

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

**IN THE MATTER OF THE APPLICATION OF)
UNITED WATER DELAWARE FOR AN) PSC DOCKET NO. 98-98
INCREASE IN WATER RATES (FILED)
MARCH 11, 1998))**

ORDER NO. 5152

AND NOW, to wit, this 22nd, day of June, 1999;

WHEREAS, on March 11, 1998, United Water Delaware Inc., filed with the Commission an application seeking a revision of rates, certain changes to its Rules and Regulations, and implementation of a Water Rate Adjustment Charge;

AND WHEREAS, by Order No. 4744, dated March 24, 1998, the Commission suspended the filing pending full and complete evidentiary hearings into the justness and reasonableness of the proposed rates and tariffs;

AND WHEREAS, following scheduled public evidentiary hearings concerning this matter, the parties notified the Hearing Examiner that they had reached a proposed Settlement Agreement;

AND WHEREAS, the Hearing Examiner, having conducted a duly publicized public evidentiary hearing to examine the justness and reasonableness of the proposed Settlement Agreement, has filed his Findings and Recommendations concerning the parties' joint proposal with the Commission;

AND WHEREAS, based upon the recommendations of the Hearing Examiner and upon such investigation and inquiry that each individual Commissioner has deemed appropriate, the Commission has determined that the evidence of record supports adopting the proposed Settlement as recommended by the Hearing Examiner; now, therefore,

IT IS ORDERED:

1. That the Commission hereby adopts in its entirety the June 15, 1999 Findings and Recommendations of the Hearing Examiner, attached to the original hereof as Attachment "A".

2. That by such adoption, the Commission hereby approves the thereto attached Settlement Agreement.

3. That the Commission hereby approves as just and reasonable the rules and rates set forth the tariff sheets appended to the Settlement Agreement.

4. That United Water Delaware, Inc. shall forthwith file with the Commission a clean set of tariff sheets setting forth therein the rules and rates approved by this Order.

5. That the hereby approved tariff sheets shall become effective for all bills rendered on and after the filing date thereof, until changed by further Commission Order.

6. That United Water Delaware, Inc. shall forthwith refund to its customers the excess revenues collected under bond in the manner described in the Hearing Examiner's Findings and Recommendations.

7. That upon the Company's demonstration to the Commission that it has completed the refund to its customers, the bond submitted by United Water Delaware, Inc., shall be discharged.

8. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary and proper.

BY ORDER OF THE COMMISSION:

Chairman

/s/ Joshua M. Twilley
Vice Chairman

/s/ Arnetta McRae
Commissioner

/s/ Donald J. Puglisi
Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

A T T A C H M E N T "A"

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MARCH 11, 1998))**

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: JUNE 14, 1999

**G. ARTHUR PADMORE
HEARING EXAMINER**

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**IN THE MATTER OF THE APPLICATION)
OF UNITED WATER DELAWARE FOR) PSC DOCKET NO. 98-98
AN INCREASE IN WATER RATES)
(FILED MARCH 11, 1998))**

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

G. Arthur Padmore, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. §502 and 29 Del. C. Ch. 101, by Commission Order No. 4748, dated March 24, 1998, reports to the Commission as follows:

I. APPEARANCES

On behalf of the Applicant, United Water Delaware:
THE BAYARD FIRM
WILLIAM D. BAILEY, JR., ESQUIRE

On behalf of the Intervenor:
The Division of the Public Advocate:
PATRICIA A. STOWELL, The Public Advocate

On behalf of the Public Service Commission Staff:
ASHBY & GEDDES
BY: JAMES McC. GEDDES, ESQUIRE & REGINA A. IORII, ESQUIRE

II. BACKGROUND

1. On March 11, 1998, United Water Delaware (“UWD” or “the Company”) filed with the Public Service Commission of Delaware (“the Commission”) an application seeking authority to revise its currently effective tariffs to provide an annual increase of 24.75% in revenues, or approximately \$4,088,453. UWD, a Class “A” water

utility, provides public water service to various parts of New Castle County and is subject to the Commission's jurisdiction.

2. After reviewing the Company's application, the Commission, by Order No. 4749, dated March 24, 1998, and pursuant to 26 Del. C. § 306(a)(1), suspended the proposed rate increase pending evidentiary hearings concerning the justness and reasonableness of the proposed new rates and tariffs. The Commission's Order also directed the Company to publish notice of its rate application and designated this Hearing Examiner to conduct duly noticed public hearings to fully scrutinize UWD's proposed rate changes and, thereafter, to propose findings and recommendations for the Commission's consideration.

3. On April 6, 1998, the Public Advocate filed her statutory notice of intervention and thereby became a party to these proceedings. No other person petitioned for or was granted intervenor status in this docket.¹

4. By Order No. 4782, dated April 28, 1998, the Commission, pursuant to 26 Del. C. §306 (c), granted the Company's request to place into effect under bond and subject to refund rates that did not exceed 15% of its annual gross intrastate operating revenues. Pursuant to Order No. 4782, the Company placed a rate increase of \$2,384,580 into effect on May 11, 1998.

5. On May 6, 1998, the Hearing Examiner conducted a scheduling conference in the Wilmington offices of Ashby and Geddes, Rate Counsel. By letter

¹ The Utility Workers Union of America and Local 584, Utility Workers Union of America, filed a Petition to Intervene in April, 1998 but subsequently withdrew its Petition.

dated May 13, 1998, the Hearing Examiner approved a procedural schedule for the conduct of proceedings in this docket.²

6. Upon due public notice (Ex. 1),³ a public comment session was conducted on the evening of June 17, 1998 in Wilmington. Other than the parties and Staff representatives, no one appeared at the public comment session.

7. With its application, the Company filed the direct testimony of: Victor Mercado, General Manager and a Vice President of UWD (Ex. 50); Matthias Jost, a regulatory economist for United Water Management & Services, Inc. (“UWM&S”), a UWD affiliate (Ex. 55); Frank Gradilone III, the Manager of Resource Planning and Rates for UWM&S (Ex. 2); Albert Candelmo, a Senior Rate Analyst for UWM&S (Ex. 21); Richard B. L. Meloy, a Senior Project Liaison for UWD (Ex. 32); Pauline M. Ahern, a Vice President of AUS Consultants (Ex. 17); Frank J. Hanley, President of AUS Consultants (Ex. 12); John R. Palko, a Vice President of AUS Consultants (Ex. 37); and Earl M. Robinson, President of the Weber Fick & Wilson Division of AUS Consultants (Ex. 6).

8. On August 19, 1998, the DPA filed the direct testimony of Andrea C. Crane, a Vice President of the Columbia Group, Inc. (Ex. 62.) On August 20, 1998, Staff filed the direct testimony of: (a) Michael J. Majoros, Vice President of Snavelly, King, Majoros, O’Connor & Lee, Inc. (Ex. 11); (b) Robert J. Henkes, a principal of Georgetown Consulting Group, Inc. (Ex. 68); (c) Jennifer J. Sieber, a Public Utilities Analyst II for the Commission (Ex. 67); (d) David C. Parcell, Executive Vice President

² During the subsequent period, between May 13 and August 20, 1998, the procedural schedule was modified on several occasions to accommodate changes necessitated by discovery disputes.

and Senior Economist of Technical Associates, Inc. (Ex. 20); and (e) Brian Kalcic, the founder and principal of Excel Consulting (Ex 65).

9. On October 5, 1998, UWD filed the rebuttal testimony of seven of the witnesses that had previously sponsored direct testimony,⁴ as well as the testimony of two new witnesses: W. Marie Zonavich, UWM&S' Chief Information Officer (Ex. 38); and Mark A. Gennari, a Director in UWM&S' Regulatory Business Department (Ex. 44). In its rebuttal testimony, UWD reduced its requested rate increase to \$3,794,251.⁵

10. The Hearing Examiner conducted duly publicized⁶ evidentiary hearings in Dover on October 21, 1998 and in Wilmington on November 2 through 4, 1998. All of the witnesses who sponsored pre-filed testimony presented that testimony and were subject to cross-examination.⁷ Pursuant to the procedural schedule, each party submitted one brief that addressed all of the issues remaining after rebuttal.

11. On March 3, 1999, Company Counsel, Walton F. Hill, Esquire, and Rate Counsel, James McC. Geddes, Esquire, telephoned the Hearing Examiner to inform him that the parties were engaged in discussions involving a proposed Settlement of all issues in this proceeding. They stated that they would report back to the Hearing Examiner concerning the status of their discussions. The Hearing Examiner informed them that under the circumstances he would suspend further work on the preparation of his findings

³ References to the pre-filed testimony and other exhibits introduced into this record will be cited as "Ex. ____." The transcripts of the various proceedings will be referred to as "Tr. at ____."

⁴ The rebuttal testimony is identified as follows: Messrs. Mercado (Ex. 51), Jost (Ex. 57), Gradilone (Ex. 3), Candelmo (Ex. 22), Hanley (Ex. 13), Robinson (Ex. 7) and Ms. Ahern (Ex. 18).

⁵ Ex. 57 at Reb. Ex. 5, page 1, Revised 9/30/98.

⁶ See, Ex. 1.

⁷ There were no disputed issues regarding Mr. Palko's cost of service study and testimony. Thus, by agreement of the parties, his prefiled direct testimony was admitted into the record by stipulation. (See, Ex. 36 and 37.)

and recommendations pending the outcome of their discussions. Eventually, on April 5, 1999, the parties informed the Hearing Examiner that they had reached a Settlement of all issues in this proceeding and that the proposed Settlement would be reduced to writing on April 19, 1999. After a slight delay, the parties filed the proposed Settlement Agreement (“Settlement”) on April 23, 1999. (Ex. 76.) Following a telephone conference on April 28, 1999, I scheduled a public hearing to review and consider the reasonableness of the proposed Settlement and the rates resulting therefrom.

12. On the morning of May 26, 1999, a duly publicized⁸ public hearing was conducted in Wilmington. At the hearing, the parties moved into the evidentiary record the proposed Settlement (Ex. 76), which is hereto attached as Attachment “A” for easy reference. In support thereof, the Company presented the testimony of Mr. Gregory Roupp, UWD’s Manager of Rates, and Staff presented the testimony of Ms. Susan B. Neidig, a Commission Public Utilities Analyst. Ms. Stowell, the Public Advocate, also made a statement on the record in support of the proposed Settlement. (Tr. at 841-846.) No member of the public appeared at or otherwise participated in the May 26, 1999 proceeding.

13. At the conclusion of the May 26, 1999 hearing, the record consisted of 77 exhibits⁹ and an 856-page *verbatim* transcript. The parties presented for my consideration proposed findings and recommendations, which I have substantially incorporated herein. I have also considered the proposed Settlement, the briefs, and the

⁸ Ex. 75.

⁹ Pursuant to an off-record discussion at the May 26, 1999 hearing, the parties undertook, among other things, to provide the Hearing Examiner with a proposed refund plan. They provided the proposed refund plan, and after having reviewed it, I accepted it as reasonable and incorporated it as Exhibit 77 into this record.

entire record of this proceeding. Based thereon, I submit for the Commission's consideration these Findings and Recommendations.

III. SUMMARY OF THE SETTLEMENT

14. **Introduction.** As is typical for utility rate cases, the major issues in this docket involved revenue requirement; capital structure and rate of return; cost of equity; rate base; plant-in-service; and depreciation expense. Other issues considered by the parties included: cash working capital; projected consumption; and operations and maintenance expenses.

15. Exhibit A, attached to the proposed Settlement, illustrates the pre- and post-Settlement positions of the parties concerning revenue requirement, overall rate of return, rate base, operating income and federal and state income tax. The parties have agreed to, and recommend as reasonable, the following items:

- (a) Rate Base \$60,932,274
- (b) Rate of Return: 9.08%
- (c) Return of Equity: 10.75%
- (d) Revenues at Present Rates: \$16,935,077
- (e) Total Operating Expenses: \$8,577,532
- (f) Depreciation Expense: \$1,851,581
- (g) Operating Income at Proposed Rates: \$4,316,323.¹⁰

(Ex. 76 at Exhibits A-1 through A-5.)

¹⁰ At the May 26, 1999 hearing, Witness Roupp indicated that this amount was incorrect because it represented operating income at present rates. (Tr. at 835.) The correct amount for operating income at proposed rates is \$5,534,180. (*Id.*, *see also*, discussion, *infra*, at ¶ 31.)

16. **Rate Base.** UWD's application was based on an end of test period (September 30, 1998) rate base of \$58,399,410. In response, DPA calculated a rate base of \$59,580,624 based on adjustments to plant-in-service, intangible assets, accumulated depreciation, advances for construction and CIAC, and deferred income taxes. Staff originally calculated a rate base of \$59,506,531, based on adjustments to plant-in-service, accumulated depreciation, advances for construction and CIAC, and cash working capital.

17. The post-hearing rate base positions of the parties, as stated in their briefs were: UWD, \$61,024,044; DPA, \$59,506,803; and Staff, \$59,696,068. (Ex. 74 at Exhibit 3.) In the Settlement Agreement, the parties propose as reasonable a total pro forma rate base of \$60,932,274. (Ex. 76 at Exhibit A-3.)

18. One of the most controversial rate base issues related to UWD's projected plant in service balance of \$90,489,401. This balance was based upon plant additions that the Company had forecasted through September 30, 1998. At the close of the record in November, DPA projected a plant-in-service balance of \$88,255,011. The DPA's projection was based on an analysis of past variances between internally budgeted and actual plant-in-service additions. In its post-hearing brief, Staff projected a plant-in-service balance of \$89,253,195. (Ex. 74.)

19. **Operating Income.** As of the close of the record, the parties had made the following proposals with respect to net operating income. UWD proposed a pro forma operating income of \$3,446,281. (Ex. 74.) The DPA supported a pro forma operating income of \$4,396,847; and Staff proposed a pro forma operating income of \$4,447,646.

(Id.) The Settlement proposes a pro forma operating income of \$5,534,180. (Ex. 76 at Exhibit A-1.)

20. The Settlement also recommends the approval of the depreciation rates set forth in Exhibit B to Exhibit 76 and the adoption of the rate design proposed by UWD, as modified by Staff.

21. The Settlement proposes a resolution of the underlying rate base issues and most other issues relating to other matters, such as, cash working capital, projected consumption, and operations and maintenance expenses as set forth in detail on Exhibits A-3 and A-4 to Exhibit 76.

22. Lastly, the Settlement adopts certain changes to UWD's Rules and Regulations relating to definitions, applications for service, meter testing, billing, discontinuance of service, theft of service, and delinquent bills. These changes are reflected in Exhibit C of the Settlement Agreement.

23. **Rate of Return.** The discussion on an appropriate rate of return for UWD's investors necessarily involves a look at the Company's capital structure and the cost of the debt and equity capital of which that structure consists. The appropriate capital structure for use in this case was a significant issue. The Company's initial position regarding its capital structure was that the capital structure of its immediate parent, United Water Works, should be employed as it was the source of the capital to be employed in the rate base. That capital structure consisted of 55.15% debt; a 0.13% minority interest; and 44.72% common equity. (Ex. 18 at 28.)

24. The Staff and the DPA contended that the capital structure of United Water Resources, the owner of United Water Works, should be employed as representing

the only means by which a common equity investor could invest in the Company. DPA calculated a capital structure consisting of 52% long-term debt; 5.23% short-term debt; 9.98% preferred stock; and 32.79% common equity. The Staff proposed using the consolidated capital structure of United Water Resources (“UWR”), the parent of United Water Works and recommended a long-term debt ratio of 51.05%, short-term debt ratio of 6.80%, preferred stock at 7.83%, and common equity at 34.32%. (Ex. 20 at 3, Sched. 15.)

25. The Staff and DPA advocated that the Commission follow the same course it did in UWD’s last rate case, PSC Docket No. 96-164, *i.e.*, to use the capital structure of UWR. That decision had been sustained by the Superior Court on appeal, but the Company had filed a further appeal to the Delaware Supreme Court during the course of this litigation. On February 11, 1999, the Delaware Supreme Court issued an opinion that reversed the decision the Superior Court and remanded the matter to the Commission for proceedings consistent with the Court’s opinion. I am informed that the parties have reached agreement in PSC Docket No. 96-164 and will present a proposal to the Commission for its consideration and possible approval.

26. The Settlement now under review proposes as reasonable the capital structure initially proposed by the Company, *i.e.*, 55.15% debt; 0.13% minority interest; and 44.72% common equity.

27. Turning to the issue of an appropriate rate of return, the positions of the parties are summarized below:

<u>UWD Post-Hearing (1)</u>	<u>Ratios</u>	<u>Cost Rate</u>	<u>Weighted Cost</u>
Debt	55.15%	7.74%	4.27%
Minority Interest	0.13%	5.00%	0.01%

Common Equity	<u>44.72%</u>	11.20%	<u>5.01%</u>
Total	<u>100.00%</u>		<u>9.29%</u>

<u>DPA Post-Hearing (1)</u>	<u>Ratios</u>	<u>Cost Rate</u>	<u>Weighted Cost</u>
Long-Term Debt	52.00%	7.14%	3.71%
Short-Term Debt	5.23%	5.40%	0.28%
Preferred Stock	9.98%	6.62%	0.66%
Common Equity	<u>32.79%</u>	10.75%	<u>3.52%</u>
Total	<u>100.00%</u>		<u>8.18%</u>

<u>Staff Post-Hearing (1)</u>	<u>Ratios</u>	<u>Cost Rate</u>	<u>Weighted Cost</u>
Long-Term Debt	51.05%	7.59%	3.87%
Short-Term Debt	6.80%	5.50%	0.37%
Preferred Stock	7.83%	6.44%	0.50%
Common Equity	<u>34.32%</u>	10.40%*	<u>3.57%</u>
Total	<u>100.00%</u>		<u>8.33%</u>

* Mid-point of recommended ROE range of 10.3% - 10.5%.

(1) Per exhibits attached to December 16, 1998 letter from Regina A. Iorii to Hearing Examiner Padmore. (Ex. 74.)

28. The proposed Settlement indicates the parties' agreement to an overall rate of return which is calculated based upon the cost rates for debt, minority interest, and common equity illustrated below:

<u>Stipulation</u>	<u>Ratios</u>	<u>Cost Rate</u>	<u>Weighted Cost</u>
Debt	55.15%	7.74%	4.27%
Minority Interest	0.13%	5.00%	0.01%
Common Equity	<u>44.72%</u>	10.75%	<u>4.81%</u>
Total	<u>100.00%</u>		<u>9.08%</u>

29. **Revenue Requirement.** UWD calculated a revenue requirement of \$3,705,189, based on its claimed rate base, operating income, and overall rate of return.

DPA proposed a revenue requirement of \$784,774, and Staff proposed a revenue requirement of \$825,158. These proposals, as well as the revenue requirement of \$2,030,000 calculated in the proposed Settlement, are illustrated in greater detail below.

	UWD Post-Hearing (1)	DPA Post-Hearing (1)	Staff Post-Hearing (1)	Stipulation
1. Pro Forma Rate Base	\$61,024,044	\$59,506,803	\$59,696,068	\$60,932,274
2. Overall Rate of Return	<u>9.29%</u>	<u>8.18%</u>	<u>8.33%</u>	9.08%
3. Income Requirement	5,669,134	4,867,656	4,972,682	5,534,180
4. Pro Forma Operating Income	<u>3,446,281</u>	<u>4,396,847</u>	<u>4,477,646</u>	4,316,323
5. Income Deficiency	2,222,853	470,809	495,037	1,217,857
6. Revenue Conversion Factor	<u>1.6668617</u>	<u>1.6668617</u>	<u>1.6668617</u>	1.6668617
7. Total Revenue Requirement	<u><u>\$3,705,189</u></u>	<u><u>\$784,774</u></u>	<u><u>\$825,158</u></u>	\$2,030,000

30. **The May 26, 1999 Hearing.** As previously noted, the parties presented testimony in support of the proposed Settlement at a public hearing conducted in Wilmington on May 26, 1999. UWD presented the testimony of Gregory Roupp, Manager of Rates for United Water Management and Services, Inc. Mr. Roupp testified that the Settlement represented a resolution of this Docket that is just and reasonable and within the range of the evidence as analyzed at the hearing and in the post-hearing briefing. (Tr. at 837-838.) He further testified that the Settlement is consistent with the Supreme Court’s opinion on UWD’s capital structure in Docket 96-164. (*Id.* at 838.)

31. As previously noted, Mr. Roupp pointed out that ¶ 12 of the Settlement should be corrected to agree with Exhibit A-1 to indicate that the operating income at

proposed rates is \$5,534,180. (Id. at 835.) The \$4,316,323 referred to in ¶ 12 is the revenue at present rates. (Id.)

32. Mr. Roupp also identified a typographical error in the Second Revised Page No. 6 of UWD's tariff as found in Exhibit C to the Settlement Agreement. On May 27, 1999 the witness forwarded to me a corrected Second Revised Tariff Page No. 6, which I have accordingly substituted in UWD's proposed tariff.

33. Ms. Stowell, the Public Advocate, asserted that she found the Settlement to be a reasonable compromise and in the public interest. She noted that the agreed upon return on equity of 10.75% was identical to the DPA position. She also observed that the Settlement figure of \$2,030,000 is but 26% higher than the DPA's position, considering the revised capital structure. The Settlement figure is but 55% of the increase sought by the Company in its post-hearing position. She also noted the provision for a refund. Ms. Stowell concluded that the Settlement is just and reasonable and in the public interest. (Tr. at 842-846.)

34. Staff witness Susan B. Neidig testified that she had reviewed the proposed Settlement. Based thereon, and in light of the Supreme Court's decision, she testified that Staff supported the Settlement rate of return of 9.08% as well as the proposed equity cost rate of 10.75%. (Id. at 848-849.)

35. Turning to rate base issues, Ms. Neidig indicated that Staff had conducted a post-hearing on-site review of several UWD capital projects that were the source of contention at the hearing. (Id. at 849.) According to Ms. Neidig, the review, while not comprehensive, gave the Staff confidence in assenting to the Company's proposed pro

forma utility plant in service as embodied in the Settlement and the rate base figure adopted therein. (Id. at 849-850.)

36. Ms. Neidig also indicated that she had reviewed details of questions resolved by the Settlement relating to operating revenues, operating expenses, depreciation expense and rate design. (Id. at 850-851.) She characterized the Settlement as having produced reasonable results and emphasized that Staff supported the adoption of the Settlement as being in the public interest because “it effectively resolves the issues overall and avoids additional litigation and administrative costs.” (Id. at 852.)

37. Ms. Neidig also noted that if the Settlement is approved, “a refund will be forthcoming for the difference between the revenues produced under interim rates and the proposed final rates.” (Id.)

IV. DISCUSSION

38. Title 26 of the Delaware Code confers on the Public Service Commission of Delaware “exclusive original supervision and regulation of all public utilities,” including “their rates, property rights, equipment, facilities,....etc.” 26 Del. C. § 201(a). UWD, the applicant herein, is a public water utility within the meaning of 26 Del. C. § 201(2). Thus, the Commission has jurisdiction over this matter.

39. After having negotiated in good faith, the parties to this proceeding have presented for consideration a proposed Settlement Agreement which resolves the additional annual revenue requirement for UWD. My review of the materials filed prior to the presentation of the proposed agreement indicates that there is no dispute among the parties that an increase of UWD’s revenue requirement was necessary. The dispute among the parties involved the magnitude of such an increase.

40. The proposed increase set forth in the Settlement is the result of a reasonable compromise, which balances the interests of the regulated utility as well as those of the consuming public. It affords UWD the means of maintaining its financial health, and it keeps the rates which its customers must pay for utility water service within reasonable bounds. Indeed, the rate impact of this Settlement on an average UWD residential customer, using 18,000 gallons of water per quarter with fire protection, is approximately as follows:

	<u>Old</u>	<u>New</u>	<u>Difference</u>	<u>% Difference</u>
Service Charge:	\$ 24.75	\$ 24.75	\$	0.00%
Consumption Charges	40.52	47.48	6.97	17.19%
Fire Protection	<u>5.61</u>	<u>6.24</u>	<u>0.63</u>	<u>11.23%</u>
TOTAL	\$70.88	\$78.47	\$7.60	10.72%

41. Pursuant to 26 Del. C. § 512, if deemed in the public interest, the Commission is mandated to “encourage the resolution of matters brought before it through the use of stipulations and Settlements.” The savings in time and money that result from the willingness of the parties hereto to reach a compromise are not insignificant. Thus, I conclude that there is a benefit to the public in reaching a Settlement in this case.

42. I have reviewed and carefully considered the proposed Settlement Agreement, the accompanying material in support thereof, and the entire record of this record. Based thereon, I am persuaded to recommend Commission approval of the proposed Settlement Agreement.

43. **The Rate Refund.** As previously noted,¹¹ at the conclusion of the May 26, 1999 hearing, the parties undertook to provide the Hearing Examiner with a proposed refund plan (“the plan”). (Ex. 77.) They provided the plan, which I have reviewed and recommend to the Commission as reasonable. I have summarized below the mechanics of the plan.

44. Pursuant to the plan, the Company will refund to its customers the difference between the revenues collected under bond and the final revenue requirement with interest calculated in conformance with Commission Order No. 2696. The Settlement contemplates that the rates will become effective on a bills rendered basis as soon as new tariffs are filed after the Commission issues its final order in this docket. Such a procedure will give customers the full benefit of the lower rates. In addition, instituting the new rates on this basis will simplify the calculation of the refund to customers by allowing the refund to be calculated consistently on a bills rendered basis.

45. The plan proposes that excess revenues collected under bond will be refunded by issuing a one time credit to each customer equal to a percentage of the total of the bills rendered to that customer from the period from May 11, 1998 to the effective date of the new final rates, plus interest. The percentage will be calculated by dividing the total annual pro forma excess revenues plus interest, divided by the total pro forma annual revenues under bond. Each customer’s account will be credited for the dollar amount of this calculation, and the credit will appear on the next bill rendered to the customer with an explanation of the reason for the credit. All credits will be issued through one complete quarterly and monthly billing cycle of the Company. The Company

¹¹ See, n.11, *supra*.

will issue checks to former customers who have left the system for the appropriate refund based on the total dollars billed during the applicable period, for amounts of \$1.00 or more. (*See, Ex. 77.*)

V. RECOMMENDATIONS

46. In summary, and for the reasons discussed above, I propose and recommend to the Commission the following:

- A) That the Commission adopt as reasonable the hereto appended Settlement Agreement (Attachment “A”);
- B) That the Commission approve as just and reasonable, rates and rules set forth in the tariff leaves attached to the Settlement Agreement;
- C) That the Commission order that the proposed rates set forth in the tariff shall become effective for all bills rendered on and after the Commission’s final Order in this proceeding; and
- D) That the Commission approve the proposed refund plan and direct the Company to forthwith implement refunds as set forth therein.

47. A proposed form of Order that will implement the foregoing recommendations is attached for the Commission’s consideration.

Respectfully submitted,

G. Arthur Padmore
Senior Hearing Examiner

Dated: June 14, 1999

