



Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010

www.aquaamerica.com

December 21, 2015

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

RE: Comments of Aqua Pennsylvania, Inc.
Implementation of Act 11 of 2012 – Docket No. M-2012-2293611

Dear Secretary Chiavetta:

Attached for electronic filing are the Comments of Aqua Pennsylvania, Inc. to the Commission's November 5, 2015 Tentative Supplemental Implementation Order.

If you have any questions regarding this filing please contact me at (610) 645-1077.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Joyce".

Kimberly A. Joyce
Regulatory Counsel

Attachment

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Act 11 of 2012 Tentative Supplemental : Docket No. M-2012-2293611
Implementation Order :

Comments of
Aqua Pennsylvania, Inc.

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Act 11 of 2012 Tentative Supplemental : Docket No. M-2012-2293611
Implementation Order :

**COMMENTS OF AQUA PENNSYLVANIA, INC.
TO THE
NOVEMBER 5, 2015 TENTATIVE SUPPLEMENTAL IMPLEMENTATION ORDER**

I. INTRODUCTION

Aqua Pennsylvania, Inc. (“Aqua”) appreciates the opportunity to comment on the Pennsylvania Public Utility Commission’s (“PUC” or the “Commission”) Tentative Supplemental Implementation Order (“Order”) entered November 5, 2015, regarding the implementation of Act 11 of 2012. Aqua serves approximately 1.4 million customers in Pennsylvania through 31 counties. Aqua water system includes over 5,600 miles of main. Aqua’s wastewater subsidiary, Aqua Pennsylvania Wastewater, Inc., serves approximately 20,000 connections in Pennsylvania. Aqua’s water and wastewater systems serve both rural and urban areas.

In response to the problems presented by the Commonwealth’s aging water infrastructure, the Commission, on August 26, 1996, issued an order authorizing Aqua (then “Philadelphia Suburban Water Company”) to establish a Distribution System Improvement Charge (“DSIC”). Petition of Philadelphia Suburban Water Company, Docket No. P-00961036 (Aug. 26, 1996). Thereafter, on December 18, 1996, the General Assembly enacted Section 1307(g) of the Public Utility Code, 66 Pa. Cons. Stat. § 1307(g), to eliminate any uncertainty as to the Commission’s authority in this area. Aqua subsequently filed and had approved a DSIC which outlined requirements, processes, and procedures for calculating and processing the DSIC. Aqua’s DSIC recovery was capped at 5%.

On December 8, 2008, Aqua filed Supplement No. 88 to Tariff Water-Pa. P.U.C. No. 1, requesting approval to increase the DSIC cap from 5% to 7.5%. In support of the tariff supplement filing, Aqua included a detailed analysis and a long-term pipe replacement plan. The Office of Consumer Advocate intervened and an ALJ was assigned, discovery asked, and an evidentiary hearing was held resulting in 15 pages of discussion in the Final Order. The Commission's Final Order entered July 23, 2009, approved the proposed increase in the DSIC cap from 5% to 7.5%. In so doing, the Commission concluded that the tariff water DSIC model was working effectively and, indeed, that its use has made a significant impact in terms of improving Aqua's distribution system.

Act 11 was signed into law on February 14, 2012, which amended Chapter 13 of the Public Utility Code by adding a new Subchapter B, Sections 1350 through 1360 (66 Pa. Cons. Stat. §§ 1350-1360). Act 11 permitted water and wastewater utilities, electric distribution companies ("EDCs"), natural gas distribution companies ("NGDCs"), and city gas distribution operations to petition for the implementation of a DSIC. On August 2, 2012, the Commission entered a Final Implementation Order which established the procedures and guidelines for utilities that sought to implement a DSIC.

Aqua has implemented and operated a water DSIC for almost the last two decades. In operating the DSIC Aqua has completed yearly reconciliation filings in on the record proceedings and has participated in multiple audits performed by the Commission's Bureau of Audits, including on-site visits to examine its use of a water DSIC. Moreover, Aqua has filed eight water rate cases during the two decades that DSIC has been in effect allowing extensive opportunity for fact finding related to the mechanism.

Aqua notes that throughout this period the Commission and the legislative community has applauded the water companies for being proactive and instrumental in replacing Pennsylvania's aging water infrastructure through the DSIC mechanism. The water companies using the DSIC were left to manage the level of investment up to 5%, and later up to 7.5%, all the while providing the necessary information on how much and where these investments were made. It is also significant that there were no filed complaints on Aqua's DSIC spending while it was operating a DSIC. The water DSIC was the model upon which Act 11 was based, and because the water utilities operated their DSIC programs effectively, the legislature exempted the water industry from certain aspects of the Act due to their experience in the program. The DSIC has been an integral part of Aqua's infrastructure plan, and it will continue to be as Aqua invests in Pennsylvania's water systems. As such, Aqua believes that the water industry has and will continue to operate their DSIC programs within the guidelines set forth by the Commission and there is ample oversight of this process.

Aqua commends the General Assembly and the Commission for taking steps to encourage infrastructure investment by Pennsylvania utilities. It is with this background that Aqua provides the following suggestions and clarifying comments for the Commission's consideration.

II. COMMENTS

A. Uniform Financial Earnings Report Requirements

The Commission in its Order requested comments on whether it should no longer allow the exemption on filing quarterly financial reports during the pendency of a base rate case. The water utilities that currently have implemented a DSIC have not filed quarterly earnings reports

during the pendency of a rate case, and in Aqua's case that has been true for the past 20 years. Aqua comments that the exemption on filing quarterly earnings reports should remain for utilities during the pendency of base rate cases. Currently the regulations simply require a utility to file a letter with the Secretary for each quarter that the rate case is pending. Id. at § 71.4(c).

The exemption should remain because the base rate case proceeding is the process whereby the utility's earnings are determined. That is the purpose of a base rate case. In addition, the information set forth in an earnings report has not been required during prior water utility rate cases and the process has worked effectively. There is also a concern that providing this information will simply create another layer of data and possible confusion due to the timing differences between the earnings reports and the test years of a base rate case. Moreover, the utility personnel who are filing the quarterly earnings reports are the same personnel who are answering discovery questions during the rate case. In Aqua's case, there is one manager of rates responsible for responding to discovery, and in non-rate case years, that person is also responsible for filing an earnings report. Aqua received over 300 data requests (not including subparts) from three regulatory agencies and one public intervenor in its last rate case, and if the Commission required these reports, Aqua's manager of rates would be responsible for filing two earnings reports during the rate case process. While this information may be marginally helpful to have, Aqua believes that this would create unnecessary and redundant reporting requirements for different time periods. Therefore, Aqua comments that the Commission should keep the exemption on filing earnings reports during the pendency of a base rate case.

B. Customer Protections – DSIC Rate Reset To Zero

1. Proposed Tariff Supplement To Reset DSIC To Zero

Aqua agrees that a utility should file a tariff supplement resetting its DSIC rate to zero when new rates go into effect, and when a quarterly earnings report indicates the utility is overearning. Aqua points out that it has always utilized the most current Commission report on quarterly earnings provided by the Bureau of Technical Utility Services when ensuring compliance with the earnings test customer protection mechanism. Aqua also supports the recommendation that a utility incorporate a reference to resetting its DSIC rate to zero in the tariff supplement requesting an increase in base rates under 66 Pa. Cons. Stat. § 1308(d). Aqua again highlights that it has done this in its previous base rate case filings.

Aqua comments that it agrees with the Commission that when a utility determines that it is overearning the utility should file its next quarterly DSIC update resetting the rate to zero. To be clear, the utility will wait until the next quarterly DSIC update to reset the rate to zero, not in the middle of the period.

2. DSIC Rate Reset To Zero Upon Effective Date of New Base Rates

If the Commission adopts this recommendation, Aqua suggests that the criterion to determine whether a prospective recovery amount has been surpassed should be the total aggregate dollar amount of the *categories* (mains, meters, hydrants, valves, and services) of utility plant in service included in the future test year or fully projected future test year (“FPFTY”) of the utility’s last base rate case. If the Commission believes that a utility needs to specify the level of investment, Aqua suggests that a utility can refer to its exhibit in its most recent base rate case indicating the level of investment (total aggregate dollar amount by category) needed.

Aqua disagrees with the Commission's recommendation that utilities should continue to file quarterly DSIC updates during the stay-out period. The Commission stated that it "proposes that utilities should continue to file quarterly DSIC updates reflecting the eligible property placed into service that was associated with a repair, replacement or improvement during the stay-out period even though they are unable to recover such costs." Order at 12. Aqua believes that this continuous filing is not necessary to monitor and verify when the criterion is surpassed. Aqua therefore proposes that when a utility company has come to the end of its FPPTY and files its first DSIC, the utility company should include a statement acknowledging the satisfaction of the stipulation criterion for reinstating the DSIC.

3. Resetting DSIC Rate To Zero Due To Overearnings

Aqua agrees that after a period of overearning ceases, a utility should be allowed to recover the fixed costs of all eligible property since the last base rate case on a prospective basis. In its Order, the Commission also asked a series of questions related to this topic. Specifically, the Commission asked "how far back may the utility be able to go to recover the current fixed costs for eligible plant placed in service once the successive overearnings period ceases?" Order at 14. For background purposes, utilities have made their investments into this eligible property, and the accrual of these investments does not simply go away if a utility enters a period of overearning and has to suspend charging its DSIC. As the Company reads this section, we are concerned that we may be misreading the nature of the question. This section and question seems contrary to the enacted legislation, and the ultimate intent of the DSIC, and appears to suggest there is a certain time period associated with the recovery of DSIC investments. We believe a utility should be able to recover its fixed costs plus depreciation on a prospective basis after a period of overearning ceases.

Respectfully, reading this section as drafted, the Company does not understand the issue of utilities in the position of overearning and continuing to charge a DSIC. The Company is unaware of any utility that has been in the position of overearning for successive quarters and continuing to charge a DSIC. In addition, the legislature set forth very clear customer protections in Act 11. 66 Pa. Cons. Stat. § 1358(b). The Company believes that these customer protections are more than adequate to address any overearnings, and an additional requirement to file a Section 1308(d) tariff supplement appears contrary to the legislation and the intent of the DSIC program.

4. Residual E-Factor Portion Of The DSIC Rate Upon A Reset Of The DSIC Rate

Aqua agrees that a tariff revision should be made so a utility may file an E-Factor only DSIC update after the DSIC rate is reset to zero to refund/collect and over/under collections. The Commission recommended that utilities should file a tariff revision that would allow them “to file interim revisions to resolve the over/under collection or E-factor amount after the DSIC rate is reset to zero.” Order at 16. A tariff revision to allow this E-Factor only filing will ensure that the DSIC is charged accurately and that the utility and the customer are treated fairly. Therefore, Aqua supports the tariff revision allowing an E-Factor only filing to resolve any under/over collection.

C. Computation Of The DSIC Rate Cap

Aqua comments that the Commission has the authority to exclude the E-Factor in the calculation of the DSIC cap. The Commission requested comments on whether it is feasible and in the public interest to allow utilities to exclude the E-Factor component when calculating the DSIC rate cap because the rate cap is “related to the time period in which the utility was authorized to charge and collect the designated DSIC rate.” Order at 17. The Public Utility

Code states that “[t]he commission, by regulation or order, shall prescribe the specific procedures to be followed to approve a [DSIC].” *Id.* at § 1358(d). Generally, any E-Factor calculation results in less than 0.5% adjustment to the current DSIC calculation in any one year. Additionally, because the calculation of the DSIC cap is not specified in the statutory language, it is within the Commission’s authority to determine the details of the calculation. Therefore, Aqua believes that the Commission has the authority to exclude the E-Factor in the calculation of the DSIC cap.

D. Water Utility Long-Term Infrastructure Plans

Aqua comments that water utilities that have operated with a DSIC, prior to Act 11, should not be required to file a Long-Term Infrastructure Improvement Plan (“LTIIIP”). The Commission recommended that water utilities that have previously implemented a DSIC file a LTIIIP by September 30, 2016. Order at 18. For non-water utilities a LTIIIP is used to determine whether a utility is eligible to recover costs under a DSIC program. A number of water utilities have implemented and have been operating a DSIC for 20 years. The company believes that the water DSIC has been properly implemented and reviewed in multiple Commission audits and rate case hearings during this period.

The Public Utility Code provides that “[t]he commission *may* require the submission of a new long-term infrastructure plan by a water utility.” 66 Pa. Cons. Stat. § 1360. (emphasis added). The General Assembly specifically exempted water utilities from filing a LTIIIP. The Company does not believe that an added layer of reporting through the LTIIIP is necessary for water companies that have been utilizing a DSIC mechanism for many years simply for the purpose of uniformity. While the legislature believed an LTIIIP was necessary for electric, gas, and wastewater utilities that had not previously utilized this process, a specific exemption was

made for water utilities that have successfully incorporated an infrastructure replacement plant into their planning and budget for many years. Additionally, water companies have already filed infrastructure replacement plans when they originally applied for a DSIC, and for Aqua, when it petitioned to increase its DSIC rate to 7.5%. The Company believes it has the experience to operate a DSIC program, and while an LTIP may be necessary for companies with less experience with the DSIC, Aqua's two decades of implementing this program shows its willingness and ability to continue to replace aging infrastructure. As such, Aqua does not believe that water utilities that currently have a DSIC program in place should be required to file a LTIP.

As stated previously, in support of its original DSIC filing and in the increase to 7.5%, Aqua included a detailed analysis and a long-term pipe replacement plan. In the more recent 7.5% DSIC proceeding, the Office of Consumer Advocate intervened and an ALJ was assigned, discovery asked, and an evidentiary hearing was held resulting in 15 pages of discussion in the Final Order. The Commission's Final Order entered July 23, 2009, approved the proposed increase in the DSIC cap from 5% to 7.5%. In so doing, the Commission concluded that the tariff water DSIC model was working effectively and, indeed, that its use had made a significant impact in terms of improving Aqua's distribution system. The Company respectfully submits that requiring all water utilities to file an LTIP for the sake of uniformity should not be the reason for requiring companies to go through a docketed proceeding for approval of a plan that has never been questioned in the past. The Company further respectfully submits that it is always available to update the Commission on its DSIC program and has done so through presentations and informal updates throughout the years.

However, if the Commission determines that water utilities must file a LTIP, Aqua strongly recommends that the Commission allow water utilities file a LTIP after their next base rate case. Water utilities are currently allowed to utilize a DSIC without a LTIP, and have already accumulated significant investments since their last rate case to which they charge for in DSIC rates today. One of the purposes of the LTIP is to show prospectively the impact of future DSIC spending and its future recovery through the DSIC rate starting at the reset, or zero point, to which water utilities are not. Therefore, waiting until the water utilities' next base rate case will ensure a clean starting point for the first LTIP and utilization of the DSIC prospectively.

III. CONCLUSION

Aqua appreciates the opportunity to comment on the Tentative Supplemental Implementation Order and asks that the Commission consider its comments. Aqua looks forward to continuing to work with the Commission on these issues. Please direct any questions with regard to these comments to the undersigned.

Respectfully submitted,



Kimberly A. Joyce
Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
Phone: (610) 645-1077
KAJoyce@AquaAmerica.com

Dated: December 21, 2015