paragraph 5 of the Commission's Order entered January 23, 2003, at Docket No. A-230086.

8. That a copy of this Order shall be served upon Nantmeal Warwick Sewer Company, Inc., the Commission's Bureau of Investigation and Enforcement, the Office

of Consumer Advocate, the Office of Small Business Advocate, and any persons who have filed formal complaints against the proposed tariff supplement.

9. That the Formal Complaint filed by the Office of Small Business Advocate at Docket No. C-2023-3043807 shall be marked closed.

10. That upon completion of the Commission's review of the tariff supplement identified in Ordering Paragraph No. 3, the proceeding at Docket No. R-2023-3043497 be closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being more prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 11, 2024

ORDER ENTERED: July 11, 2024

ATTACHMENT A
Sample Tariff Supplement

Supp. No. _____ to
_____ Pa. P.U.C. No. _____.

(COMPANY NAME)

(TERRITORY SERVED BY COMPANY)

The application of rates proposed in Tariff Supplement No. 2 to Tariff Wastewater - Pa. P.U.C. No. 1 filed to become effective January 1, 2024, was permitted to become effective August 1, 2024, at Docket No. R-2023-3043497. Presently effective rates contained in Tariff Wastewater - Pa. P.U.C. No. 1 and supplements thereto, will continue in effect until otherwise amended. Issued in compliance with Title 66 Pa. C.S. § 1308.