

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2024-3050208
Office of Consumer Advocate	:	C-2024-3050613
Office of Small Business Advocate	:	C-2024-3050625
	:	
v.	:	
	:	
Newtown Artesian Water Company	:	

**RECOMMENDED DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Decision recommends that the Joint Petition for Complete Settlement of Rate Investigation filed on January 16, 2025, by Newtown Artesian Water Company, the Pennsylvania Public Utility Commission's Bureau of Investigation & Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate, be approved by the Commission.

Therefore, I recommend that the Joint Petition for Complete Settlement of Rate Investigation be approved in its entirety and without modification, that Newtown Artesian Water Company be authorized to file a tariff supplement to reflect rates and terms consistent with the Settlement terms and applicable to the base rate investigation at Docket No. R-2024-3050208. The Joint Petition for Approval of Settlement of Rate

Proceeding is unopposed by any other party, supported by substantial evidence and in the public interest.

The suspension date is April 18, 2025. The last reasonable Commission Public Meeting before the end of the suspension period is March 27, 2025.

### HISTORY OF THE PROCEEDINGS

On July 19, 2024, Newtown Artesian Water Company (NAWC or Company) filed proposed Supplement No. 158 to Tariff Water – Pa. P.U.C. No. 9 with a proposed effective date of September 18, 2024. The rates set forth therein, if approved by the Commission, would increase NAWC’s annual jurisdictional revenues by \$922,419, or 14.1%.

On August 7, 2024, the Office of Consumer Advocate (OCA) filed a Formal Complaint at Docket No. C-2024-3050613 along with a Public Statement.

On August 8, 2024, the Office of Small Business Advocate (OSBA) filed a Formal Complaint at Docket No. C-2024-3050625 along with a Public Statement.

On August 13, 2024, The Commission’s Bureau of Investigation and Enforcement (I&E) filed its Notice of Appearance.

On August 22, 2024, the Commission issued a Suspension Order that initiated an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase in this filing in addition to the Company’s existing rates, rules, and regulations, assigned this matter to the OALJ for further proceedings as appropriate, and suspended the effective date of the tariff until April 18, 2025. The Commission assigned

this proceeding to the Office of Administrative Law Judge and further assigned this proceeding to me.

On August 28, 2024, the Company submitted Supplement No. 160 to Tariff-Water-Pa. P.U.C. No. 9 suspending, by operation of law, the effective date of Supplement No. 158 until April 18, 2025. The Company submitted a corrected version of Supplement No. 160 on August 29, 2024.

On August 29, 2024, a Prehearing Conference Notice was issued scheduling a telephonic prehearing conference for September 9, 2024, at 10:00 a.m. A Prehearing Conference Order was also entered the same day, directing the parties to file and serve a Prehearing Memorandum on or before noon on September 6, 2024.

The prehearing conference was held as scheduled on September 9, 2024. Present through counsel were NAWC, I&E, OCA and OSBA. Public input hearings were discussed, and a schedule was set for hearings and formal testimony by the parties. The actions taken at the prehearing conference were memorialized in a Prehearing Order dated September 26, 2024.

The established litigation schedule included two public input hearing sessions to be held on October 7, 2024. The first in-person public input session was held on October 7, 2024, in Newtown, PA, at the Council Rock School District Administration Building, at 1:00 p.m., while the second public input hearing session was via telephone at 6:00 p.m. on the same day. No consumers or members of the public offered testimony or evidence into the record therein.

NAWC, I&E, OCA and OSBA engaged in extensive settlement discussions in an attempt to resolve the issues presented in this proceeding. On or about November 19, 2024, the parties informed me they had reached an agreement in principle

settling all the issues in this proceeding and that they did not intend to further litigate the matter.

A Hearing Cancellation Notice dated November 19, 2024, cancelled the evidentiary hearings scheduled for November 20, and 22, 2024.

On December 23, 2024, NAWC, I&E, OCA, and OSBA (Joint Petitioners or Settling Parties) filed a Joint Petition for Complete Settlement of Rate Investigation (Joint Petition or Settlement), representing settlement of the issues litigated between the Settling Parties in the case. On January 16, 2025, the Joint Petitioners refiled the Joint Petition with revised Appendices. Each Settling Party has submitted a Statement in Support of this Settlement.

By Joint Stipulation filed contemporaneously with the Joint Petition, all parties stipulated to the admission of the pre-served testimony and exhibits in this case and requested that the testimony be admitted into the record by separate order or by the inclusion of a provision in the Recommended Decision.

The following pre-served testimony was admitted into the record via stipulation:

**NAWC**

- a. Direct Testimony of Daniel J. Angove (NAWC Statement No. 1)
- b. Direct Testimony of Gregory R. Herbert (NAWC Statement No. 2 and Exhibit GRH-1)
- c. Direct Testimony of Harold Walker, III (NAWC Statement No. 3 and Exhibit HW-1)
- d. Direct Testimony of John J. Spanos (NAWC

Statement No. 4 and Exhibits JJS-1, JJS-2, and JJS-3)

- e. Rebuttal Testimony of Daniel J. Angove (NAWC Statement No. 1-R and Exhibit DJA-1R)
- f. Rebuttal Testimony of Gregory R. Herbert (NAWC Statement No. 2-R and Exhibit Nos. GH-1R & 2R)
- g. Rebuttal Testimony of Harold Walker, III (NAWC Statement No. 3-R and Exhibit HW-1R)
- h. NAWC's Stipulated Discovery Response concerning Gregory R. Herbert's Rebuttal Testimony

**I&E**

- a. Direct Testimony of Vanessa Okum (I&E Statement No. 1 and I&E Exhibit No. 1)
- b. Direct Testimony of D.C. Patel (I&E Statement No. 2 and I&E Exhibit No. 2)
- c. Direct Testimony of Esyan Sakaya (I&E Statement No. 3 and I&E Exhibit No. 3)
- d. Surrebuttal Testimony of Vanessa Okum (I&E Statement No. 1-SR)
- e. Surrebuttal Testimony of D.C. Patel (I&E Statement No. 2-SR and I&E Exhibit No. 2-SR)
- f. The Surrebuttal Testimony of Esyan Sakaya (I&E Statement No. 3-SR and I&E Exhibit No. 3-SR)

**OCA**

- a. Direct Testimony of Jennifer L. Rogers (OCA Statement No. 1)
- b. Direct Testimony of Morgan N. DeAngelo (OCA Statement No. 2)

- c. Surrebuttal Testimony of Jennifer L. Rogers (OCA Statement 1SR)
- d. Surrebuttal Testimony of Morgan N. DeAngelo (OCA Statement 2SR).

The record in this case closed on January 16, 2025, when the Joint Petition for Settlement was resubmitted. For the reasons discussed below, the settlement will be recommended for approval in its entirety without modification.

### FINDINGS OF FACT<sup>1</sup>

1. The Company is a public utility regulated by the Commission. *See* NAWC St. No. 1 at 2.
2. The Company provides water service in Bucks County, Pennsylvania, in the following areas: Newtown Borough, Newtown Township, and the northern portion of Middletown Township. *See* NAWC Statement No. 1 at 2.
3. The Company has a diversified water supply that includes five Company wells and purchased water from the Bucks County Water and Sewer Authority and Pennsylvania American Water Company. *See* NAWC St. No. 1 at 4.
4. On July 19, 2024, the Company filed Supplement No. 158 to Tariff Water – Pa. P.U.C. No. 9.

---

<sup>1</sup> The Findings of Fact are based on the Findings of Fact that the parties proposed in the Joint Petition which they requested the Commission to adopt. *See* Section IV of the Joint Petition for Complete Settlement filed in this matter on January 16, 2025. However, they have been revised for clarity, accuracy and consistency.

5. If approved, the Company's as-filed rates would increase the Company's annual jurisdictional revenues by \$922,419, or 14.1%.

6. The Company identified in its filing that the primary basis for the Company's rate increase is to seek recovery of infrastructure investments made by the Company during the historical test year and which will be made during the fully projected future test year, as well as to reflect the increased level of expenses during the fully projected future test year. This includes construction of a new treatment plant for the "forever chemicals." In addition, the Company continues to see decreasing customer usage. *See* NAWC St. No. 1 at 4.

#### TERMS AND CONDITIONS OF THE SETTLEMENT PETITION

The Joint Petition is a 12-page document signed by all the parties in this proceeding: NAWC, I&E, OCA, and OSBA. Attached to the Joint Petition are Appendices A-F:

Appendix A – Proposed Tariff Supplement – Effective April 18, 2025

Appendix B – Settlement Proof of Revenues

Appendix C – NAWC's Statement in Support

Appendix D – OCA's Statement in Support

Appendix E – I&E's Statement in Support

Appendix F - OSBA's Statement in Support

The principal terms and conditions of the proposed Settlement, contained in Paragraphs 26-32, Section III of the Petition, are included here verbatim as follows:

### III. SETTLEMENT TERMS AND CONDITIONS

The terms of the Settlement are as follows:

26. The Company will be permitted to establish rates for customers which will produce an overall increase in annual operating revenues of approximately \$750,000 in lieu of the originally proposed rate increase of \$922,418. These rates will become effective on April 18, 2025. The Settlement concerning revenue requirement shall be a “black box” settlement, except as expressly noted herein. Proof of Revenues for rates established by the Settlement is set forth at Appendix B.

27. The other tariff changes proposed in Supplement No. 158 will be reflected in the tariff included at Appendix A, and will go into effect as filed.

28. The Company’s Distribution System Improvement Charge (“DSIC”) shall be established at 0% of billed revenues effective April 18, 2025. The DSIC shall remain at 0% of billed revenues until the later of: (a) the end of the FPFTY; or, (b) the quarter following the point in time at which NAWC’s net plant in service (original investment less accumulated depreciation, customer advances and customer contributions) exceeds the levels projected by NAWC as of March 31, 2026 (i.e., the end of the FPFTY) per Company Exhibit JJS-3 (page 12). 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.

29. For the purposes of calculating its DSIC, the Company 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. Section 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa. C.S. Section 1358(b)(1).

30. In tandem with the rate increase authorized by this Settlement, which will be implemented across the board, the Company's customer charges and usage rates for all effected rate classes will be scaled back proportionally, effective on April 18, 2025.

31. The Company will provide the OCA, I&E and OSBA with an update to Table No. 4 in Company Exhibit JJS-2 (page 45) for the years 2024-2025 no later than August 1, 2025, and an update to Table No. 5 in Company Exhibit JJS-3 (page 12) for the years 2025-2026 no later than August 1, 2026. These updates will be filed under the Docket Number of this proceeding. The updated tables will include actual capital expenditures, plant additions, and retirements by month for the twelve months ending March 31, 2025 and March 31, 2026, respectively.

32. The Settling Parties agree that the Company's original filing, including all Company Direct and Rebuttal Testimony, exhibits and supporting data, shall be admitted into the record as originally filed with the Secretary of the Commission and as outlined in the Joint Stipulation for Admission of Evidence ("Stipulation for Admission") which accompanies this Petition for Settlement. The Settling Parties further agree that all Direct and Surrebuttal Testimony, exhibits and supporting data filed by the OCA and I&E in this proceeding shall be admitted into the record as outlined in the Stipulation for Admission.

Settlement, ¶¶ 26-32. Additional terms and conditions of the Settlement, are contained in Paragraphs 53-62, Section VII of the Petition, and are included here verbatim as follow:

#### ADDITIONAL TERMS AND CONDITIONS OF SETTLEMENT

53. This Petition for Settlement arises following extensive discovery and discussions, and reflects compromises by all sides. It is being proposed to settle the instant case. Accordingly, this Petition for Settlement is made without any admission against, or prejudice to, any positions which

any Settling Party might adopt during any subsequent litigation of this proceeding (should this Petition for Settlement be rejected or modified), or in any other proceeding. If the Commission withholds such approval as to any of the terms and conditions, or alters any of the terms and conditions, any Settling Party may withdraw from this Settlement upon written notice of its intent to the Commission and the remaining parties within three (3) business days of the date of the Commission's Order and may resume with the litigation of this proceeding within ten (10) days of the entry of the Order making any such modifications.

54. The Settling Parties agree that the Petition for Settlement shall be considered to have the same effect as full litigation of the instant proceeding resulting in the establishment of rates that are Commission-made, just and reasonable rates.

55. This Settlement and its terms and conditions may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

56. Any issues not specifically addressed in these settlement terms are not deemed as accepted or rejected as part of this black box settlement. The Settlement shall not be construed as approval of any Joint Petitioner's position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement.

57. Each term and condition set forth in this Settlement, whether or not set out in a numbered paragraph, shown in a table or other graphic presentation, bolded, italicized, or otherwise emphasized, or set forth in the body, a footnote, a parenthetical, an appendix, an exhibit, or otherwise, is material consideration to the entry into this Settlement by the signatory parties.

58. Unless otherwise expressly indicated, all terms and conditions contained herein shall take effect upon issuance of a final order in this proceeding, without the need or requirement for additional Commission review or approval.

59. The Settlement Parties acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding. If the ALJ, in her Recommended Decision, recommends that the Commission adopt this Petition for Settlement as herein proposed, the Settling Parties agree to waive the filing of Exceptions. However, the Settling Parties do not waive their rights to file Exceptions with respect to any additional matters dealt with, or any modifications to the terms and conditions of this Petition for Settlement recommended by the ALJ in her Recommended Decision.

60. In the event that the Commission does not approve this Petition for Settlement, the Settling Parties reserve their respective rights to resume litigation. If the Commission modifies the Settlement, any Settlement Party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Parties within five (5) business days after the entry of an Order modifying the Settlement.

61. If the Commission does not approve the Settlement and the proceedings continue, the Settlement Parties reserve their respective procedural rights. The Joint Petition for Settlement is made without any admission against, or prejudice to, any position which any Settlement Party may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

62. Each Settling Party has submitted a Statement in Support of this Settlement. The Company's Statement in Support is included in Appendix C. The OCA's Statement in Support is included in Appendix D. I&E's Statement in Support is included in Appendix E. The OSBA's Statement in Support is included in Appendix F.

Settlement, ¶¶ 53-62.

## DISCUSSION

### Applicable Legal Standard

The purpose of the Base Rate Case is to establish rates for NAWC's customers which are "just and reasonable" pursuant to Section 1301 of the Public Utility Code, 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. *Pa. Gas & Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa. Cmwlth. 1975). 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 Commission of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield* the United States Supreme Court stated:

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 too high or too low by changes affecting

opportunities for investment, the money market and business conditions generally.

*Bluefield*, 262 U.S. at 692-3.

In analyzing a proposed general rate increase, the Commission determines a rate of return to be applied to a rate base measured by the aggregate value of all the utility's property used and useful in the public service. In determining a proper rate of return, the Commission calculates the utility's capital structure and the cost of the different types of capital during the period in issue. Because of its administrative expertise, the Commission has wide discretion in determining the cost of capital. *Equitable Gas Co. v. Pa. Pub. Util. Comm'n*, 405 A.2d 1055 (Pa. Cmwlth. 1979).

Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time 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. Rate cases are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. That is one reason why settlements are encouraged by long-standing Commission policy. *Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket No. R-2018-3000164 (Opinion and Order entered Dec. 20, 2018).

The Commission has recognized that “black box” settlements can serve an important purpose in reaching consensus in rate cases. The Commission has stated:

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*, Docket No. R-2013-2355886, p. 28 (Opinion and Order entered Dec. 19, 2013). *See also*, *Pa. Pub. Util. Comm’n v. Columbia Gas of Pa.*, Docket No. R-2021-3024296, (Opinion and Order entered Dec. 16, 2021), *aff’d*, 2023 WL 5282358 (unpublished opinion Aug. 17, 2023); *Pa. Pub. Util. Comm’n v. Pike Cnty. Light & Power Co.–Elec.*, Docket No. R-2020-3022135, (Opinion and Order entered July 21, 2021); *Pa. Pub. Util. Comm’n v. City of Bethlehem – Water Dept.*, Docket No. R-2020-3020256, (Opinion and Order entered Apr. 15, 2021).

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. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm’n v. CS Water and Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

This recommended decision is prepared for the Commission in accordance with Section 1308(d) of the Public Utility Code, which states in pertinent part,

Whenever there is filed with the commission by any public utility ... any tariff stating a new rate which constitutes a general rate increase, the commission shall promptly enter into an investigation and analysis of said tariff filing and may by order setting forth its reasons therefore, upon complaint or upon its own motion, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, and the commission may, at any time by vote of a majority of members of the commission serving in accordance with law, permit such tariff to become effective, except that absent such order such tariff shall be suspended for a period not to exceed seven months from the time such rate would otherwise become effective. Before the expiration of such seven-month period, a majority of members of the commission serving in accordance with law, acting unanimously, shall make a final decision and order, setting forth its reasons therefore, granting or denying, in whole or in part, the general rate increase requested.

66 Pa.C.S. § 1308(d).

Section 315(a) of the Code articulates the burden of proof applicable in rate cases and places the burden of proof on the utility. It provides as follows:

**§ 315. Burden of proof**

**(a) 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 complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings and decide the same as speedily as possible.

66 Pa.C.S. § 315(a). Consequently, in this proceeding NAWC has the burden of proving that the rate increase it has proposed through the Settlement is just and reasonable. The

Joint Petitioners have reached an accord on the issues and claims that arose in this proceeding and submitted a Joint Petition for Settlement for Commission review. In reviewing the Settlement, the question which must be answered is whether the Settlement is in the public interest. The Joint Petitioners have the burden to prove that the Settlement is in the public interest.

### Analysis

It is noted that none of the parties in this proceeding opposed the Settlement. The Joint Petitioners state that the Settlement was achieved after an extensive investigation of NAWC filings, including informal and formal discovery, public input hearings, and exhaustive settlement negotiations. According to the Joint Petitioners, the Settlement represents a balanced compromise on all issues that recognizes the benefit to NAWC's ratepayers of providing NAWC with the opportunity to receive sufficient revenue to fund the provision of adequate, efficient, safe, and reasonable service. The Joint Petitioners support the Settlement as consistent with Commission policies promoting negotiated settlements and argue that its acceptance will avoid the necessity of further administrative and possibly appellate proceedings at substantial cost to the Joint Petitioners and NAWC's customers. The individual parties that make up the Joint Petitioners offer further arguments of why the Settlement is in the public interest in statements of support attached to the Joint Petition. These reasons are provided in the analysis below.

#### A. Revenue Requirement (Joint Petition ¶ 26)

NAWC supports the Settlement arguing that it establishes just and reasonable rates for the Company and its customers. It will permit the Company to establish rates that will produce an overall increase in annual operating revenues of approximately \$750,000 in lieu of the originally proposed rate increase of \$922,418. The

Company notes that the Settlement concerning revenue requirement is a “black box” settlement, except as expressly noted in the Joint Petition. NAWC St. in Supp. at 4.

OCA, too, supports the revenue requirement terms of the Settlement. OCA witness, Jennifer Rogers initially recommended that the Company receive an increase of no higher than \$416,487, but she later updated her proposed revenue requirement to \$557,999 in her surrebuttal testimony. *See* OCA St. 1 at 3, Exh. JLR-1; OCA St. 1SR at 2. Although under the Settlement NAWC will be permitted a total annual revenue of \$750,000, OCA explains that the Settlement represents a “black box” approach to the revenue requirement including, among other things, cost of capital issues. OCA supports the black box settlement for avoiding protracted disputes over the merits of individual revenue requirement adjustments. Acknowledging the parties’ different policy and legal positions, OCA commends their chosen approach to the revenue requirement because it avoids the need to attempt to reach a consensus on each of the disputed accounting and ratemaking issues in this matter. Based on its analysis of NAWC’s filing, discovery responses received, and testimony by all parties, OCA believes that the revenue increase under the Settlement represents a result that is within the range of likely outcomes in the event of full litigation of the case. OCA St. in Supp. at 6-7.

In its Statement in Support, I&E notes that its witness Vanessa Okum initially recommended a rate increase of \$629,483 based on adjustments made to NAWC’s operating and maintenance expense, cash working capital, rate base, and rate of return claims. Subsequently, Ms. Okum recommended in her surrebuttal testimony a rate increase of \$746,180 based on further adjustments made to NAWC’s categories listed above. In view of this, I&E supports the \$750,000 rate increase proposed in the Settlement as representing a compromise among the Joint Petitioners’ proposals that serves the public interest. I&E St. in Supp. at 5.

Like NAWC and OCA, I&E emphasizes the fact that the additional annual revenues were agreed upon by the parties as a “black box” settlement. I&E supports this approach, noting that a “black box” settlement does not specifically identify the resolution of any disputed issues. Instead, an overall increase to base rates is agreed to and parties retain all rights to further challenge all issues in subsequent proceedings. I&E argues that, in the present matter the “black box” revenue increase balances the interests of ratepayers and the Company. As such, I&E supports the “black box” revenue increase as being in the public interest. I&E St. in Supp. at 5.

B. Other Tariff Changes (Joint Petition ¶ 27)

The Settlement provides that the other tariff changes proposed in NAWC’s Supplement No. 158 will be reflected in the tariff included at Appendix A and will go into effect as filed. Settlement, ¶ 27. OCA notes that it reviewed the proposed tariff changes and those changes did not raise any concerns for OCA. OCA St. in Supp. at 7. Similarly, I&E has no specific comments on the settlement provision regarding other tariff changes proposed in Supplement No. 158 but supports the Settlement in its entirety as being in the public interest. I&E St. in supp. at 6.

C. Distribution System Improvement Charge (Joint Petition ¶¶ 28-29)

The Company explains that pursuant to the terms of paragraph 28 of the Settlement, its DSIC shall be established at 0% of billed revenues effective April 18, 2025. The DSIC shall remain at 0% of billed revenues until the later of: (a) the end of the FPFTY; or, (b) the quarter following the point in time at which NAWC’s net plant in service (original investment less accumulated depreciation, customer advances and customer contributions) exceeds the levels projected by NAWC as of March 31, 2026 (i.e., the end of the FPFTY) per Company Exhibit JJS-3 (page 12). The parties have agreed that 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. NAWC St. in Supp. at 4.

Additionally, the Company states that, for the purposes of calculating its DSIC, it has agreed to 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). NAWC St. in Supp. at 4-5.

For its part, OCA notes that the Settlement is a "black box" agreement and does not otherwise identify a specific return on equity number which is necessary for the calculation of the DSIC. According to OCA, the provisions of paragraphs 28 and 29 of the Joint Petition will help to ensure that the DSIC is calculated properly, sets the return on equity necessary for calculating the DSIC, and otherwise establishes the threshold for plant in service when the Company may begin to charge the DSIC again. Consequently, OCA supports the proposed terms because they provide clarity and are just and reasonable. OCA St. in Supp. at 8.

I&E avers that it has no specific comments on the settlement provisions regarding NAWC's DSIC but supports the Settlement in its entirety as being in the public interest. I&E St. in Supp. at 6.

D. Rate Design and Scale Back (Joint Petition ¶ 30)

Pursuant to the Settlement, the Company's customer charges and usage rates for all rate classes will be scaled back proportionately, effective on April 18, 2025. Settlement, ¶ 30. In its Statement in Support, OCA explains that, because the Company's

filing was less than \$1 million, it did not file a separate Cost of Service Study (COSS) consistent with the Commission’s regulations. As such, OCA maintains that a proportionate scale back of the rates is appropriate and should be approved as being in the public interest. OCA St. in Supp. at 9.

In turn, I&E points out that the recommendation for the proportional scale back of both the customer charges and usage rates for all the affected classes was first put forth by its witness, Esyan Sakaya, in the event NAWC received a rate increase less than \$922,419. Noting that NAWC accepted Mr. Sakaya’s recommendation in rebuttal testimony, I&E supports this provision as being in the public interest. I&E St. in Supp. at 6.

OSBA, too, supports the Joint Petition’s proposal for revenue allocation in this proceeding. Without a COSS available to the parties, OSBA submits that assigning the revenue increase across-the-board to the various customer classes is the only just and reasonable methodology for revenue allocation. OSBA St. in Supp. at 3.

E. Reporting on Plant Additions (Joint Petition ¶ 31)

Under the Settlement, the Company agrees to provide to the OCA, I&E, and OSBA an update of its Table No. 4 in Company Exhibit JJS-2 (page 45) for the years 2024-2025 no later than August 2025, and an update to Table No. 5 in Company Exhibit JJS-3 (page 12) for the years 2025-2026 no later than August 1, 2026. Settlement, ¶ 31. The updated tables will be filed at the instant docket and will include “actual capital expenditures, plant additions, and retirements by month for the twelve months ending March 31, 2025, and March 31, 2026.” Settlement, ¶ 31.

OCA supports these provisions because they will allow the Commission and the parties to track how the Company is meeting its projections for the future test

year and the FPFTY. In turn, I&E points out that its witness Sakaya recommended plant-related reporting in his direct and surrebuttal testimonies because this data will allow the Commission and the parties to better gauge the accuracy of NAWC's projected investments in future proceedings. Noting that NAWC accepted Mr. Sakaya's recommendation in rebuttal testimony, I&E supports this provision as being in the public interest. I&E St. in Supp. at 7.

### RECOMMENDATION

The Settlement allows NAWC to establish rates for customers which will produce an overall increase in annual operating revenues of approximately \$750,000 to become effective on April 18, 2025, in lieu of the originally proposed rate increase of \$922,418. It assigns the revenue increase across-the-board to the various customer classes while scaling back proportionally the Company's customer charges and usage rates for all rate classes. The Settlement also establishes that the DSIC shall remain at 0% of billed revenues until the later of (a) the end of the FPFTY, or (b) the quarter following the point in time at which NAWC's net plant in service exceeds the levels projected by NAWC as of March 31, 2026.

This Settlement exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be irreconcilable regulatory differences. The Joint Petitioners have carefully discussed and negotiated all issues raised in this proceeding, and specifically those addressed and resolved in this Settlement. All issues raised by the parties in testimony have been satisfactorily resolved through discovery and discussions with the Company or are incorporated or considered in the resolution proposed in the Settlement.

In reviewing this Settlement, it is important to note that it represents a "black box" approach to the revenue requirement and memorializes a series of

compromises agreed to by the Joint Petitioners. Although the parties have not specified a dollar amount for each issue or adjustment raised in this case, the terms and conditions of the proposed Settlement of these investigations, taken as a whole, represent a fair and reasonable resolution of the issues raised by the parties in this matter.

Each of the terms of the Settlement are consistent with the Company's obligation to provide safe, adequate and reliable water service to its customers. These terms allow NAWC to receive sufficient operating funds in order to provide safe and adequate service while ensuring that its ratepayers are protected by minimizing the impact of the initial proposal. In view of the above, I recommend that the Settlement be approved by the Commission without modification as being in the public interest and in the interest of NAWC's ratepayers.

In addition, the Settlement is consistent with Commission policies promoting negotiated settlements. The parties engaged in extensive discovery and discussion. Their efforts resulted in reasonably negotiated compromises on the issues addressed. Thus, the Settlement is consistent with the Commission's rules and practices encouraging settlements, 52 Pa. Code §§ 5.231, 69.391, 69.401-69.406 and is supported by record evidence.

With the approval of the Settlement, the parties and the Commission avoid the time, expense and uncertainty that would occur if the parties were required to fully litigate the issues in this proceeding. Moreover, the Settlement provides regulatory certainty with respect to the disposition of issues and final resolution of this case which benefits the parties' discrete interests.

Accordingly, I find the settlement terms to be in the public interest. I recommend the Commission approve the Joint Petition for Settlement without modification.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the Parties to this proceeding. 66 Pa.C.S. §§ 501, 1308(d).
  
2. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).
  
3. The Commission has historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. *Pa. Pub. Util. Comm'n v. Peoples TWP LLC*, Docket No. R-2013-2355886, p. 28 (Order entered Dec. 19, 2013).
  
4. NAWC’s proposed base rate increase, and tariff, as modified by the terms of the Settlement comply with the requirements of the Pennsylvania Public Utility Code. 66 Pa.C.S. §§ 1301, 1308(d); 315(a).
  
5. Approval of the Settlement is in the public interest. *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

## ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement filed January 16, 2025, by Newtown Artesian Water Company, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate is granted, and the Settlement is thereby adopted, in full, without modification or correction.

2. That Newtown Artesian Water Company shall be permitted to file tariffs in the form set forth in Appendix A to the Joint Petition for Settlement, to become effective upon at least one day's notice, for service rendered on and after April 18, 2025, so as to produce an annual increase in revenues consistent with this Order.

3. That Newtown Artesian Water Company, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate shall comply with the terms of the Joint Petition for Settlement submitted in this proceeding, as though each term and condition stated therein had been the subject of an individual ordering paragraph.

4. That the Formal Complaint of the Office of Consumer Advocate at Docket No. C-2024-3050613 is deemed satisfied and marked closed.

5. That the Formal Complaint of the Office of Small Business Advocate Docket No. C-2024-3050625 is deemed satisfied and marked closed.

