

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
SUSSEX SHORES WATER COMPANY FOR AN) PSC DOCKET NO. 07-278
INCREASE IN WATER RATES)
(FILED OCTOBER 15, 2007))

ORDER NO. 7418

This 5th day of August, 2008, the Commission finds, determines and Orders the following:

1. In October, 2007, Sussex Shores Water Company ("SSWC" or "the Company") filed seeking approval to increase its water service rates. The Commission suspended the Company's rate proposal and referred the matter to a Hearing Examiner to conduct the necessary hearings and thereafter submit a Report with recommendations. SSWC placed a portion of its rate increase in effect, under bond, on an interim basis pending a final decision by the Commission.

2. After pre-hearing exchanges, SSWC, the Division of the Public Advocate, and the Staff submitted a Proposed Settlement Agreement to resolve the matter. The Examiner held a hearing concerning the Proposed Settlement and has now filed his Report. He recommends that the Commission accept the Proposed Settlement Agreement and the rate and revenue increases it allows.

3. No party filed exceptions. After considering the Report at its August 5, 2008 public meeting, the Commission adopts the Hearing Examiner's Report and accepts the Proposed Settlement Agreement. The Commission finds both the Proposed Settlement Agreement and the rates

included within its attachments to be a resolution of this matter which is in the public interest as required under 26 Del. C. § 512(c).

Now, therefore, **IT IS ORDERED:**

1. That the Report of the Hearing Examiner dated July 15, 2008, is adopted by the Commission. A copy of that Report is attached as Exhibit "A" to the original of this Order.

2. That, for the reasons set forth in the Hearing Examiner's Report, the Proposed Settlement Agreement submitted in this matter by the Sussex Shores Water Company, the Division of the Public Advocate, and the Commission Staff is accepted and is found to be a resolution in the public interest under 26 Del. C. § 512. A copy of the Proposed Settlement Agreement is included as Exhibit "1" to the Hearing Examiner's Report.

3. That, consistent with the Proposed Settlement Agreement, the revised tariff sheets (and the rates included in such sheets) contained in Exhibit B of the Proposed Settlement Agreement are hereby approved, with such rates to be effective on the date of this Order and with any refund liability to relate back to December 18, 2007.

4. That, consistent with the Proposed Settlement Agreement, Sussex Shores Water Company may implement a new "Private Fire Line Service" rate classification. Such new service shall be offered under the terms of the tariff sheet (original Sheet No. 8) included in Exhibit B to the Proposed Settlement Agreement. Such service and rates shall be effective on the date of this Order, with any refund liability to relate back to December 18, 2007.

5. That Sussex Shores Water Company and the Commission Staff shall confer to determine what refunds (or refund credits) might be due based on the Commission's acceptance of rates set forth in the Proposed Settlement Agreement. Sussex Shores Water Company and the Commission Staff shall then agree upon a schedule for providing such refunds or credits to the relevant customers in a prompt manner.

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

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae _____
Chair

/s/ Joann T. Conaway _____
Commissioner

/s/ Dallas Winslow _____
Commissioner

/s/ Jaymes B. Lester _____
Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson _____
Secretary

E X H I B I T "A"

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
SUSSEX SHORES WATER COMPANY FOR AN) PSC DOCKET NO. 07-278
INCREASE IN WATER RATES)
(FILED OCTOBER 15, 2007))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

July 15, 2008

GARY A. MYERS
CONTRACT HEARING EXAMINER

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
SUSSEX SHORES WATER COMPANY FOR AN) PSC DOCKET NO. 07-278
INCREASE IN WATER RATES)
(FILED OCTOBER 15, 2007))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Gary A. Myers, having been appointed by PSC Order No. 7311 (Nov. 6, 2007) to act as the Hearing Examiner in this docket, submits this Report to the Commission.

I. APPEARANCES

On behalf of the Applicant, Sussex Shores Water Company:

SAUL EWING LLP
By: WENDIE C. STABLER, ESQ.

On behalf of the Public Service Commission Staff:

MURPHY & LANDON
By: FRANCIS J. MURPHY, ESQ.

On behalf of the Division of the Public Advocate:

G. ARTHUR PADMORE, ESQ., PUBLIC ADVOCATE

II. SUMMARIES OF PROCEEDINGS AND RECOMMENDATION

1. On October 15, 2007, Sussex Shores Water Company ("Sussex Shores," "the Company," or "the utility") filed an application seeking Commission approval to increase its water service rates in order to generate additional annual revenues of \$305,873. In percentage terms, the new rates proposed by the Company would result in a 22-23% increase over its present revenues. As a part of its application, Sussex Shores also sought to implement a new service classification:

"Private Fire Line Service." This service would be available to customers with in-structure sprinkler and fire suppression systems requiring dedicated fire protection service. The particular quarterly charge for such new service would be dependent on the size of the meter (or line) serving the customer.¹

2. On November 6, 2007, the Commission suspended all of the Company's proposed rates pending a final Commission decision. See PSC Order No. 7311 (Nov. 6, 2007). Thereafter, the Company exercised its statutory right (See 26 Del. C. § 306(c)) and placed into effect "interim" rates. The interim rates tracked the Company's current rate structure, but with each "interim" charge coming in at about 12% higher than the pre-application rate amount. These interim rates were designed to produce an additional \$154,651 in annual revenues to the Company. See PSC Order No. 7334 (Dec. 18, 2007) (interim rates effective December 18, 2007).

3. The Division of Public Advocate ("DPA") intervened in the rate filing. Comments from customers and the public were solicited. A handful of written submissions were forthcoming. On Friday evening, January 25, 2008, this Examiner held a public comment session on the Company's rate application in the Town Hall in Bethany Beach. Less than a dozen customers attended but most offered views not only about the proposed rate increase but the timing of the rate review process.

4. Prior to the scheduled date for the evidentiary hearing on the rate application, the three parties - Sussex Shores, the DPA, and

¹Customers with in-structure sprinkler or private fire suppression systems are currently serviced by the Company under its "Public Fire Hydrant" service classification.

Staff - informed the Examiner that they had reached a "Proposed Settlement Agreement" to fully resolve the rate application. At heart, the Settlement Agreement would make permanent and final the "interim" rates placed in effect in December, and thus allow the Company an increase of \$154,651 in annual revenues. Public notices were then published announcing that the proposed Settlement Agreement would be considered at a public hearing on April 28, 2008. No comments were received from customers concerning the Settlement and no member of the public appeared to speak at the later hearing. At such hearing, the Company, the DPA, and Staff each presented testimony and evidence to establish that it would be "in the public interest" for the Commission to accept the Settlement Agreement and the rates derived from it.² Post-hearing briefing was deemed unnecessary.

5. After reviewing the evidence, I recommend that the Commission accept the Proposed Settlement Agreement - and the "across-the-board" rate increases it allows - as a resolution that is in the public interest under the criteria set forth in 26 Del. C. § 512(c). As to the rate and revenue increase, I think that the Commission can particularly look to two things to make such "public interest" finding. First, Staff endorses the Settlement's resolution after it conducted a careful and thorough investigation of the rate application and supporting cost figures. Staff concluded that Sussex Shores could

²The day after the hearing, Staff Counsel asked by letter to re-open the record to provide corrections for some comparative figures offered by Staff during its presentation at the hearing. With no objection from the other parties, I granted the request and the letter outlining the corrections was entered as Hearing Exhibit ("H Exh.") 6.

justify a rate increase in the 12% range if not higher.³ Second, and just as importantly, the Commission can look to the testimony of the experienced consultant retained by the DPA. According to her, the overall rate increase adopted in the Settlement Proposal falls within 5% of the revenue requirement figure she had determined appropriate after her own independent scrutiny of the Company's filing.⁴

6. I also recommend that the Commission accept, as in the public interest, the provisions in the Proposed Settlement Agreement allowing for the implementation of the new Private Fire Line Service classification. Judged on its face, the new service is an appropriate first attempt by the Company to better align the costs of this "stand-by" service to the customers who use, or need, it.

III. SUMMARY OF THE PUBLIC COMMENTS

7. In December, 2007, the Company gave notice of its proposed rate increase. The notices - published in two newspapers and directly mailed to customers - solicited comments from the utility's customers.⁵ Six comments in the form of letters or e-mails were received.⁶ Almost all of these submissions objected to the Company's then proposed 22% rate increases. Several customers noted that their incomes had not

³Hearing Transcript ("HTr.") at 124 (Wagner).

⁴HTr. at 117 (Crane).

⁵Public Comment Exhibits ("PC Exh.") 1C (affidavit of R. Short reflecting publication and direct mailing of notices to all customers); 1A (affidavit of publication of notice regarding public comment in weekly The Wave newspaper); 1B (affidavit of publication of notice regarding public comment in daily Delaware State News newspaper); & 2 (press release concerning public comment session).

⁶PC Exhs., 3-8.

comparably risen by 20%.⁷ Two others questioned how such an increase could be approved now in 2008 when, in 2006, the Commission had just lowered - "by 50%" - the quarterly "fixed service charge" component for many of Sussex Shores' customers.⁸ In fact, almost all of the comments criticized the quarterly "fixed service charge" component of Sussex Shores service rates as too high or unfair to those "seasonal" customers who use their homes (and water service) primarily during a few Summer season months. Several favored lowering or abandoning the quarterly fixed charge in favor of a rate structure based more on actual water usage.⁹

⁷PC Exh. 3 (letter of M. Cohen, P. Cohen, & S. Cohen) (Dec. 20, 2007).

⁸PC Exh. 7 (e-mail of C. & M. Reith) (Jan. 20, 2008). In PSC Orders Nos. 6884 (Feb. 7, 2006) & 7115 (Jan. 23, 2007), the Commission accepted a settlement that allowed Sussex Shores customers served by a 1" meter connection to "down-size" to a 3/4" connection for rate purposes. At the same time, the Commission also approved tariff revisions which, on a going-forward basis, lowered the Company's quarterly fixed service charges for customers served by 3/4" and 1" meters. A customer who downsized to a 3/4" meter with its new lower rate could have seen a substantial reduction in quarterly fixed charges.

⁹PC Exh. 3 (noting that Company's growing customer base generates increased revenues and emphasizing that many customers are not at their homes full-time but still pay quarterly fixed service charge); PC Exh. 5 (letter of R. Kauffman) (Jan. 4, 2008) (suggesting customer would not object to worthy increase in per gallon usage charges but voicing strenuous objection to total bills made excessively high because of quarterly fixed, demand charges); PC Exh. 6 (letter of T. Stack) (Jan. 10, 2008) (objecting to rate increase and noting that he pays \$200 per quarter regardless of any water usage and suggesting the Company eliminate quarterly fee and increase rates for actual water usage to encourage water conservation and to be fair to all); PC Exh. 7 (comparing \$70 quarterly water charge for larger New Castle County home with higher fixed service charge for smaller home served by Sussex Shores and arguing that such fixed charges subsidize full-time residential customers); PC Exh. 8 (letter of M. Bisker) (Jan. 18, 2008) (opposing increase and citing unfairness, particularly if rates increased, in being obligated to pay quarterly service charge regardless of water use, when home is used only two months of the year). One comment also objected to the rates the Company was then proposing for the new Private Fire Line Service. PC Exh. 7 (noting that his community could not afford to pursue private fire line service if proposed rate for a 10" meter connection was allowed). Another e-mail also reported that the Company had oversized a main to a particular development

8. As noted earlier, a public comment session was held on Friday evening, January 25, 2008. Ten persons appeared. Several speakers raised issues about the Commission's process in reviewing the rate application. First, they asked why the opportunity for public comment was being offered in the middle of the Winter when many in the utility's customer base were "seasonal" residents who would not then be in the area.¹⁰ One suggested that Sussex Shores' rate filings should be time-regulated to ensure that the opportunity for public input would be available in May or June when many customers could offer their views.¹¹ Later, another customer proposed that the Commission should also re-examine its "public information" methods and begin to post utility rate applications "on-line" so that underlying cost and other information might be easily reviewed and disseminated among customers and homeowners' associations.¹² One customer challenged both the proposed rate increases and the Company's earlier 2000 rate adjustments as being excessive for an eight year period. He also questioned the utility's need for a "security upgrade" surcharge, the propriety of a \$115 quarterly hydrant fee for hydrants only opened

and urged that the additional costs for such larger main should be excised from the Company's recoverable costs. PC Exh. 4 (e-mail of R. Martin) (Dec. 26, 2007).

¹⁰Public Comment Transcript ("PCTr.") at 26 (Mooney), 29 (unidentified speaker), 86 (Katz).

¹¹PCTr. 27-29.

¹²PCTr. 84 (Katz).

once a year, and the high quarterly fixed service charges.¹³ Another customer commented that while the Company was doing a good job, it needed both a better customer relations approach and better maintenance efforts to keep its main water tower freshly painted and appropriately lighted.¹⁴

9. An officer of the Sussex Shores Beach Association also spoke at the session. He focused on his community's need to obtain some commitment from the Company that it was planning to promptly move forward to upgrade the utility's 50-year old pipeline infrastructure in that community. As he explained, only after such upgrades could the community then pursue re-paving its streets and burying its electric lines.¹⁵ In response, Mr. Rodney Short, president of the Company, reported that the utility's board had just approved obtaining the \$350,000 to \$400,000 funding that likely would be required for such improvements and that work on replacing the Company's pipes in the community would begin as soon as possible. He explained that the costs for such improvements are not "covered" by this particular rate application. Instead, once completed, the Company would begin recovering its capital costs for replacing this aging infrastructure

¹³PCTr. 40 (Pfeil). See PSC Order No. 6069 (Nov. 19, 2002) (approving Company's application to charge a security upgrade surcharge of \$1 per quarter).

¹⁴PCTr. 47 (Mooney).

¹⁵PCTr. 48-52 (Psares). Mr. Psares also offered a letter summarizing the community's particular need for this commitment from the Company about replacing the old water pipe system. PC Exh. 9.

via a system-wide Distribution System Improvement Charge applied to all customers' bills.¹⁶

10. One customer could not understand why Sussex Shores has the highest water utility rates in the State and why its rates even exceed those to be charged by the nearby Town of Ocean View for water service from its new water system.¹⁷ He, along with others, also called for an investigation of the Company's decision to construct a second water storage tank and related facilities in the State park immediately north of the Indian River Inlet. As they saw it, the Company only serves two or three customers north of the Inlet: the State park, an adjacent State-owned marina, and a Coast Guard station. Given that, they questioned whether it was a prudent investment decision to incur the costs for a large storage tank at that location, particularly when most of the Company's customers were located in areas some distance south of the Inlet.¹⁸

¹⁶PCTr. 53-56 (Short). The Company's express commitment and its explanation of how the costs were going to be recovered then engendered a back-and-forth discussion related to why the costs associated with a system upgrade in one community should be recovered from all the utility's customers, particularly when individual communities (or developers) are generally required to "contribute" the costs for infrastructure used to serve new developments and communities. PCTr. 56-63.

¹⁷PCTr. 64-66 (Coffey).

¹⁸PCTr. 66-72, 77 (Coffey); 79 (Payne), 83 (unidentified speaker). At the comment session, Mr. Short responded with an explanation that the Company had determined that the State park location was the appropriate one for service, engineering, and financial reasons. The Company needed a second storage facility and that facility's location north of the Inlet would also offer the needed fire protection capacity for the adjacent State-owned marina. Moreover, he outlined how the Company's engineering study had favored, for hydraulic reasons, the site north of the Inlet location over more difficult to acquire locations south of the Inlet. And he explained how the State had contributed large amounts towards the construction of the facilities including its underwater connection with the utility's main service area. PCTr. 67-70, 82-83. At the later evidentiary hearing, Mr. Short

IV. SUMMARY OF THE EVIDENCE

11. An evidentiary hearing on Sussex Shores' rate application had been scheduled for April 28, 2008. But by then, the Company, the DPA, and Staff had agreed to the Proposed Settlement Agreement to resolve the matter. Consequently, the focus of the presentations at the publicly-noticed hearing was not the Company's original rate application and its supporting cost materials but the parties' Proposed Settlement Agreement.¹⁹ Should that Agreement - allowing the Company a 12% increase in annual revenues (and rates) - be accepted by the Commission as a resolution that is in the public interest? See 26 Del. C. § 512(c).

A. The Original Application

12. At the hearing, the Company introduced its original application and supporting materials. It did so to put the Settlement's resolution in context: to compare its 12% increase with the 22.68% increase that the Company had originally sought and proposed to justify. In that original application, the Company had premised its need for additional revenues on increases in its operating costs - particularly labor - and the additional capital expenditures it had made since its last general rate case in 1999-2000. That original filing used a test year ending September 30, 2007 and proposed an increase in annual revenues of \$305,873, or 22.68%

and Staff recounted the Company's reasoning in constructing these facilities north of the Inlet. See paragraphs 15 and 20 of this Report.

¹⁹H Exh. 1 (affidavits of publication of notices of hearing on Proposed Settlement Agreement in The Wave and Delaware State News newspapers on April 7 and 9, 2008 respectively). The notices allowed for comment from the public on the Proposed Settlement Agreement. None were received.

over its then current rates. The application and supporting materials reflected an increase in investments of \$1,292,000 since the Company's last rate increase in 2000. The Company calculated its cost of equity to be 11.70% with an overall cost of capital (or rate of return) of 9.55%. Later, in December, 2007, Sussex Shores filed updated schedules adjusting the Company's additional revenue request to \$304,233 (down from the earlier \$305,873), or an increase of 22.26% (adjusted from 22.68%).²⁰

B. The Proposed Settlement Agreement

13. The Proposed Settlement Agreement proffered by the Company, the DPA, and the Staff is a "semi-black box" resolution. H Exh. 4. Under the Agreement, the Company is allowed a 12% increase in its annual revenues (that are subject to rate increases) or in dollar terms an additional \$154,651 over its \$1,287,022 test period revenues.²¹ The Settlement Agreement describes this resolution as being based on compromises between the parties on all issues that the final result should not set a precedent or have precedential effect in any future proceeding.²² In addition, by a number of tariff sheet attachments, the Proposed Settlement Agreement translates the additional 12% revenue amount into new rates for the Company's services. It appears that in almost all instances (except for the new

²⁰H Exhs. 2A-2F. This summary of the original filings, and its cost justifications, is truncated given that the Settlement Agreement proposes a significantly lower revenue and rate increases.

²¹H Exh. 4 (Settlement Agreement) at ¶ 2 & Exh. A, "Operating Revenues."

²²H Exh. 4 at ¶¶ 2, 7.

"Private Fire Line Service"), those agreed-upon new rates come in at 12% above the Company's last-approved rates.²³

14. The Proposed Settlement also endorses Sussex Shores' implementation of its new service classification, "Private Fire Line Service." Under this classification, customers requiring such stand-by capacity for their fire suppression systems will pay a quarterly charge (ranging from \$51.20 to \$345) determined by the size of the dedicated fire line or meter.²⁴

C. Sussex Shores

15. In addition to introducing into the record its original filings, Sussex Shores presented testimony from Mr. Short, its President. He offered that he believed that the 12% revenue and rate increase which the Company had agreed to in the Settlement Agreement (down from the 22.87% increase originally sought) represented a fair balance between the Company and its customers while providing an adequate rate of return for the utility.²⁵ Mr. Short also tendered a response to the earlier comments from customers questioning the need for, and dollar amounts of, the Company's quarterly fixed service

²³H Exh. 4 at Exh. B (new tariff sheets for water services implementing revenue increase).

²⁴H Exh. 4 at ¶ 4 & Exh. B, Original Sheet 8 ("Private Fire Line Service"). At the hearing, Mr. Short offered that the rates for this new service were not set strictly in accordance with a cost of service study. The deviation was made, according to Mr. Short, in an effort to avoid rate shock to some customers moving to this new service. He suggested the rates for such service would gradually rise over the ensuing years to conform to the allocated costs of serving these customers. HTr. at 111. Staff also offered a follow-up worksheet to show how the Private Fire line rates were calculated consistent with the overall 12% revenue increase parameter adopted in the Settlement Agreement. H Exh. 5.

²⁵HTr. 108, 110.

charges. Supplementing a written explanation for those charges that the Company had made available at the public comment session (H Exh. 3), Mr. Short posited that the Company needed both fixed and volumetric charges in its rate structure because it builds its facilities to service its customers on a year-round basis and has to be prepared to provide service during periods of peak demand.²⁶ He also explained the Company's decision to site a second storage facility in the State park north of the Indian River Inlet. That decision, he said, was driven by a study performed by its consulting engineers that had concluded that such site was the best location for it to be built. According to Mr. Short, the chosen location allows for needed fire protection for a boat storage facility at the adjacent marina while also still providing additional storage and pumping capacity for the entire system.²⁷

D. The Division of the Public Advocate

16. Andrea C. Crane, a retained consultant, testified on behalf of the DPA. The DPA joined in the Proposed Settlement Agreement and endorses its acceptance by the Commission. Ms. Crane summarized the chronology of her review process in this matter. She had scrutinized the Company's original filings and supporting materials and its later updated schedules. She had made data requests of the Company and reviewed its answers to both Staff's and her inquiries. From this, she had then arrived at an additional revenue requirement for the Company that she recommended to the DPA as a reasonable one to assert

²⁶HTr. 109.

²⁷HTr. 109.

in any hearing in this matter. She reported that such figure fell within 5% of the overall rate increase that eventually emerged in the Proposed Settlement Agreement. Given that closeness, she recommended that the DPA support the Settlement Agreement as consistent with the public interest. As she saw it, not only were the rates in the Settlement Agreement fair and reasonable based on her prior independent analysis but resolving the matter by a settlement would further serve the public interest by saving the parties from further regulatory and rate case expenses.²⁸

E. Commission Staff

17. Ms. Heidi Wagner, a Public Utility Analyst, offered Staff's views on why it joined in the Proposed Settlement Agreement and why the Commission should accept its resolution as being in the public interest. Ms. Wagner recounted how Staff had reviewed the Company's original application and supporting testimonies and schedules, as well as its later-submitted financial updates. Similarly, Staff had reviewed the utility's responses to the comprehensive (approximately 150) data requests made by Staff and the DPA. And, Staff had retained two consultants to provide help: one to focus on an appropriate cost of capital and the other to review cost of service and rate design issues. Staff also conducted an in-office audit of the Company's financial books. Discussions were had with the DPA, its consultant, and Staff's legal counsel. After all this, Staff reached the conclusion that the Company "could arguably present evidence in

²⁸HTr. 116-118.

support of a rate increase in the 12% range and possibly higher.”²⁹ Given Staff’s view that the Company could be expected to justify a majority of the rate increase it had sought, Staff decided to pursue settlement with the Company to arrive at a revenue increase level that Staff believed was supported by the record. In addition, as Staff saw it, settlement would have the additional advantage of avoiding the increased rate case costs surrounding a contested case - costs which might eventually be passed on to the customers. These twin concerns moved Staff initially to pursue settlement negotiations and to now endorse the Proposed Settlement Agreement and its 12% revenue increase.³⁰

18. To Staff, the revenue and rate terms in the Proposed Settlement Agreement offer advantages. First, while the Agreement allows a revenue increase of \$154,651, that amount is significantly below the \$305,873 that the Company had originally sought. In addition, while a 12% increase is the end result, if that increase were to be spread out over the eight-year period since the Company’s last general rate increase, that result can be seen as an annual increase of only 1.5%. That level of annual increase, according to Ms. Wagner, falls below the Department of Labor’s annual Consumer

²⁹HTr. 124. See also HTr. 128 (Staff’s concern was that in a litigated case “it was possible that the Hearing Examiner might award the Company an increase higher than 12 percent.”). In fact, the Staff had reviewed the Company’s labor and operating expenses and found them to appear to be reasonable. HTr. 128.

³⁰HTr. 124, 128. Staff calculated that if the entire cost of this particular rate proceeding (approximately \$300,000) were passed through to the utility’s 1,691 customers, those costs would result in something akin to a one-time surcharge of more than \$150 to customers’ bills. HTr. 123.

Price Index measure of inflation for each of those eight years.³¹ Ms. Wagner also offered a concrete example of the effect of the Settlement's rates: a customer with a 3/4" meter connection would see annual billings rise by \$72.68. While acknowledging that this, like any rate increase, can negatively affect customers and particularly those on fixed incomes, Ms. Wagner pointed out that such \$72 increase averages out to about an additional 20 cents a day.³² And to put the 12% increase in some comparative perspective, Ms. Wagner summarized the rate increases obtained since 2000 by two other Class A water utilities regulated by the Commission, Artesian Water Company and Tidewater Utilities Inc. Each of them had received several rate increases over that period. And the percentage amounts of those increases, cumulatively and in some cases individually, were greater than the 12% percent increase proposed in the Settlement Agreement.³³ As Ms. Wagner eventually summarized: "Staff believes that the Settlement is in the public interest and will result in fair and reasonable rates."³⁴

19. The new Private Fire Line Service is also part of the Settlement Agreement and its implementation is endorsed by Staff. According to Ms. Wagner, if such service and its varying rates were approved, only 12 customers assigned to such service would then be

³¹HTr. 127-128, 129-130.

³²HTr. 129.

³³HTr. 130-131; H Exh. 6 (letter correcting some percentage levels).

³⁴HTr. 132.

entitled to partial refunds from the "interim" fire hydrant rates that they had been paying since December, 2007.³⁵

20. Ms. Wagner also spoke to the issue raised during the public comment session concerning the Company's construction of a storage tank and accompanying pumping facilities in the State park north of the Indian River Inlet. As she recounted, Sussex Shores had explained to Staff that the State of Delaware had initially approached the Company about the construction of facilities north of the Indian River Inlet to serve the State park and adjacent State-owned marina. The Company also needed to construct a new water storage facility to help serve its existing customers spread in areas south of the Inlet. Its engineers concluded that, for reasons related to hydraulic pressure, a new facility located north of the Inlet would best serve the Company's needs. Its engineers concluded that these north-side facilities were needed not only to provide service to the State facilities north of the Inlet, but to provide sufficient pressure in order to serve the Company's customers south of the Inlet. These facilities cost a total of \$3,111,000. The State of Delaware advanced about \$1,681,000 of that cost; Sussex Shores paid the remaining \$1,430,000. In addition, the State paid the cost of \$702,000 for extending the water main under the Inlet. It was the Company's view that its cost-sharing agreement with the State represented a "win/win" situation for both the utility's existing customers and the State. Staff did not retain a consulting engineer to second-guess the conclusions of the Company's engineering consultants and it did not seek to remove these facilities

³⁵HTr. 129 & H Exh. 5.

from the Company's rate base. Rather, it was Staff's view that such north of the Inlet facilities are "used and useful" in the Company's provision of water services.³⁶

V. DISCUSSION

21. Distilled, the Proposed Settlement Agreement gives the utility a 12% increase in revenues. If accepted, it will mean that Sussex Shores' customers will face water service rates each approximately 12% higher than those previously approved by the Commission.

22. The Public Utilities Act commands all regulated public utilities to charge rates that are just and reasonable (See 26 Del. C. § 303(a)) and it charges this Commission to enforce that obligation. At the same time, for more than a decade, the Act has also encouraged the Commission to use the devices of settlements and stipulations to help resolve the matters that might be brought before it. See 26 Del. C. § 512(a). However, before the Commission can accept any such brokered resolution, the Commission must find the resolution "to be in the public interest." See 26 Del. C. § 512(c).

23. In the testimony presented here, the Staff, the Company, and the DPA assert that the Proposed Settlement Agreement is in the public interest. To Staff, the Agreement protects customers. It provides for a "lesser" rate increase, negates the possibility of a higher increase emerging at the end of any contested proceeding, and avoids increased rate expense costs to be eventually passed through to

³⁶HTr. 125-127.

customers. The DPA sees the same benefits for customers: reasonable "new" rates and avoided "rate case" costs. To the Company, the Proposed Settlement gives it additional revenues, avoids the risk of unfavorable litigation outcomes, and similarly avoids larger expenses in time and rate case costs. All of those interests do provide benefits. And in themselves they support the Commission accepting the Proposed Settlement Agreement as "in the public interest."

24. A lurking, somewhat abstract, question is whether the "in the public interest" criteria in § 512(c) also requires a finding by the Commission that the 12% increase is - standing alone - "in the public interest." I find that neither the Commission nor I need answer that question in the context of this particular matter. The evidence presented at the hearing provides a basis for the Commission to find that the rate and revenue increases under the Proposed Settlement Agreement are consistent with the public interest. The Commission can particularly look to two items. First, Ms. Wagner outlined an extensive investigation of the rate filing by the Commission Staff that eventually led Staff to conclude that the Company could reasonably be expected to provide sufficient support to justify a revenue and rate increase of at least 12%. HTr. 124. It is not essential that the record here provide all the details for why Staff came to such a determination. The Commission can look to its Staff to provide an unbiased, researched appraisal of the filing. Just as importantly, the Commission can look to the testimony of Ms. Crane for the DPA. According to her, the 12% rate increase adopted in the Settlement Agreement falls within 5% of the revenue requirement

that she had formulated after her equally intensive, and independent, analysis of the Company's original filing. HTr. 117-118. Based on these two pieces, I think the Commission can accept the Proposed Settlement Agreement, and its attendant new rates, as being in the public interest.

25. I also recommend that the Commission accept the terms in the Settlement Agreement that allow the Company to implement a Private Fire Line Service classification at specified rates keyed to meter or line connection size. Both Staff and the DPA endorse both the separate service and the varying rates. As the Company suggests, the rates for such new service appear to be a first step in gradually moving the costs incurred by the utility in providing such stand-by fire protection capacity to the customers who require, or need, such private fire line service. HTr. 111-12.³⁷

26. I end with one caveat. In the public comments, I read and heard numerous complaints about the "unfairness" of the Company's quarterly fixed service charges that are imposed on customers separately from any volumetric water charges. In the eyes of many of Sussex Shores' "seasonal" customers, the "excessive" quarterly fixed service charges over-charge part-time residents and inhibit any efforts at water conservation. In this proceeding the Company responded to those voiced complaints, explaining why it needs to

³⁷As noted earlier, Sussex Shores currently serves customers with in-structure fire suppression systems under its public hydrant service category with a flat rate quarterly charge per hydrant. Under the new Private Fire Line service, some customers with smaller-sized connections will see their quarterly charges move lower. Conversely, those with larger-sized meters or line connections for their private fire suppression systems will see higher quarterly charges.

assess both fixed and volumetric charges not only to provide infrastructure capable of serving peak demands but to be able to support operations on a year-round basis, and to account for weather-related fluctuations. H Exh. 5. In this proceeding, neither Staff nor the DPA offered anything explicit or affirmative - one way or another - related to the fixed service charge issue. At the same time, the Proposed Settlement Agreement utilizes the Company's current rate design - with those separate fixed and volumetric charges - as the benchmark foundations for its "across-the-board" 12% increases. Consequently, both the Fixed Service Charge and Water Charge will rise. I simply now note that in recommending acceptance of the Proposed Settlement Agreement, I need not make - and have not made - any determination about the validity of either the customers' fixed charge complaints or the Company's explanation why it needs both fixed and volumetric charges.

VI. RECOMMENDATION

27. Based on the evidence presented and for the reasons stated above, I recommend the following:

A. That, for the reasons set forth above, the Commission find that the Settlement Agreement proposed in this matter by the Sussex Shores Water Company, the Division of the Public Advocate, and the Commission Staff is in the public interest under 26 Del. C. § 512 and that the Commission accept such Settlement Agreement. That Settlement Agreement is attached as Exhibit 1.

B. That, consistent with the Settlement Agreement, the Commission approve the revised tariff sheets (and the rates included in such sheets) contained in Exhibit B of the Settlement Agreement with such rates to be effective on the date of the Order and with any refund liability relating back to December 18, 2007.

C. That, consistent with the Settlement Agreement, the Commission approve the implementation of a new "Private Fire Line Service" classification by Sussex Shores Water Company to be offered under the terms of the tariff sheet (original Sheet No. 8) included in Exhibit B to the Settlement Agreement with such service and rates to be effective on the date of the Order and with any refund liability relating back to December 18, 2007.

D. That the Commission direct Sussex Shores Water Company and Staff to determine any refunds (or refund credits) that might be due based on the Commission's acceptance of rates set forth in the Settlement Agreement and to tender a schedule for providing such refunds or credits.

Respectfully submitted,

/s/ Gary A. Myers
Gary A. Myers
Hearing Examiner

Dated: July 15, 2008

EXHIBIT "1"

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

IN THE MATTER OF THE APPLICATION OF :
SUSSEX SHORES WATER COMPANY FOR AN : PSC Doc. No. 07-278
INCREASE IN WATER RATES :
(FILED OCTOBER 15, 2007) :

PROPOSED SETTLEMENT AGREEMENT

THIS PROPOSED SETTLEMENT AGREEMENT ("Settlement") is entered into as of the ___ day of April, 2008, by and among SUSSEX SHORES WATER COMPANY ("Sussex Shores" or the "Company"), the STAFF OF THE DELAWARE PUBLIC SERVICE COMMISSION ("Staff") and the DIVISION OF THE PUBLIC ADVOCATE ("DPA") (each, a "Party" and, collectively, the "Parties").

WHEREAS, on October 15, 2007, Sussex Shores filed an application (the "Application") with the Delaware Public Service Commission (the "Commission"), pursuant to 26 *Del. C.* §§201, 209, 304 and 306 and other sections of the Public Utilities Act of 1974, 26 *Del. C.* §§101, *et seq.* (the "Act") as applicable, seeking an overall increase of \$305,873 over base rates previously authorized by the Commission in 2000 in PSC Docket No. 99-576. On a net basis, the Company's overall revenue would increase approximately 22.68% over Test Period revenues, and

WHEREAS, the Application also included revised tariff sheets and a proposed new tariff sheet (the "Proposed Tariff"), which incorporated proposed changes to Sussex Shores' rates, including a separate tariff page for Private Fire Line Service.

WHEREAS, on December 18, 2007, the Commission entered Order No. 7334 pursuant to which Sussex Shores' petition filed October 15, 2007, to put interim rates into effect, with assurance of future payment of refunds secured by a letter of credit, was approved (the

requirement of a surety bond having been waived by the Commission), thereby permitting Sussex Shores to place into effect, on December 18, 2007, an interim rate increase of \$154,651 under bond, and subject to refund as permitted under 26 *Del. C.* §306(c); and

WHEREAS, on January 25, 2008, a duly noticed public comment session was conducted at the Bethany Beach Town Hall; and

WHEREAS, on December 31, 2007, Sussex Shores filed updated Test Period financial data as of September 30, 2007; and

WHEREAS, pursuant to 29 *Del. C.* §8716, the DPA intervened in this proceeding; and

WHEREAS, the Parties have conducted substantial discovery; and

WHEREAS, the Parties desire to avoid the substantial additional costs which would be involved if Staff and DPA were required to file prefiled testimony, and this case were to proceed to evidentiary hearing; and

WHEREAS, the Parties have conferred in an effort to resolve the issues raised in this proceeding; and

WHEREAS, it is acknowledged that the Parties differ as to the proper resolution of many of the underlying issues in the rate proceeding and are preserving their rights to raise those issues in future proceedings, but believe that settlement of the pending rate proceeding on the terms and conditions contained herein will serve the interest of the public and the Company, while meeting the statutory requirement that rates be both just and reasonable.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the undersigned that the Parties shall, and do hereby, submit to the Commission for its approval the following terms and conditions for resolution of this rate proceeding:

1. The Parties acknowledge that this Settlement, and the amounts set forth herein, have been agreed to as a compromise of the Parties' positions, and the Parties hereby acknowledge, agree and set forth their collective belief that these proposed rates are within the bounds of the statutory requirement of a fair rate of return, based on circumstances specifically unique to Sussex Shores.

2. The rates established are intended to afford Sussex Shores an overall revenue increase of twelve percent (12%) on revenues subject to a rate increase, amounting to a rate increase of \$154,651. The overall rate increase is 11.466% representing a total revenue requirement of \$1,503,389. This revenue requirement is based on a compromise between the Parties on all issues toward the end of achieving an overall resolution of the case and does not reflect any particular position on any issue except as may otherwise be expressly set forth herein.

3. The Parties pledge to use their respective best efforts to work diligently towards securing the Commission's approval of this Settlement (including the rates and tariff provisions herein contained), which shall become effective July 1, 2008.

4. The Parties have agreed to a rate design and tariff schedule, as reflected in the Proof of Revenues and Tariff Rates, attached as Exhibit A. The changed tariff pages are attached as Exhibit B. In addition to the changes in rates, the Parties have agreed that it is just and reasonable for Sussex Shores to implement a new and separate Private Fire Line Service Tariff upon the rates, terms and conditions, set forth on Original Sheet 8, contained in Exhibit B.

5. The Company's rate case expenses were a significant issue for Staff in this proceeding. Staff believes that it is incumbent upon the Company to make best efforts to reduce the Company's rate case expenses in its next rate case. Sussex Shores understands the Staff's concern about rate case expenses. However, the Company believes that a number of rate case

expenses are not within the Company's control and are associated with such matters as current regulatory compliance requirements under the "Rules and Regulations Governing Rate Case Filing Requirements for Class A Utilities" and the need for the Company to provide information in response to Staff and DPA data requests.

6. This Settlement is the product of extensive negotiation, and reflects a mutual balancing of various issues and positions. It is therefore a condition of the Settlement that it be approved by the Commission in its entirety without modification or condition. If this Settlement is not approved in its entirety, this Settlement shall become null and void.

7. This Settlement shall not set a precedent, shall not have any precedential effect in any future proceeding, and no Party shall be prohibited from arguing any policy or position before the Commission in any future proceeding as a result of this Settlement. The purpose of this Settlement is to provide just and reasonable rates for the customers of Sussex Shores. In addition, the Parties believe that the Settlement is in the public interest because, among other things, it avoids the additional cost of litigation.

8. The terms of this Settlement will remain in effect until changed by an order of the Commission or until mutually agreed to in writing by the Parties. The Parties acknowledge and agree that the Commission retains jurisdiction over this Settlement and all statutory procedures and remedies otherwise available to the Parties to ensure that Sussex Shores' rates are just and reasonable, while providing a fair rate of return to Sussex Shores' shareholders, including without limitation, 26 *Del. C.* §§304 and 309-311.

10. This Proposed Settlement Agreement may be executed in multiple counterparts by any of the signatories hereto and transmission of an original signature by facsimile or e-mail shall constitute valid execution of this Agreement. Copies of this Proposed Settlement

Agreement executed in counterpart shall constitute one agreement. Each signatory executing this Proposed Settlement Agreement warrants and represents that he or she has been duly authorized and empowered to execute this Proposed Settlement Agreement on behalf of their respective Party.

[THE REMAINDER OF THIS PAGE IS BLANK INTENTIONALLY;
THE SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF, the undersigned Parties have executed this Settlement with intent to be legally bound hereby as of the day and date set forth in the first paragraph hereof.

DELAWARE PUBLIC SERVICE COMMISSION STAFF

Date Signed: 4/21/08 By: /s/ Bruce Burcat
Name: Bruce Burcat
Title: Executive Director, Delaware Public Service Commission

DIVISION OF THE PUBLIC ADVOCATE

Date Signed: 4/18/08 By: /s/ G. Arthur Padmore
Name: G. Arthur Padmore
Title: Public Advocate

SUSSEX SHORES WATER COMPANY

Date Signed: 4/09/08 By: /s/ R. J. Short
Name: Rodney J. Short
Title: President