

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

ORIGINAL
DO NOT REMOVE FROM OFFICE

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER ENVIRONMENTAL SERVICES, INC.) PSC DOCKET NO. 11-329WW
FOR AN INCREASE IN WASTEWATER RATES)
(Filed July 29, 2011))

ORDER NO. 8153

AND NOW, this 5th day of June, 2012;

WHEREAS, the Delaware Public Service Commission (the "Commission") has received and reviewed the Findings and Recommendations of the Hearing Examiner, dated May 9, 2012, issued in the above-captioned docket (attached as Exhibit "A" hereto), which Findings and Recommendations were submitted after a duly-noticed evidentiary hearing; and

WHEREAS, other than Paragraph No. 13, the Hearing Examiner recommends approval of the Proposed Settlement Agreement, dated March 13, 2012 (attached as Exhibit "B" hereto), which was executed - or not objected to - by all of the parties to the proceeding; and

WHEREAS, Paragraph No. 13, which the Hearing Examiner found to be unsupported in the record, provides:

The Parties recognize that the business risk of real estate development build-out should not be borne by ratepayers, and Commission-approved tariff rates should not include recovery of costs resulting from the failure to build-out. To this end, the Parties recognize that TESI should include in future wastewater agreements terms that condition the release of security interests on the number of Equivalent Dwelling Units ("EDUs") that have been completed rather than on a projected timeline for build-out. Thus, any risk that housing developments or similar

projects, in any future wastewater service territories, that do not build-out on a prescribed EDU based timetable will be excluded from the costs used to set rates, unless reasonable cause can be shown[;]

and

WHEREAS, on May 22, 2012, the Division of the Public Advocate ("DPA") filed exceptions to the Hearing Examiner's Findings and Recommendations arguing: (1) there is substantial evidence in the record to support the Proposed Settlement Agreement as a whole and Paragraph No. 13 in particular, including expert testimony from DPA's and Staff's witnesses; (2) Paragraph No. 13 clearly places the risk that build-out of a new development does not occur as projected on the developer or utility by conditioning developer contributions on the number of units sold rather than on a set expiration date; and (3) excising Paragraph No. 13 from the Proposed Settlement Agreement would violate the signatories' intent because the terms of the Proposed Settlement Agreement are not severable; and

WHEREAS, on May 29, 2012, Commission Staff and Tidewater Environmental Services, Inc. ("TESI") filed joint exceptions to the Hearing Examiner's recommendation to delete Paragraph No. 13 citing record testimony from Staff's and DPA's expert witnesses which explains that by conditioning the release of security interests on the number of units sold and therefore when connection fees are collected, rather than to a set timetable, TESI can help to ensure that ratepayers do not bear the risk that new developments do not build-out as projected; and

WHEREAS, the Commission finds that the proposed rates and tariff changes resulting from the Proposed Settlement Agreement are just and reasonable and that approval of the Settlement Agreement is in the public interest for the reasons described in the Hearing Examiner's Findings and Recommendations, with the exception of its discussion of Paragraph No. 13; and

WHEREAS, the Commission agrees with the parties filing Exceptions that Paragraph No. 13 benefits TESI's ratepayers because by conditioning the release of security interests to a developer on the number of units sold rather than on a set timetable, TESI can help to ensure that ratepayers do not bear the risk that new developments do not build-out as projected, and finds that the inclusion of this paragraph in the Proposed Settlement Agreement is in the public interest; and

WHEREAS, the Hearing Examiner also recommended that the Commission direct Commission Staff to establish a regulation docket to govern the funding of wastewater utility plant in new developments, and delineated four specific issues to be addressed; and

WHEREAS, as noted by the Public Advocate in his exceptions, the signatories to the Proposed Settlement Agreement, and other wastewater stakeholders, have already conducted workshops and discussions regarding proposed amendments to the Commission's wastewater regulations to further address, among other things, development risk;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE
OF NOT FEWER THAN THREE COMMISSIONERS:

1. That the Commission hereby adopts the Findings and Recommendations of the Hearing Examiner dated May 9, 2012, attached hereto as Exhibit "A", other than Paragraph No. 63 through Paragraph No. 79, and incorporates those Findings and Recommendations herein by reference as though fully set forth in this Order.

2. That the Proposed Settlement Agreement, attached hereto as Exhibit "B", and the tariff changes and rates contained therein, reflecting the additional annual revenue of \$555,000 awarded to the Company, is hereby approved for implementation effective for service provided on and after the date of the filing of Tariffs consistent with this Order. The Company shall file all revised Tariffs within five (5) days of the date of this Order.

3. That the Commission directs Staff to continue its collaboration with the DPA and other wastewater stakeholders regarding amendments to the Commission's rules regarding development risk.

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

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow
Commissioner

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
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)
TIDEWATER ENVIRONMENTAL SERVICES, INC.)
FOR AN INCREASE IN WASTEWATER RATES)
(Filed July 29, 2011))

PSC DOCKET NO. 11-329WW

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATE: May 9, 2012

Mark Lawrence
Hearing Examiner

TABLE OF CONTENTS

	<u>PAGE</u>
I. APPEARANCES	1
II. PROCEDURAL HISTORY	2
III. DISCUSSION - APPLICABLE LAW	5
IV. DESCRIPTION OF COMPANY'S CUSTOMERS & FACILITIES	8
V. SUMMARY OF THE EVIDENCE.	11
a. Company's Testimony. Proposed 90.6% Increase For Each Community & Consolidated Rate Approach	11
b. Staff's Testimony. Proposed 63.3% Increase For Each Community & Beginning Consolidated Rate Approach	13
c. Public Advocate's Testimony. Community-By-Community Approach; Proposes 0% to 102.4% Rate Increases, amounting to a 54.3% Overall Rate Increase	18
d. Intervener Harts Landing Homeowners Association's Testimony.	22
VI. A SYNOPSIS OF THE PROPOSED SETTLEMENT AGREEMENT	22
VII. DISCUSSION.	24
VIII. RECOMMENDATIONS.	37

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER ENVIRONMENTAL SERVICES, INC.) PSC DOCKET NO. 11-329WWW
FOR AN INCREASE IN WASTEWATER RATES)
(Filed July 29, 2011))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Mark Lawrence, duly appointed Hearing Examiner in this docket pursuant to 26 Del. C. §502 and 29 Del. C. Ch. 101, by Commission Order No. 8012 dated August 9, 2011, reports to the Commission as follows:

I. APPEARANCES

On Behalf of the Applicant Tidewater Environmental Services,
Inc.:

RICHARDS, LAYTON & FINGER, P.A.

BY: TODD A. COOMES, ESQUIRE

On behalf of the Delaware Public Service Commission:

BY: JULIE DONOGHUE, ESQUIRE, Deputy Attorney General

On behalf of The Division of the Public Advocate:

BY: REGINA A. IORRI, ESQUIRE, Deputy Attorney General

On behalf of the Town of Milton:

Sergovic & Carmean, P.A.

BY: Seth L. Thompson, ESQUIRE, City Solicitor

II. PROCEDURAL HISTORY

1. On July 29, 2011, Tidewater Environmental Services, Inc. ("the Company" or "TESI") filed with the Commission an Application ("the Application") seeking approval for a general rate increase for wastewater service representing an increase in annual operating revenues of \$798,000 or 90.6% over current revenues. (Application, Exh.4.)¹ This is the first general rate case filed by the Company. (Tr.-17.) Each of the seven (7) communities involved in this case currently has a Commission approved tariff establishing its respective rate. (Woods, Exh.8, pp. 5-6.)

2. On August 9, 2011, after reviewing the Company's Application, the Commission initiated this docket pursuant to 26 Del. C. §306(a)(1). By Order No. 8012 dated August 9, 2011, the Commission suspended the proposed rate increases pending its investigation and full and complete evidentiary hearings into the justness and reasonableness of the proposed rates and tariffs.

3. By Order No. 8012, the Commission also designated me as the Hearing Examiner to conduct the evidentiary hearings and, thereafter, to report my proposed findings and recommendations to the Commission. Pursuant to Order No. 8012, notice of the Company's Application was published in the Delaware State News, the Cape Gazette and The Wave newspapers on August 16 and 17, 2011. (See PSC Order No. 8012, p.2.)

¹ Exhibits entered into the evidentiary record will be cited as "Exh. ___". References to the transcript from the evidentiary hearing will be cited as "Tr. - ___ pg #." Schedules from the parties' filings entered into the record will be cited as "Sch."

4. On August 18, 2011 the Company filed an Application to place interim rates into effect under bond pursuant to 26 Del. C. §306(c). On August 23, 2011, the Commission issued Order No. 8014, granting the Company's request to immediately place interim rates into effect under bond, which rates would not exceed 15% of the Company's annual gross intrastate operating revenues, as permitted by Delaware law. (See 26 Del. C. §306(c).)

5. Pursuant to Order No. 8014, on September 28, 2011, the Company placed into effect a temporary rate increase of approximately 7.60% or approximately \$121,761, less than permitted by Delaware law. As required by Order No. 8014, TESI also filed a \$75,000 surety bond issued by its parent company Middlesex Water Company as Principal. TESI would have collected approximately \$75,000 of revenue if the 7.60% temporary rate was in effect for seven (7) months. (Tr.-5.)

6. On September 16, 2011, the Division of the Public Advocate (the "Public Advocate") exercised its statutory right to intervene in this case, pursuant to 29 Del. C. §8716(d)(1). Thereafter, two (2) residential communities subject to the proposed rate increase sought to intervene. I permitted the Harts Landing Homeowners Association, Inc. and the Town of Milton to intervene.² (See Order No. 8046,

² In addition to the two (2) communities which intervened, the five (5) other communities involved in this case are: The Retreat, Country Grove, Breeders Crown, Bay Front and Bay Pointe. Finally, TESI also serves two (2) additional communities which are the subject of separate Commission dockets, The Ridings and Holland Mills. See PSC Dkt. Nos. 11-274WW and 11-419WW, respectively.

September 26, 2011 and Order No. 8076, November 21, 2011, respectively.)

7. On November 8, 2011, I held a Public Comment Session in the Town of Milton in Sussex County. On November 9, 2011, I held a Public Comment Session in the City of Milford in Kent County. On November 16, 2011, I held a Public Comment Session in the City of Millsboro in Sussex County. All Public Comment Sessions were very well attended.

8. Over one hundred (100) written comments about the proposed rate increase were filed with the Commission. According to written comments received by the Commission and oral comments at the Public Comment Sessions (PCS), the vast majority of the Company's customers opposed the Company's request for a rate increase. The customers' complaints included: a) the amount of the proposed rate increase; b) claims that the Company's proposed uniform rates were unfair if the revenues and expenses of each community were not considered; and c) the proposed rates should not be approved considering the weak economy and dwindling financial resources, particularly for retirees. (E.g., Vol. 2-PCS-Tr.-39-95.)

9. For example, if the Commission granted the increase the Company is seeking, the rate of a Bay Pointe customer would nearly double, increasing from \$960 to \$1,832.88 per year. (Woods, Exh.8, p.8 LL 11-15.) To put this in perspective, a member of the Delaware House of Representative from Sussex County stated at a Public Comment Session that his yearly bill for County sewer service was approximately \$704 per year. (Tr.-168)

10. On September 29, 2011, I issued the Procedural Schedule, which was agreed to by the parties. On February 2, 2012, the parties agreed upon an Amended Procedural Schedule. A settlement conference occurred on February 15, 2012. (Tr.-32.) The evidentiary hearing was held on Wednesday, March 21, 2012 at the Commission's office in Dover. The record consists of nineteen (19) hearing exhibits and a fifty-nine (59) page hearing transcript. Before discussing the evidence in this case, however, I will first discuss the law which governs this general rate case.

III. DISCUSSION - APPLICABLE LAW

11. The Commission applies certain principles in deciding a general rate increase case filed by a public wastewater utility. According to the United States Supreme Court, a public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of its property dedicated to public service. Bluefield Water Works and Improvement Co. v. Public Service Comm. of West Virginia, 262 U.S. 679 (1923); Federal Power Comm. v. Hope Natural Gas Co., 320 U.S. 591 (1944). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield* where the Court held as follows:

"A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding

risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return ~~should be reasonably sufficient to assure~~ confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally."

Bluefield Water Works and Improvement Co. v. Public Service Comm. of West Virginia, 262 U.S. 679, 692-93 (1923).

12. In Delaware, a public utility seeking a general rate increase has the Burden of Proof to establish the justness and reasonableness of every element of the rate increase request, pursuant to 26 Del. C. §307(a). This statute sets forth the "just and reasonable" standard which has to be satisfied by the public utility:

§307. Burden of Proof

(a) In any proceeding upon the motion of the Commission, or upon complaint, or upon application of a public utility, involving any proposed or existing rate of any public utility, or any proposed change in rates, the burden of proof to show that the rate involved is just and reasonable is upon the public utility.

13. Thus, according to 26 Del. C. §307(a), the Burden of Proof does not shift to parties challenging a requested rate increase. The utility has the burden of establishing the justness and reasonableness

of every component of its rate request. Other parties to the proceeding do not have the Burden of Proof to justify any adjustment to the public utility's filing. In this regard, the Pennsylvania Supreme Court held in Berner v. Pennsylvania Pub. Util. Comm., 116 A.2d 738,744 (Pa. 1955):

"[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of installations, and that is the burden which the utility patently failed to carry."

14. In analyzing a proposed general rate increase, the Commission determines a rate of return to be applied to a rate base measured by the aggregate value of all the utility's property used and useful in the public service. *E.g.*, PSC v. Wilmington Suburban Water Corp., 211 A.2d 602 (DE. 1965); see 26 Del. C. §§302, 303. In determining a proper rate of return, the Commission calculates the utility's capital structure and the cost of the different types of capital during the period in issue. (*Id.*) Due to its administrative expertise, the Commission has wide discretion in determining a proper rate of return, provided that the Commission reasonably supports its calculations. (*Id.*)

15. In this case, the parties i.e. the Company, Commission Staff, the Public Advocate, the Town of Milton, and the Harts Landing Homeowners Association, have reached a settlement. The Settlement

Agreement was marked as Exhibit 18 at the evidentiary hearing and is attached hereto as Exhibit "1" hereto.

16. Delaware law promotes settlements in utility rate cases, provided that the settlements are in the public interest. Section 512 of Delaware's Public Utilities Act directs the Commission to "encourage the resolution of matters brought before it through the use of stipulations and settlements." 26 Del. C. §512(a). The Commission may, upon hearing, approve the resolution of matters by stipulations or settlements when the Commission finds such resolutions to be in the public interest. (*Id.* at §(c).) Before discussing the parties' proposed Settlement Agreement, however, I will discuss the Company's wastewater customers and facilities.

IV. DESCRIPTION OF COMPANY'S CUSTOMERS & FACILITIES

17. TESI is a public wastewater utility subject to the Commission's regulatory jurisdiction.³ TESI provides wastewater service to approximately 1,959 customers in Kent and Sussex Counties. (Woods, Exh.8, pp. 11,14 & Sch. HJW-1, using Test Period customer counts.) The seven (7) communities involved in this case are all located in Sussex County, except the Breeders Crown community, which is located in Kent

³ Since 2004, the Commission has had jurisdiction to regulate and establish wastewater rates in this case since TESI is a public wastewater utility serving over fifty (50) customers. See 26 Delaware Code §201(a); 74 Delaware Laws, Chapter 317; 26 Delaware Code §203(D). In Delaware, each of the three (3) counties also provides sewer service to certain residents.

County. (*Id.* at pp. 1-3.) A Map depicting the location of the subject communities is attached hereto as Exhibit "2."⁴

18. I will first provide a description of TESI's services according to the testimony of its President Gerard L. Esposito.⁵ TESI provides wastewater service to the seven (7) communities listed in the graph below. As you can see, four (4) communities, The Retreat, Country Grove, and Bay Point/Bay Front, are well below full build-out.

Community	# of current TESI Customers	# of potential TESI Customers if full build-out occurs/% of build-out which has occurred	Wastewater Services Agreement ("WWSA") between TESI and Developer of Community or Town
The Retreat	101	144/70.1%	Yes
Harts Landing	142	144/98.6%	Yes
Country Grove	60	177/33.9%	Yes
Breeders Crown	56	63/88.9%	Yes
Bay Front & Bay Pointe (2 different Communities, 1 District)	98	180/54.4%	Yes, separate WWSAs with each community
Town of Milton	1,502	1,843/81.5%	WWSA with Town of Milton ⁶

⁴ This Map was marked as Exhibit "10" at the evidentiary hearing. Delaware's Minimum Filing Requirements ("MFRs") required this Map to be filed. See PSC Order No. 5410 (April 11, 2000) (Section A (2) (3)).

⁵ Mr. Esposito is also President of TESI's affiliate Tidewater Utilities, Inc., a public water utility regulated by the State of Delaware. (Esposito, App., Exh.4, p.1.) TESI and Tidewater Utilities, Inc. are wholly-owned subsidiaries of Middlesex Water Company. (*Id.*)

⁶ Woods, Exh.8, pp.11,14 & Sch. HJW-1. The parties chose not to proffer these Wastewater Service Agreements into the evidentiary record.

19. TESI's President Gerard Esposito described TESI's wastewater systems as follows:

~~"TESI serves ... [its] customers through 7~~
wastewater systems. One of these systems is "regional" and one is planned to become regional, that is, they interconnect two community systems. The other 5 are independent systems, and are not interconnected with other communities. One of these systems, The Ridings, is not included in this rate filing [and therefore will not be discussed any further]. The systems' capacities range in size ... to serve ... [all] customers ... at build-out in the communities these systems serve.

The systems are served by six (6) active treatment plants. They are described as follows:

1. *Breeder's Crown*: A 18,900 gallon per day ("gpd") Parkeson Geo-Reactor wastewater treatment plant discharging to six Rapid Infiltration Basins ("RIBs");
2. *Bay Front & [Bay Pointe]*: A 54,000 gpd Membrane Bio-Reactor (MBR) discharging to five RIBs. [Currently, this is TEST's only regionally operated wastewater district];
3. *Country Grove*: A 54,000 gpd Sequential Batch Reactor (SBR) discharging to six RIBs;
4. *Hart's Landing*: A 39,150 gpd MBR discharging to a drip disposal field;
5. *The Retreat*: A 48,300 gpd SBR discharging to subsurface trenches; and
6. *Town of Milton*: A 350,000 gpd Rotating Biological Contactor (RBC) discharging to the Broadkill River." (App., Exh.4, Esposito, pp. 1-2; TR.-10. emphasis supplied.)⁷

⁷ For a detailed description of how TESI's four (4) wastewater treatment systems and how they operate, see Application, Exh. 4, Esposito, pp. 4-5 and Exhibit "B" thereto.

V. SUMMARY OF THE EVIDENCE.

a. Company's Testimony. Proposed 90.6% Increase For Each

Community & Consolidated Rate Approach

20. TESI's July 24, 2011 Application included the pre-filed testimony of three (3) witnesses: its President Gerard L. Esposito, A. Bruce Connor, the Vice President and Chief Financial Officer of TESI's parent company, Middlesex Water Company, and Edward A. Rapciewicz, Jr., TESI's Vice President of Operations. (Exh.4.) On November 15, 2011, TESI filed updated Minimum Filing Requirement ("MFR") schedules reflecting "changes identified during the initial discovery phase and for actual income statement activity through September 30, 2011 and actual base rate items as of September 30, 2011."⁸ (Exh.5.)

21. The Company's Application seeks a 90.6% consolidated rate increase, which would be applied to each community in this case. (App., Exh.4, ¶2.) If granted, the proposed rate increase would produce an additional \$797,950 in annual revenue in excess of the Test Period revenue of \$880,786. (App., Exh.4, O'Connor Schs.1,3.) Although consolidated rates will be discussed in detail later herein, the Company's pre-filed testimony states as follows:

⁸ While TESI claimed in its Nov. 15, 2011 filing that an overall rate increase request of 100.36% or \$900,144 of annual revenue is justified, TESI is not seeking to change its original rate increase request of 90.6%. (TESI's Updated M.F.R. Schs. filed 11/15/11; Exh.5, O'Connor Sch. 3A, p.1; Woods, Exh.8, p.7, LL 13-16.) Therefore, since TESI is claiming a 90.6% increase and not a 100.36% increase, to avoid confusion, this Report will not discuss a potential 100.36% increase any further.

For the Test Period⁹ of the twelve (12) months ending December 31, 2011, the Company calculated an annual revenue deficiency of \$797,950, derived from a rate base of \$2,329,379, an operating loss of \$288,144, ~~an earned rate of return¹⁰ of -~~ 12.37%, including a proposed return on equity¹¹ of 10%. (App., Exh.4, O'Connor, pp.3-4, Schs. 1,3.)

22. The Company's Application seeks a consolidated rate increase, which means that all communities would be charged the same rate.¹² (App., Exh.4, ¶2.) The Company's Application does not separate the operating expenses for each community but instead calculates an overall revenue requirement and then allocates the resulting revenue

⁹ The Company used a "Test Year" comprised of the 12 month period ending March 31, 2011 and the "Test Period" as the 12 month period ending December 31, 2011. (Tr.18.) At the evidentiary hearing, the Company testified that the actual recorded figures were: Test Year-Operating Revenues ("OR") (\$829,000) and Operating Expenses before Income Taxes ("OE") (\$1.271m); Test Period OR (\$881K) and OE (\$1.425m). (Tr.-18.) Neither Staff nor the Public Advocate disagreed with the Company's selected Test Year or Test Period. (Henkes, Exh.6, p.7, LL 21-22; Woods, Exh.8, p.7, LL 11-12; HJW-Sch.16.) However, as will be described later herein, Staff and the Public Advocate disagreed with some of the Company's adjustments, rate base calculation and operating expenses.

¹⁰ The Rate of Return is defined as TESI's net operating income divided by its rate base. E.g., FPC v. Hope Nat. Gas Co., 320 U.S. 591,596-97(1944). "Rate base" is defined in 26 Del. C. §102(3).

¹¹ Although the term "Common Equity Cost Rate" is sometimes used, this Report uses the terms "Return on Equity" since the witnesses generally used that term in their testimony. The Return on Equity (or "ROE") is defined as the annual rate of return which an investor expects to earn when investing in shares of the Company. (Henkes, Exh.6, pp. 9-10.)

¹² Previously, consolidated rates were not in effect; each community was charged a separate rate. (Woods, Exh.8, pp. 5-6.)

deficit equally to each community. (Woods, Exh.8, p.11, LL 19-21.) According to the Company, the proposed rate increase is due to increased operations, maintenance, regulatory and administrative costs, as well as necessary capital improvements. (Tr.-17.)

23. As will be explained later, the Public Advocate disagrees with the Company's position that consolidated rates should be implemented. (Woods, Exh.8, p.12 L15 - p.13 L14.) Rather, the Public Advocate seeks to establish separate rates for each community based upon the revenues and expenses of each community. (Woods, Exh.8) Commission Staff's position is that a rate design should be implemented "that begins the process of rate consolidation." (Henkes, Exh.6, p.21 LL 9-19; Kalcic, Exh.7, p.3 at LL 3-4.) Staff's pre-filed testimony is discussed next.

b. Staff's Testimony. Proposed 63.3% Increase For Each Community & Beginning Consolidated Rate Approach

24. On January 18, 2012, Commission Staff filed the pre-filed testimony of its Consultant Robert J. Henkes. (Exh.6.) Mr. Henkes testified regarding "the appropriate Test Period rate base and pro-forma operating income, as well as the appropriate Test Period revenue requirement for TESI in this proceeding." (Id. at p.3, LL 9-12.) Staff simultaneously filed the pre-filed testimony of Brian Kalcic of Excel Consulting regarding Staff's proposed rate design. (Kalcic, Exh.7, p.1 LL 14-17.)

25. According to Staff's Henkes, the Company should be granted a 63.3% consolidated rate increase. (Henkes, Exh.6, p.5 LL 7-11). Mr. Henkes concluded as follows:

"The recommended ratemaking components outlined above indicate the need for a consolidated rate increase of \$651,215 (63.3%), which is ... \$146,735 lower than TESI's originally proposed consolidated rate increase of \$797,950 (90.6%)..."
(*Id.*)

26. Mr. Henkes' opinion is that a rate design should now be implemented "that begins the process of rate consolidation." (Kalcic, Exh.7, p.3 LL 3-4.) "When fully implemented, rate consolidation "would result in all of TESI's customers paying the same annual rate ... for wastewater service, based on the system-wide average cost per [customer] of providing wastewater service on the Company's system."
(*Id.* at LL 7-10.)

27. However, Staff did not adopt the Company's proposed complete consolidation approach which: 1) groups together the revenues and expenses of all communities; and 2) proposes an overall revenue requirement and revenue deficit. (Woods, Exh.8, p.18 LL 4-8.) Rather, "in order to mitigate the rate impacts resulting from TESI's [detrimental agreements with Developers]," Staff's Henkes first "imputes" or adds approximately \$124,000 of revenue to TESI's proposed Test Period operating revenue. (Henkes, Exh.6, p.18 LL 5-9; p.16, LL 7-10.)

28. "[A]s a phase-in measure" toward consolidating rates, Staff's Henkes proposes that 50% of the revenue shortfall associated

with three (3) communities substantially below build-out be imputed to the Company's Test Year revenues in this rate case and 100% in the next rate case. (Henkes, Exh.6, p.21 LL 16-19.)

29. In this case, Mr. Henkes imputes approximately \$124,000 of revenue to the following three (3) communities with the following customer counts/build-outs: 1) The Retreat (\$25,499; 90 current customers out of a possible 144 customers); 2) Bay Front/Bay Pointe (\$36,960; 98 current customers out of a possible 345 customers); and 3) Country Grove (\$61,495; 59 current customers out of a possible 177 customers).¹³ (*Id.* at LL 9-15; RJH-Sch.5.)

30. According to Staff's Henkes, "consistent with this recommended revenue imputation," Staff also adds to TESI's Test Year expenses by "imput[ing] incremental power, chemical and residual expenses totaling approximately \$60,000." (*Id.* at p.22 LL 1-4; RJH Schs. 7,8,9.) Finally, Mr. Henkes imputes or adds approximately \$8,000 to TESI's Test Year operating revenue for volumetric use of wastewater at the Town of Milton.¹⁴ (*Id.* at p.16, LL 6-7.) Thus, "as a phase-in measure" toward consolidating rates, Staff's Henkes has imputed or added a total of approximately \$191,000 of revenue and expenses to TESI's Test Year.

¹³ Because Staff's Henkes used the customer counts listed in the Company's Application, his customer counts slightly differ from those used by the Public Advocate's consultant, Howard Woods, Jr., who used the Test Period customer counts. (Henkes, p.16 LL 7-10; Sch. RJH-5; p.16, LL 6-7; see Graph, p.-, *supra.*)

¹⁴ The Town of Milton has a fixed service charge plus a volumetric rate. (Henkes, Exh.6, p.6, LL 8-10) The remaining communities have a fixed rate only. (*Id.*)

31. Staff's Henkes concludes that the Company's detrimental Wastewater Service Agreements ("WWSAs") with Developers, "which violate traditional Developer contribution arrangements," caused the revenue shortfalls associated with these communities. (Henkes, Exh.6, pp. 18-22.)

32. According to Mr. Henkes, the Company's WWSAs generally violate traditional Developer contribution arrangements because they fail to: 1) require the Developer to "design, install and fund the development's collection system, the cost of which is incorporated in home prices;" 2) require the Developer "to advance to the utility the required funds for the construction of the treatment and disposal plant, which funds are later reimbursed to the Developer through connection fees paid by new homeowners;" and 3) "require the Developer to provide operating subsidies to the utility if there is not an adequate number of homeowners to pay the required operating expenses." (Henkes, Exh. 6, pp.18-19.)

33. According to Mr. Henkes, the Company's WWSAs with the Developers of the communities in this case are "the reverse" of what they should be. (*Id.* at p.19, LL 15-17.) "In most ... agreements, "TESI has agreed to upfront financing of the construction of the developments' treatment and disposal plants with reimbursement of this upfront funding by way of [customer] connection fees rather than through advances from the Developer." (*Id.* at LL 17-20.) According to Mr. Henkes, TESI has not "tied" developer operating contributions to the achievement of the number of customer connections"... [r]ather they

are based on the expiration of a certain period." (*Id.* at p.20 LL 8-12.) Since these developments have generally not built-out, TESI's Agreements have placed the risk upon TESI and its ratepayers if full build-out does not occur, as opposed to placing that risk upon the Developers which is typically done. (*Id.* at p.19, L20 - p.20, L6-21.)

34. Regarding the Town of Milton, in 2007, TESI and The Town of Milton entered into a Contract whereby TESI would operate the Town's existing, wastewater system.¹⁵ (Woods, Exh.8, p.11 LL 1-14.) Previously, this system was municipally-owned and managed. (Tr.-13.) It serves residential customers and businesses. (*Id.*) Approximately 68% of the \$651,215 revenue increase Staff argues that the Company is entitled to, or \$441,356, is allocated to the Town of Milton. (Henkes, Exh.6, Sch. RJH-1.) Thus, "[p]resent rate revenues for the Milton System is inadequate and does not even cover the cost of operations and maintenance." (Woods, Exh.8, p.32 LL 11-12.)

35. In conclusion, for the Test Period of the twelve (12) months ending December 31, 2011, Staff calculated an annual revenue deficiency of \$145,748 derived from a rate base of \$1,840,837, an operating loss of \$245,484, an overall rate of return of 7.92%, and a

¹⁵ The Commission has jurisdiction to regulate and establish wastewater rates in this case since TESI is a public wastewater utility with over fifty (50) customers. See 26 Delaware Code §201(a); 74 Delaware Laws, Chapter 317. However, according to Delaware's Supreme Court, the Commission does not have jurisdiction to interpret the private Contract between TESI and the Town of Milton, since it is essentially a debt controversy. *E.g.*, Artesian Water v. Cynwood Club Apartments, 297 A.2d 387 (Del. 1972); Bass Properties, Inc. v. Delaware Public Service Commission, 2001 WL 2791129 (Del. Super. July 14, 2011), on remand to Commission.

proposed return on equity of 10%.¹⁶ (Henkes, Exh.6, RJH-Schs. 1, 2,3,4.)

c. Public Advocate's Testimony. Community-By-Community

Approach; Proposes 0% to 102.4% Rate Increases, amounting to a 54.3% Overall Rate Increase

36. On January 18, 2012, the Public Advocate filed the pre-filed testimony of its Consultant, Howard J. Woods, Jr., P.E. (Exh. 8.) Mr. Woods was engaged "to review TESI's proposal to increase rates to its customers in six communities and the Town of Milton." (Id. at p.4 LL 20-21 - p.5 L1.)

37. According to Mr. Woods, "the record in this matter supports an overall revenue increase of \$488,046 or an overall increase of 54.3% over present rate revenues." (Woods, Exh.8, p.12 LL 15-16 & Sch. HJW-17.) According to Mr. Woods, however, the increase should not be uniformly applied to all communities. (Id. at LL 16-17.) According to Mr. Woods, the Commission should set rates which are based upon the actual cost of serving each community. (Id. at p.18 L 20 - p.19 L1.)

38. Thus, Mr. Woods' opinion is that rate consolidation should not occur. According to Mr. Woods:

"For three of the Company's systems, I am recommending no rate increase. I believe the rates now in effect in The Retreat, Country

¹⁶ Staff's Henkes agreed with TESI's proposed capital structure of 59.50% debt/40.50% equity, although Henkes employed a 6.50% debt cost rate as opposed to TESI's 7.00% rate. (Henkes, Exh.6, p.10 LL 5-9.) The Public Advocate's Consultant Woods did not dispute the Company's proposed capital structure and debt cost. (Woods, Exh.8, Sch. HJW-12.)

Grove, and the Bay Front/Bay Pointe should be maintained. While the Company has asked for a 90.92% increase in the fixed service charges for these systems, I believe that the existing rates should be maintained without any increase. In making this recommendation I have accounted for the actual costs of operations and I have made adjustments that reflect the risk the Company has taken on through its developer agreements. The risk should not be passed on to customers. As these systems continue to develop, I believe the existing rates will be sufficient to allow the Company to earn a fair rate of return.

In the Harts Landing and Breeders Crown systems, I believe that present rates are not adequate to recover the cost of service. I am recommending an 8.3% increase in Harts Landing and a 27.2% increase in Breeders Crown instead of the 90.92% increase requested in the Company's filing.

Finally, in the Town of Milton system, I have calculated a rate increase of 102.4% and I believe that this adjustment should be subject to a rate phase-in program [over a period of five years, with an annual increase of 15.2%]."

(Woods, Exh.8, P.31 L11 - p.32 L7; p.13 LL 2-4.)

39. According to Mr. Woods, "to fairly shield ratepayers from the risks willingly taken on by the Company," the Public Advocate is recommending that the Company be required to absorb an operating loss of \$185,150, along with a -12.5% return on rate base. (*Id.* at p.35 LL 12-14,20.) Woods "imputes annual revenue [of \$243,586] and annual expenses [of \$56,893] that will not be realized until additional connections are made to the system." (*Id.* at LL 4-9; Sch. HJW-16.) As

Staff's Henkes did, Woods proposes revenue and expense addition adjustments relating to The Retreat, Country Grove, and Bay Front/Bay Pointe, although Woods also proposes adjustments regarding the Breeders Crown community. (*Id.*; p.29 LL 5-8; Schs. HJW-4,5,8,9,16.)

40. Mr. Woods opined as follows:

"The Company and its parent [company] are a sophisticated organization, so I believe it is fair to assume that the Company's management knew full well the risks they were taking with their developer agreements and in agreeing to the rate covenants in the Milton Agreement. The recommendations I have made simply leave this risk where it should be - with the Company. Ratepayers who have purchased homes [from the developers] ... have no way of controlling arms-length business decisions made between the Company and the developers they do business with. The Company should not be allowed to pass these risks on to captive ratepayers. With respect to the Town of Milton system, I believe that gradualism in setting rates dictates some form of phase-in plan."

(*Id.* at p.35 L21 - p.36 L8.)

41. Mr. Woods "calculated the need for a 102.4% increase in rates for the Town of Milton to appropriately match revenues with expenses in that system." (Woods, Exh.8, p.12 L20 - p.13 LL 1-2.) Also, Mr. Woods proposes that, "to avoid rate shock, the rate increase should be phased-in over a period of five years, with an annual increase of 15.2%." (*Id.* at p.13 LL 2-4.)

42. "The Town of Milton is currently serving 94% of its design capacity." (*Id.* at p.14 LL 18-19.) According to Mr. Woods, "[u]nless it is possible to modify the process at this facility and obtain DNREC approval for higher loadings, growth anticipated in the Milton area will require a plant expansion." (*Id.* at LL 19-21.) Of the communities

involved in this case, "only the Bay Front/Bay Pointe system contemplates the expansion of the treatment facility." (*Id.* at LL 12-13.) Although this facility currently serves only 98 customers when it has a capacity of 180 customers, it could be expanded to serve 345 customers. (*Id.* at LL 12-16.)

43. The following graph depicts Mr. Woods' conclusion that, absent expansions, the relatively small wastewater systems involved in this case generally do not have the capacity to add many new customers in the future. (*Id.* at pp. 13-14.)

Community	# of current TESI Customers/# of TESI Customers in Community if full build-out occurs/current % of build-out	System designed for _____ customers/% of design capacity used by current customers	If full build-out of community occurs, the % of design capacity used by full build-out
The Retreat	101/144/70.1%	161/63%	89%
Harts Landing	142/144/98.6%	144/99%	100%
Country Grove	60/177/33.9%	180/33%	98%
Breeders Crown	56/63/88.9%	63/89%	100%
Bay Front & Bay Pointe (2 different Communities, 1 District)	98/180/54.4%	180/54%	100%
Town of Milton	1,502/1,843/81.5%	1,590/94%	116% ¹⁷

¹⁷Woods, Exh.8, pp.11,14 & Sch. HJW-1. The Town of Milton customer count includes current and build-out customers in the Holland Mills and Anthem communities. (*Id.* at p.53 & Sch. HJW-1.) The Anthem community has not been developed yet. (Tr.-16.) Although the subject of a separate Commission docket, the Holland Mills/Anthem communities are served by the Town of Milton's system. (*Id.*)

44. In conclusion, for the Test Period of the twelve (12) months ending December 31, 2011, the Public Advocate calculated a revenue deficiency of \$488,046 derived from a rate base of \$1,482,372, an operating loss of \$185,150, and a proposed return on equity of 10%. (Woods, Exh.8, p.35, LL 1-15; HJW Schs. 14,16,17.)

d. Intervener Harts Landing Homeowners Association's Testimony.

45. On February 9, 2012, Intervener Harts Landing Homeowners Association ("Harts Landing") filed the pre-filed testimony of a Director, Lawrence Sullivan. (Exh.9.) Harts Landing "agrees overall with the findings of [the Public Advocate's] Mr. Woods." (*Id.* at §3.) Like the Public Advocate, Harts Landing argues that consolidated rates should not occur at this time. (*Id.*) According to Harts Landing, "[a] separate rate determination is the only methodology that provides rates truly attributable to the user of the facility." (*Id.*) Harts Landing also argues that consolidated rates "1) conflict with basic cost-of-service principles; 2) inherently create subsidies to utilities; and 3) mask utility inefficiency..." (*Id.*)

VI. A SYNOPSIS OF THE PROPOSED SETTLEMENT AGREEMENT

46. This section provides a synopsis of the Settlement Agreement. The Settlement Agreement proposed by the parties is attached as Exhibit "1" hereto.¹⁸

¹⁸ The parties each signed the Settlement Agreement except for the Town of Milton and Harts Landing Homeowners Association, which filed designations of non-objection to the proposed Settlement Agreement and rates. (Exhibit "1," ¶17.)

47. If the Settlement Agreement is approved by the Commission, the additional annual revenue awarded to the Company will be \$555,000 and the Company's new revenue requirement will be \$1,445,000. (Exhibit 1, ¶10; Tr.-22-23.) "This stipulated overall revenue increase is \$96,215 less than Staff's filed revenue position, \$66,954 more than the [Public Advocate's] filed revenue position, and \$242,950 less than TESI's filed revenue request." (*Id.*) In the Settlement Agreement, the parties "stipulate that the appropriate return on equity ["ROE"] in this proceeding is 10%." (Exhibit "1", ¶10.)

48. According to the Settlement Agreement, Bay Front/Bay Pointe, Country Grove and The Retreat would each receive an approximately 7.60% rate increase, Harts Landing-a 13.03% increase, Breeders Crown-a 33.46% increase, and the Town of Milton-a 111.93% increase. (Exhibit "1", Exh. A, p.1.)

49. The 111.93% increase proposed for the Town of Milton would require increased fixed and volumetric rates phased-in from April, 2012 through April, 2015. (*Id.* at p.2.) The Town's fixed and volumetric rates, which were temporarily increased 7.60% by the Commission in September, 2011, would increase an additional 18.46% in April, 2012, 2013, 2014 and 2015. (*Id.*)

50. Paragraph 13 of the parties' proposed Settlement Agreement located below opaquely addresses future rates regarding communities which do not build-out. (Exhibit 1, ¶13.) I have underlined the relevant language in Paragraph 13 because, in the following Section of

this Report, I recommend that the Commission not approve Paragraph 13.

Paragraph 13 provides as follows:

13. The Parties recognize that the business risk of real estate development build-out should not be borne by ratepayers, and Commission-approved tariff rates should not include recovery of costs resulting from the failure to build-out. To this end, the Parties recognize that TESI should include in future wastewater agreements terms that condition the release of security interests on the number of Equivalent Dwelling Units ("EDUs") that have been completed rather than on a projected timeline for build-out. Thus, any risk that housing developments or similar projects, in any future wastewater service territories, that do not build-out on a prescribed EDU based timetable will be excluded from the costs used to set rates, unless reasonable cause can be shown.¹⁹
(*Emphasis supplied.*)

VII. DISCUSSION.

51. On Wednesday, March 21, 2012, I conducted a duly-noticed, evidentiary hearing at the Commission's office in Dover. At the evidentiary hearing, the parties introduced their pre-filed testimonies and testified about the proposed Settlement Agreement. In

¹⁹ Most of the issues contested between the parties during the course of this docket are not specifically resolved in the Settlement Agreement. The agreed upon initial tariff rates of the various communities is based on a compromise among the parties on all issues achieved as an overall resolution of the case and, except as specifically identified in the Settlement Agreement and discussed below, does not reflect any particular position on any issue. (Exhibit "1," §§14, 15; Exhs. B,C.) Thus, the parties' Settlement Agreement constitutes what is commonly referred to as a "black box" settlement agreement.

addition to this Section, I hereby incorporate Sections IV, V, and VI as my Findings of Fact.

52. In this case, the parties i.e. the Company, Staff, the Public Advocate, the Town of Milton, and the Harts Landing Homeowners Association, have reached a proposed Settlement Agreement. For the reasons described herein, I recommend that the Commission approve the parties' Settlement Agreement, except for Paragraph 13. However, I will first discuss why the parties' agreed upon Community-By-Community rate approach, the proposed rates and the Return on Equity ("ROE") agreed upon by the parties, are in the public interest and should be approved by the Commission.

A. I recommend that the Commission approve the Settlement Agreement's Community-By-Community rate approach, as well as the proposed rates and Return on Equity (ROE).

53. First, the Company has the Burden of Proof to demonstrate that "the rate involved is just and reasonable," pursuant to 26 Del.

C. §307(a). This statute provides as follows:

§307. Burden of Proof

(a) In any proceeding upon the motion of the Commission, or upon complaint, or upon application of a public utility, involving any proposed or existing rate of any public utility, or any proposed change in rates, the burden of proof to show that the rate involved is just and reasonable is upon the public utility.

54. Second, Delaware law promotes settlements in utility rate cases, if the settlements are "in the public interest." Section 512 of Delaware's Public Utilities Act directs the Commission to "encourage the resolution of matters brought before it through the use of

stipulations and settlements," and provides that "[t]he Commission may, upon hearing, approve the resolution of matters by stipulations or settlements ... when the Commission finds such resolutions to be in the public interest." 26 Del. C. §512(a),(c).

55. After reviewing the Settlement Agreement and considering the testimony of the witnesses for the Company, Staff and Public Advocate, I conclude that the Settlement Agreement is in the public interest, results in just and reasonable rates and recommend that the Commission approve the Settlement Agreement, except for Paragraph 13 described later herein.

56. If the Settlement Agreement is approved by the Commission, the additional annual revenue awarded to TESI will be \$555,000, which is substantially less than the \$797,950 TESI sought in its Application. (Exhibit 1, ¶10.) "This stipulated overall revenue increase is \$96,215 less than Staff's filed revenue position, \$66,954 more than the [Public Advocate's] filed revenue position, and \$242,950 less than TESI's filed revenue request [of \$797,950]." (*Id.*) In the Settlement Agreement, the parties "stipulate that the appropriate return on equity ["ROE"] in this proceeding is 10%."²⁰ (Exhibit "1", ¶10.)

57. According to the Settlement Agreement's Community-By-Community Rate Approach, Bay Front/Bay Pointe, Country Grove and The

²⁰ According to Delaware law, "[a] fair return to the utility is an amount sufficient to pay operating expenses, to attract new investors, and to pay a fair return to the utility's existing investors." PSC v. Wilmington Suburban Water Corp., 467 A.2d 446,447 (DE. 1983)

Retreat would each receive an approximately 7.60% rate increase, Harts Landing-a 13.03% increase, Breeders Crown-a 33.46% increase, and the Town of Milton-a 111.93% increase. (Exhibit "1", Exh. A, p.1.)

58. The 111.93% increase proposed for the Town of Milton would require increased fixed and volumetric rates phased-in from April, 2012 through April, 2015. (*Id.* at p.2.) The Town's fixed and volumetric rates, which were temporarily increased 7.60% by the Commission in September, 2011, would increase an additional 18.46% in April, 2012, 2013, 2014 and 2015. (*Id.*)

59. The Community-By-Community Rate Approach agreed upon by the parties was advocated by the Public Advocate's expert, Howard J. Woods, Jr., P.E. According to Mr. Woods, "it is not appropriate to view expenses in the aggregate. An effort must be made to segregate the expenses [by community] so that the cost of providing service and the rates charged in each area can be matched." (Woods, Exh.8, p.19, LL 5-8.) "One goal of an effective rate-setting process is to choose appropriate allocation factors that allocate costs to customer classes based upon the cost of providing service to that class of customers."²¹ I fully agree with the Public Advocate's well-reasoned position regarding Community-by-Community rates in this case.

60. I find that the Settlement Agreement is in the public interest because it: a) balances the needs of TESI's ratepayers with the Company's needs within the bounds of the statutory requirement

²¹ *Water and Wastewater Finance and Pricing*, p. 182, George A. Raftelis (3rd ed. 2005).

that the Company be afforded the opportunity to earn a fair rate of return; and b) the settlement also obviates the need to fully litigate the complex issues raised by Staff and the Public Advocate as to the Company's Application, thereby saving costs and attorney's fees; and c) a settlement lessens also conserves finite governmental resources. (a:Tr.-23-24;34-36;42) (b:Tr.-34;41) (c:Tr.-34.)

61. The Settlement Agreement is clearly a product of extensive negotiations between the parties, conducted after Staff and the Public Advocate completed their own thorough discovery and investigation. (Tr.-32.) The parties have represented that the Settlement Agreement reflects a mutual balancing of various issues and positions. (Exhibit "1," ¶15; Tr.-35.) Moreover, all parties testified that the agreed-upon, initial annual tariff rates will produce just and reasonable rates for TESI's ratepayers. (Tr.-23-24; 34-36; 42.) Public understanding and acceptance is one objective of rate-making.²²

62. I also find that the Settlement Agreement complies with 26 Del. C. §303(a). This statute prohibits a Delaware public utility from enacting an "unduly preferential or unjustly discriminatory ... rate." The Settlement Agreement complies with Section 303(a) because it: a) involves Rate of Return regulation adjusting overall price levels according to the Company's accounting costs and cost of capital; and b) the rates proposed in the Settlement Agreement are on a prospective or going-forward basis, and are not retroactive. (Exhibit "1,"; Public

²² *Financing and Charges for Wastewater Systems*, p.145, WEF Press, Man. 27 (2005).

Service Comm. v. Diamond State Telephone Co., 468 A.2d 1285,1299 (Del. 1983) (allowing prospective rates only))

B. I recommend that the Commission not adopt Paragraph 13 of the proposed Settlement Agreement addressing TESI's future Wastewater Service Agreements.

63. The parties have agreed as follows in Paragraph 13 of the Settlement Agreement:

13. The Parties recognize that the business risk of real estate development build-out should not be borne by ratepayers, and Commission-approved tariff rates should not include recovery of costs resulting from the failure to build-out. To this end, the Parties recognize that TESI should include in future wastewater agreements terms that condition the release of security interests on the number of Equivalent Dwelling Units ("EDUs") that have been completed rather than on a projected timeline for build-out. Thus, any risk that housing developments or similar projects, in any future wastewater service territories, that do not build-out on a prescribed EDU based timetable will be excluded from the costs used to set rates, unless reasonable cause can be shown.
(*Emphasis supplied.*)

64. I recommend that the Commission not approve Paragraph 13 because of the following three (3) reasons: 1) there is not substantial record evidence as to why it should be approved by the Commission; 2) Paragraph 13 is ambiguous because it does not explain how TESI will handle capital contributions for customer connections, nor who pays the considerable cost of the development's collection, treatment and disposal facilities; and 3) Paragraph 13 virtually disregards the well-reasoned testimony of Staff's and DPA's own

wastewater experts in this case. Thus, Paragraph 13 does not sufficiently protect TESI's current and future ratepayers. I will explain these three (3) reasons in the order presented above.

65. First, there is not substantial record evidence as to why the Commission should approve Paragraph 13. The parties chose not to admit existing Wastewater Service Agreements into the record. This prevents me from explaining the disadvantageous terms of those Agreements to the Commission. The only evidentiary hearing testimony in support of Paragraph 13 was from Bruce O'Connor, TESI's Treasurer. Mr. O'Connor opaquely testified as follows in response to TESI's attorney's questions:

"Q. One issue that was raised in this proceeding was timing of contributions in aid of construction and so-called development-related risk. Does TESI require capital contributions from new connections?

A. Yes, it does.

Q. And what is TESI's position with respect to development-related risk?

A. TESI agrees with the Public Advocate and the PSC Staff; however, as set forth in the proposed settlement agreement, the business risk of the real estate development build-out should not be borne by ratepayers and Commission approved tariff rates should not include recovery costs resulting from failure to build out. TESI further agreed, as also provided in the proposed settlement agreement, that it should include future wastewater agreement terms that condition the release of security interest on the number of units completed rather than on a projected time line for build-out." (Tr.-21-22.)

66. Thus, the Company's hearing testimony, in essence, only repeated the words contained in Paragraph 13. Also, Staff and the DPA did not offer any meaningful hearing testimony as to why Paragraph 13 should be adopted. Therefore, there is not substantial record evidence as to whether Paragraph 13 should be approved by the Commission. *E.g.*, Public Water Supply Co. v. DiPasquale, 735 A.2d 378,383 (Del. 1999) (on appeal, a Delaware reviewing court must determine whether an agency ruling is free from legal error and supported by substantial evidence); Jersey Central Power & Light Co. v. FERC, 810 F.2d 1168 (D.C. Cir. 1987) (*vacating and remanding FERC's Order for failure to inquire under FPC v. Hope Natural Gas*, 320 U.S. 591 (1944) as to whether a rate that excludes recovery of the investment in a later-abandoned power plant is just and reasonable in light of its effect on the utility's investors).

67. I recommend later herein that the Commission order that a Regulation Docket be established to address the issues raised by Paragraph 13. However, I first ask the Commission to closely examine Paragraph 13. According to Paragraph 13, unless reasonable cause is shown [which is not defined], TESI will hereinafter be required to condition the release of security interests [also not defined] on the number of Equivalent Dwelling Units ("EDUs") that have been completed rather than on a projected timeline for build-out."

68. What does Paragraph 13 actually mean? What does it mean to require that TESI "condition the release of security interests on EDU's which have been completed?" Where are specific requirements

requiring capital contributions for customer connections? How much are the connection fees? When are those connection fees paid by homeowners and to whom? When does the Developer pay those fees to the Company?

Who pays for the considerable cost of the development's collection, treatment and disposal facilities which Staff's and the Public Advocate's testified contributed to the 90.6% requested rate increase in this case? As drafted, Paragraph 13 leaves all of these questions unanswered.²³

69. Finally, Paragraph 13 virtually disregards the well-reasoned testimony of Staff's and DPA's own wastewater experts in this case. For example, Staff's expert Robert J. Henkes testified the Company's Wastewater Service Agreements have generally violated traditional Developer contribution arrangements *because they failed to:*

²³ Despite my pre-hearing request, the Commission's own applicable wastewater regulation was also not addressed by the parties. This regulation provides as follows:

PSC's Regulations Governing the Minimum Standards for Service Provided By Public Wastewater Utilities Title 26, Section 6002 (6.0): "Front-end capital contributions shall be required from all new connections to recover, at least in part, the cost of constructing conveyance, treatment, and disposal facilities incurred by the utility where applicable."
(See 9 DE Reg. 105 (7/1/05).)

Although this Regulation is not a model of clarity, there is no record evidence as to whether Paragraph 13 is consistent with this regulation.

- 1) require the Developer to "design, install and fund the development's collection system, the cost of which is incorporated in home prices;" 2) require the Developer "to advance to the utility the required funds for the construction of the treatment and disposal plant, which funds are later reimbursed to the Developer through connection fees paid by new homeowners;" and 3) "require the Developer to provide operating subsidies to the utility if there is not an adequate number of homeowners to pay the required operating expenses." (Henkes, Exh. 6, pp.18-19.)

70. According to Staff's Henkes, the Company's WWSAs with the Developers of the communities in this case are "the reverse" of what they should be. (*Id.* at p.19, LL 15-17.) "In most ... agreements, "TESI has agreed to upfront financing of the construction of the developments' treatment and disposal plants with reimbursement of this upfront funding by way of [customer] connection fees rather than through advances from the Developer." (*Id.* at LL 17-20.)

71. Finally, according to Staff's Henkes, in its current WWSAs, TESI has not "tied" developer operating contributions to the achievement of the number of customer connections"... [r]ather they are based on the expiration of a certain period." (*Id.* at p.20, LL 8-12.) Since these developments have generally not built-out, TESI's Agreements have placed the risk upon TESI and its ratepayers if full build-out does not occur, as opposed to placing that risk upon the Developers which is typically done. (*Id.* at p.19, L20 - p.20, L6-21.) Please refer to Paragraph 40, *supra*, for the DPA's Woods' opinion, which parallels Mr. Henkes' opinion on this issue.

72. None of these issues raised by Staff's Henkes and the DPA's Woods are answered by Paragraph 13. If Paragraph 13 is approved by the Commission, TESI will continue to have essentially, unfettered discretion to enter into whatever future Wastewater Service Agreements with Developers TESI wants. Thus, TESI's current and future ratepayers are left unprotected. The proposed 90.6% rate increase in this case involving rather new wastewater systems, and the "new normal economy," dictate that a "build it and they will come" approach to Delaware's small public wastewater facilities is simply not acceptable.

73. Therefore, I recommend that the Commission not approve Paragraph 13 and order that a Regulation Docket be established. This docket would involve future Wastewater Service Agreements of all of Delaware's public wastewater utilities, including TESI. The specifics of this Regulation Docket are discussed next.

C. I recommend that the Commission order that a Regulation Docket be established to address future Wastewater Service Agreements of Delaware's public wastewater utilities, including TESI.

74. I recommend that the Commission order that a Regulation Docket be established. However, I first want to emphasize that jurisdiction over public wastewater utilities was transferred to the Commission in 2004. (See 26 Del. C. §§201(a), 203(D).) Since the recent, precipitous decline in Delaware residential real estate sales, regulatory issues regarding Wastewater Service Agreements have now begun surfacing. (Henkes, Exh. 6, p.20, LL 18-21.)

75. In Artesian Water v. Cynwood Apartments, 297 A.2d 387 (Del. 1972), the Delaware Supreme Court held that the Commission may "fix

just and reasonable standards ... regulations, practices ... or services to be furnished, imposed, observed, and followed by any public utility; and may "require every public utility to furnish safe, adequate and proper service."²⁴

76. Of Delaware's public wastewater utilities, TESI and Artesian Wastewater Management, Inc. hold the most Certificates of Public Convenience and Necessity ("CPCNs"). (See PSC Orders.) In Delaware, these CPCNs, which are issued by the Commission, permit a public wastewater utility to serve a particular area. (See 26 Del. C. §203(D). All of TESI's current CPCNs originated by TESI entering an Agreement with a Developer of a residential community as permitted by Delaware law. (See 26 Del. C. §203(D)(d)(1).

77. I recommend that the Regulation Docket address the following four (4) issues:

1) whether new residential homeowners (and non-residential service) should be required to pay wastewater connection fees, the amount of those fees, and when and to whom those connection fees shall be paid, analogous to Commission Regulation Docket 15's requirements for Delaware's public water utilities;²⁵

²⁴ *Id.* (citing 26 Del. C. §§§§121,124,131 and 135.) (Quoting the current version of 26 Del. C. §209(a)(1) & (2).

²⁵ In Regulation Docket 15, the Commission "enacted regulations concerning expansion costs for new home construction. First, it mandate[d] that all direct costs for expanded water service, on-site and off, must be paid by Developers. Second, the ... regulation impose[d] a fixed fee, \$1,500 per lot, for new residential [water] service." Reybold Group v. Public Service Commission, WL 2199677 (Del. Super. 2007), *aff'd without opinion* WL 323410 (Del. 2008). Ironically, real estate expansion caused Regulation Docket 15, while a real estate downturn is causing this need for regulation.

- 2) the method by which those wastewater connection fees will be accounted for between Developers and public wastewater utilities;
- 3) the connection fee and/or capital funding requirements for the collection, treatment and disposal plant for public water utilities; and
- 4) whether Delaware law regarding the accounting of "used and useful" plant in the rate base of public water utilities, should be adopted for public wastewater utilities.²⁶

78. After a thorough vetting of these issues in a Regulation docket, the Commission will be able to enact some clear Commission regulations for Delaware's public wastewater industry to operate under, including regulations regarding connection fees and capital plant investment. Unlike Paragraph 13 of the proposed Settlement Agreement, these Regulations should strike the proper regulatory balance between the needs of the public wastewater utilities, residential real estate developers which construct the wastewater systems, and ratepayers.²⁷

²⁶ According to Delaware law regarding water utilities, to be included in rate base, utility plant must be "used and useful" within a 3-year period for the number of customers anticipated by the utility. (See 26 Del. C. §302.) If the utility plant does not serve 75% of the customers originally anticipated within 3 years, only then can the utility impute revenue for the customers which were originally anticipated but have not been added. (Id.)

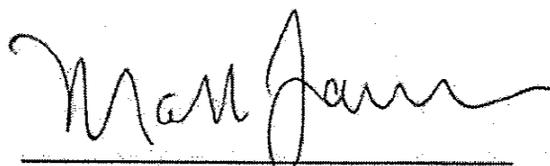
²⁷ The Regulations Docket's issues can be reconciled with the court's decision that "the Commission is required to allow a utility normally accepted operating expenses in the absence of a finding of waste, inefficiency or bad faith." Delmarva Power & light Co. v. Commission, 508 A.2d 849,859 (Del. 1986). House Bill 228 proposing a "Prudence" standard was recently proposed in the Delaware House of Representatives. However, according to the State of Delaware's website, that bill is currently tabled in the House's Natural Resource Committee. (See Delaware.gov.) If the bill is ever voted out of Committee, it must then pass the House, be voted out of a Senate Committee and pass the Senate. The current legislative session ends June 30, 2012. Following the November elections, the next Delaware General Assembly begins the second Tuesday in January, 2013. Thus, if Prudence legislation is ever passed by the Delaware legislature, it will not be enacted soon enough to

VIII. RECOMMENDATIONS.

79. In summary, for the reasons set forth above, I find that the proposed Settlement Agreement will produce just and reasonable rates. I also find that it is in the public interest to adopt the Settlement Agreement, except for Paragraph 13. Therefore, I recommend that the Commission approve the Settlement Agreement which is attached hereto as Exhibit "1", except for Paragraph 13. Finally, I recommend that the Commission order that a regulation Docket be established. A proposed Order implementing the foregoing Recommendations is attached hereto as Exhibit "3."

Dated: May 9, 2012

Respectfully Submitted,



Mark Lawrence
Hearing Examiner

protect TESI's ratepayers and is not specific enough to resolve all of the issues raised by Staff's and the Public Advocate's experts in this case.

EXHIBIT "B"

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

IN THE MATTER OF THE APPLICATION)	
OF TIDEWATER ENVIRONMENTAL)	PSC DOCKET NO. 11-329 WW
SERVICES, INC. FOR AN INCREASE IN)	
WASTEWATER RATES)	
(Filed July 29, 2011))	

PROPOSED SETTLEMENT AGREEMENT

This proposed Settlement Agreement (the "Settlement") is entered into by and among Tidewater Environmental Services, Inc. ("TESI" or the "Company"), the Staff of the Delaware Public Service Commission ("Staff"), and the Division of the Public Advocate (the "PA") (collectively, the "Parties").

I. BACKGROUND

1. On July 29, 2011, TESI filed an application with the Delaware Public Service Commission (the "Commission") requesting approval of a general increase in wastewater service rates for seven communities designed to produce an additional \$797,950 in annual revenues. TESI's tariff base rates for the individual communities were approved by the Commission in PSC Docket No. 05-217WW (The Retreat), PSC Docket No. 05-219WW (Breeders Crown), PSC Docket No. 05-344WW (Bay Front), PSC Docket No. 05-392WW (Harts Landing), PSC Docket No. 06-24WW (Country Grove), PSC Docket No. 07-184WW (Town of Milton), and PSC Docket No. 09-507WW (Bay Pointe) (communities are collectively referred to in this Agreement as the "Service Territory").

2. Pursuant to 26 *Del. C.* § 306(a)(1), in Commission Order No. 8012 dated August 9, 2011, the Commission suspended TESI's proposed rate increase pending the conduct of public evidentiary hearings to determine whether the proposed rate increase results in just and

reasonable rates, and assigned this matter to Hearing Examiner Mark Lawrence (the "Hearing Examiner") to conduct such evidentiary hearings.

3. On August 18, 2011, TESI filed an application with the Commission pursuant to 26 *Del. C.* § 306(c), seeking to place interim rates into effect under bond that would enable it to collect an annual revenue increase of approximately \$121,761. In Commission Order No. 8014 dated August 23, 2011, the Commission permitted TESI to place into effect the proposed interim rates effective September 28, 2011, subject to any refund that the Commission thereafter ordered.

4. On September 16, 2011, the PA filed a statement of intervention in this proceeding.

5. On September 16, 2011, Harts Landing Homeowners Association ("Harts Landing") filed a petition for leave to intervene, which the Hearing Examiner granted on September 26, 2011.

6. On November 17, 2011, the Town of Milton filed a petition for leave to intervene out of time, which the Hearing Examiner granted on November 21, 2011.

7. On November 15, 2011, TESI submitted updated schedules which showed the need for an increase of annual revenue of \$900,144, updating for changes identified in discovery and actual income statement activity and rate base items through September 30, 2011. However, TESI confirmed in discovery that it was maintaining its requested rate increase at the originally-filed amount.

8. On January 18, 2012, the PA filed testimony in which it took the position that TESI should be allowed an overall revenue increase of \$488,046. The PA's testimony also challenged certain of TESI's cost of service and rate design proposals, including that the rate increase should not be applied uniformly to the communities. On January 18, 2012, Staff filed

testimony in which it took the position that TESI should be allowed an overall revenue increase of \$651,215. The Staff's testimony also challenged certain of TESI's cost of service and rate design proposals, including that the rate increase should be applied by stand-alone tariff districts. On February 8, 2012, Harts Landing filed testimony challenging certain of TESI's cost of service and rate design proposals, including that rates should be set on a separate facility basis.

9. The Parties have engaged in a formal discovery process as well as settlement discussions. In a desire to avoid the substantial cost of evidentiary hearings, they have conferred in an effort to resolve the issues in this proceeding. The Parties acknowledge that they differ as to the proper resolution of many of the underlying issues in this rate proceeding and that, except as specifically addressed in this Settlement, they preserve their rights to raise those issues in future proceedings; however, for purposes of this proceeding, they believe that settlement on the terms and conditions contained herein both serve the interests of the public and TESI and satisfy the statutory requirement that rates be just and reasonable.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by TESI, Staff, and the PA that the Parties will submit to the Commission for its approval the following terms and conditions for resolution of the pending proceeding:

II. SETTLEMENT PROVISIONS

10. The additional annual revenue awarded to TESI will be \$555,000. This stipulated overall revenue increase is \$96,215 less than Staff's filed revenue position, \$66,954 more than the PA's filed revenue position and \$242,950 less than TESI's filed revenue request. This Settlement stipulates that the appropriate return on equity in this proceeding is 10%. The Parties have agreed to this revenue requirement award as a compromise of their positions and believe

that this proposed revenue requirement award is within the bounds of the statutory requirement of a fair rate of return based on circumstances unique to TESI.

11. The Parties agree that for this proceeding and for purposes of this Settlement only, the rate design agreed to by the Parties and set forth in the attached Exhibit A shall be the tariff rates for those TESI customers in the Service Territory. TESI's rates shall be those that result from the application of the agreed-upon rate design, and rates for the Town of Milton will be phased in using a constant percentage increase per year as shown in Exhibit A.

12. TESI shall file appropriate modifications to its tariff so as to incorporate the stipulated revenue requirement increase and rate design. TESI shall file a revised tariff so as to incorporate the stipulated wastewater tariff rates within five (5) business days after the Commission approves this Settlement by final order.

13. The Parties recognize that the business risk of real estate development build-out should not be borne by ratepayers, and Commission-approved tariff rates should not include recovery of costs resulting from the failure to build-out. To this end, the Parties recognize that TESI should include in future wastewater agreements terms that condition the release of security interests on the number of Equivalent Dwelling Units ("EDUs") that have been completed rather than on a projected timeline for build-out. Thus, any risk that housing developments or similar projects, in any future wastewater service territories, that do not build-out on a prescribed EDU based timetable will be excluded from the costs used to set rates, unless reasonable cause can be shown.

III. ADDITIONAL PROVISIONS

14. This Settlement is the product of extensive negotiation and reflects a mutual balancing of various issues and positions of the Parties. This Settlement is expressly conditioned

upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Settlement will terminate and be of no force and effect unless the Parties agree in writing to waive the application of this provision.

15. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any ratemaking or any other principle in any future proceeding before the Commission. No Party to this Settlement necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, any calculation made, or the resolution of any particular issue except that the Parties agree the resolution of the issues herein, taken as a whole, results in just and reasonable rates and is in the public interest.

16. This Settlement pertains to PSC Docket No. 11-329WW. To the extent opinions or views were expressed or issues were raised in this proceeding that are not specifically addressed in this Settlement, no findings, recommendations, or positions with respect to such opinions, views or issues should be implied or inferred.

17. The Parties agree that they will submit this Settlement to the Commission for a determination that it is in the public interest and results in just and reasonable rates and that no Party will oppose such a determination. Harts Landing, which is a party in this proceeding, does not object to the proposed stipulated wastewater tariff rates as described in this Settlement and has designated its non-objection in the attached Exhibit B. In addition, the Town of Milton, which is also a party in this proceeding, does not object to the proposed stipulated wastewater tariff rates as described in this Settlement and has designated its non-objection in the attached Exhibit C. This Settlement shall not have issue or claim preclusion in any pending or future proceeding, and none of the Parties waives any rights it may have to take any position in future

proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

18. If this Settlement does not become final, either because it is not approved by the Commission or because it is the subject of a successful appeal and remand, each Party reserves its respective rights to submit additional testimony, file briefs, or otherwise take positions as it deems appropriate in its sole discretion to litigate the issues in this proceeding.

19. This Settlement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Settlement shall be implemented and enforceable notwithstanding the pendency of a legal challenge to the Commission's approval of this Settlement or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

20. The Parties may enforce this Settlement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Settlement shall be appealable to the Superior Court of the State of Delaware, in addition to any other available remedy at law or in equity.

21. If a Court grants a legal challenge to the Commission's approval of this Settlement and issues a final non-appealable order that prevents or precludes implementation of any material term of this Settlement, or if some other legal bar has the same effect, then this Settlement is voidable upon written notice by any Party to all other Parties.

22. This Settlement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation in this

proceeding or related appeals; provided, however, that this Settlement is made without admission against or prejudice to any factual or legal positions which any of the Parties may assert (a) if the Commission does not issue a final order approving this Settlement without modifications; or (b) in other proceedings before the Commission or any other governmental body so long as such positions do not attempt to abrogate this Settlement. This Settlement, upon approval by the Commission, shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

23. The signatories hereto represent they have the authority to execute this Settlement on behalf of the party for whom they are signing.

24. This Settlement may be executed in counterparts, and each such counterpart shall be as valid as if all signatures appeared on the same page.

NOW, THEREFORE, intending to legally bind themselves and their successors and assigns, the undersigned Parties have caused this Settlement to be signed by their duly-authorized representatives.

[SIGNATURE PAGE TO FOLLOW]

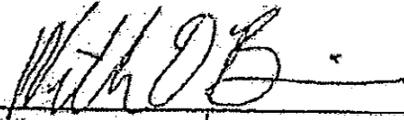
TIDEWATER ENVIRONMENTAL
SERVICES, INC.

Date: 3/13/2012

By: 
(Print Name) A. Bruce O'Connor
(Title) Treasurer

DELAWARE PUBLIC SERVICE
COMMISSION STAFF

Date: 3/7/2012

By: 
(Print Name) William O'Brien
(Title) Director

DIVISION OF THE PUBLIC ADVOCATE

Date: 3/13/2012

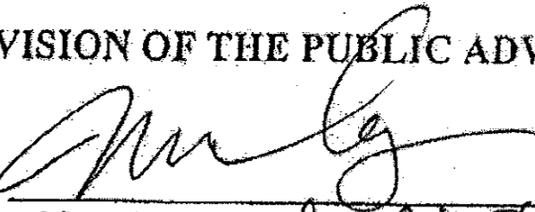
By: 
(Print Name) Michael D. Sheehy
(Title) PUBLIC ADVOCATE

EXHIBIT A

TARIFF RATES PER SETTLEMENT AGREEMENT

EXHIBIT A: RATE DESIGN AND SETTLEMENT RATES

	The Retreat	Harts Landing	Country Grove	Breeders Crown	Front/Bay Pointe	Town of Milton	TESI Aggregate
Present Rate Revenues	\$ 85,846	\$ 141,279	\$ 61,495	\$ 63,000	\$ 94,080	\$ 444,494	\$ 890,194
DPA Revenue Additions	\$ -	\$ 11,864	\$ -	\$ 17,632	\$ -	\$ 458,550	\$ 488,046
Additional Settlement Revenues	\$ 6,524	\$ 6,548	\$ 4,674	\$ 3,448	\$ 7,150	\$ 38,611	\$ 66,954
Adjusted Rate Revenues	\$ 92,370	\$ 159,691	\$ 66,169	\$ 84,079	\$ 101,230	\$ 941,655	\$ 1,445,194
Revenue Increase (\$)	\$ 6,524	\$ 18,412	\$ 4,674	\$ 21,079	\$ 7,150	\$ 497,161	\$ 555,000
Revenue Increase (%)	7.60%	13.03%	7.60%	33.46%	7.60%	111.85%	62.35%
Existing Fixed Rate At Filing	\$ 849.96	\$ 994.92	\$ 1,024.92	\$ 1,125.00	\$ 960.00	\$ 160.00	
Existing Volumetric Rate						\$ 3.00	
Volume Used (ThGal/Yr)						54.12	
Typical Bill (Quarterly)	\$ 212.49	\$ 248.73	\$ 256.23	\$ 281.25	\$ 240.00	\$ 80.59	
Rates Under Bond - Fixed	\$ 914.56	\$ 1,070.53	\$ 1,102.81	\$ 1,210.50	\$ 1,032.96	\$ 172.16	
Rates Under Bond - Volumetric						\$ 3.23	
Volume Used (ThGal/Yr)						54.12	
Typical Bill (Quarterly)	\$ 228.64	\$ 267.63	\$ 275.70	\$ 302.63	\$ 258.24	\$ 86.71	
Settlement Fixed Rate (\$/Yr)	\$ 914.56	\$ 1,124.58	\$ 1,102.81	\$ 1,501.42	\$ 1,032.96	\$ 338.96	
Settlement Volumetric Rate (\$/ThGal)						\$ 6.36	
Volume Used (ThGal/Yr)						54.12	
Typical Bill (Quarterly)	\$ 228.64	\$ 281.15	\$ 275.70	\$ 375.36	\$ 258.24	\$ 170.79	
Change in Quarterly Bill (\$)	\$ 16.15	\$ 32.42	\$ 19.47	\$ 94.11	\$ 18.24	\$ 90.20	
Change in Quarterly Bill (%)	7.60%	13.03%	7.60%	33.46%	7.60%	111.93%	
Change from Rates Under Bond (\$)	\$ -	\$ 13.51	\$ -	\$ 72.73	\$ -	\$ 84.08	

PSC DOCKET 11-329WW

Change from Rates Under Bond (%) 0.00% 5.05% 0.00% 24.03% 0.00% 96.96%

EXHIBIT A (continued): MILTON RATE PHASE-IN

CONSTANT PERCENTAGE CHANGE	At Filing	Under Bond	Apr-12	Apr-13	Apr-14	Apr-15
Fixed Rate (\$/Quarter)	\$ 40.00	\$ 43.04	\$ 50.98	\$ 60.39	\$ 71.54	\$ 84.74
Volumetric Rate (\$/ThGal)	\$ 3.00	\$ 3.23	\$ 3.82	\$ 4.53	\$ 5.37	\$ 6.36
Amount Changed - Fixed Charge	\$	\$ 3.04	\$ 7.94	\$ 9.41	\$ 11.15	\$ 13.20
Amount Changed - Volume Rate	\$	\$ 0.23	\$ 0.60	\$ 0.71	\$ 0.84	\$ 0.99
Percentage Changed - Fixed Charge		7.60%	18.46%	18.46%	18.46%	18.46%
Percentage Changed - Volume Rate		7.60%	18.48%	18.48%	18.48%	18.48%
Typical Use (ThGal/Yr)		54.12				
Typical Quarterly Bill	\$	\$ 80.59	\$ 102.73	\$ 121.70	\$ 144.17	\$ 170.79
Typical Annual Bill	\$	\$ 322.36	\$ 410.91	\$ 486.79	\$ 576.68	\$ 683.16

EXHIBIT B

~~LETTER FROM HARTS LANDING HOMEOWNERS~~
ASSOCIATION DATED FEBRUARY 21, 2012

Harts Landing Homeowners Association

~~C/o Legum & Norman Inc.~~
C-4 Edgewater House Road
Bethany Beach, DE 19930

February 21, 2012

Mr. Michael D. Sheehy
Public Advocate
Division of the Public Advocate
820 North French Street
4th Floor.
Wilmington, DE 19801

Re: PSC Docket No. 11-329WW
Tidewater Wastewater Rate Case
Proposed Settlement Rates

Dear Mr. Sheehy:

In the matter of the Tidewater Rate Case, on behalf of Harts Landing, this is to confirm that you have my non-objection to the proposed settlement rates. Thank You.

Sincerely,



Lawrence D. Sullivan
Member-at-Large
Harts Landing Board of Directors
20657 Annondell Drive
Lewes, DE 19958

EXHIBIT C

**LETTER FROM TOWN OF MILTON
REGARDING NON-OBJECTION**

SERGOVIC, CARMEAN
& WEIDMAN, P.A.

Attorneys at Law

John A. Sergovic, Jr.
Shannon D. Carmean
David J. Weidman
Leslie Case DiPietro
Seth L. Thompson
Elizabeth L. Soucek

Website: www.scdelaw.com
Email: seth@scdelaw.com

142 East Market Street
P.O. Box 751
Georgetown, DE 19947
Phone (302) 855-1260
Fax (302) 855-1270

March 6, 2012

VIA EMAIL ONLY (michael.sheehy@state.de.us)

Michael D. Sheehy, Public Advocate
Division of the Public Advocate
820 North French Street, 4th Floor
Wilmington, Delaware 19801

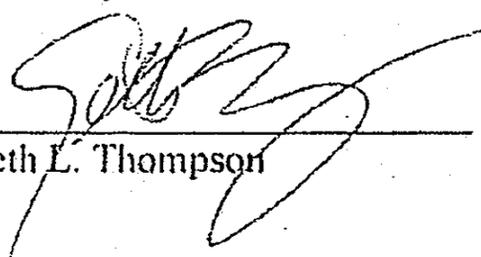
RE: PSC DOCKET NO. 11-329WW;
PROPOSED SETTLEMENT RATES

Dear Mr. Sheehy:

I am the Solicitor for the Town of Milton, an Intervenor in the above-captioned matter. Please allow this letter to confirm that, at the March 5, 2012 meeting, the Milton Town Council approved filing a letter of no objection to the proposed Settlement Agreement. Please accept this letter as such. The vote, which included authority for me to submit the letter, was unanimous, with one abstention.

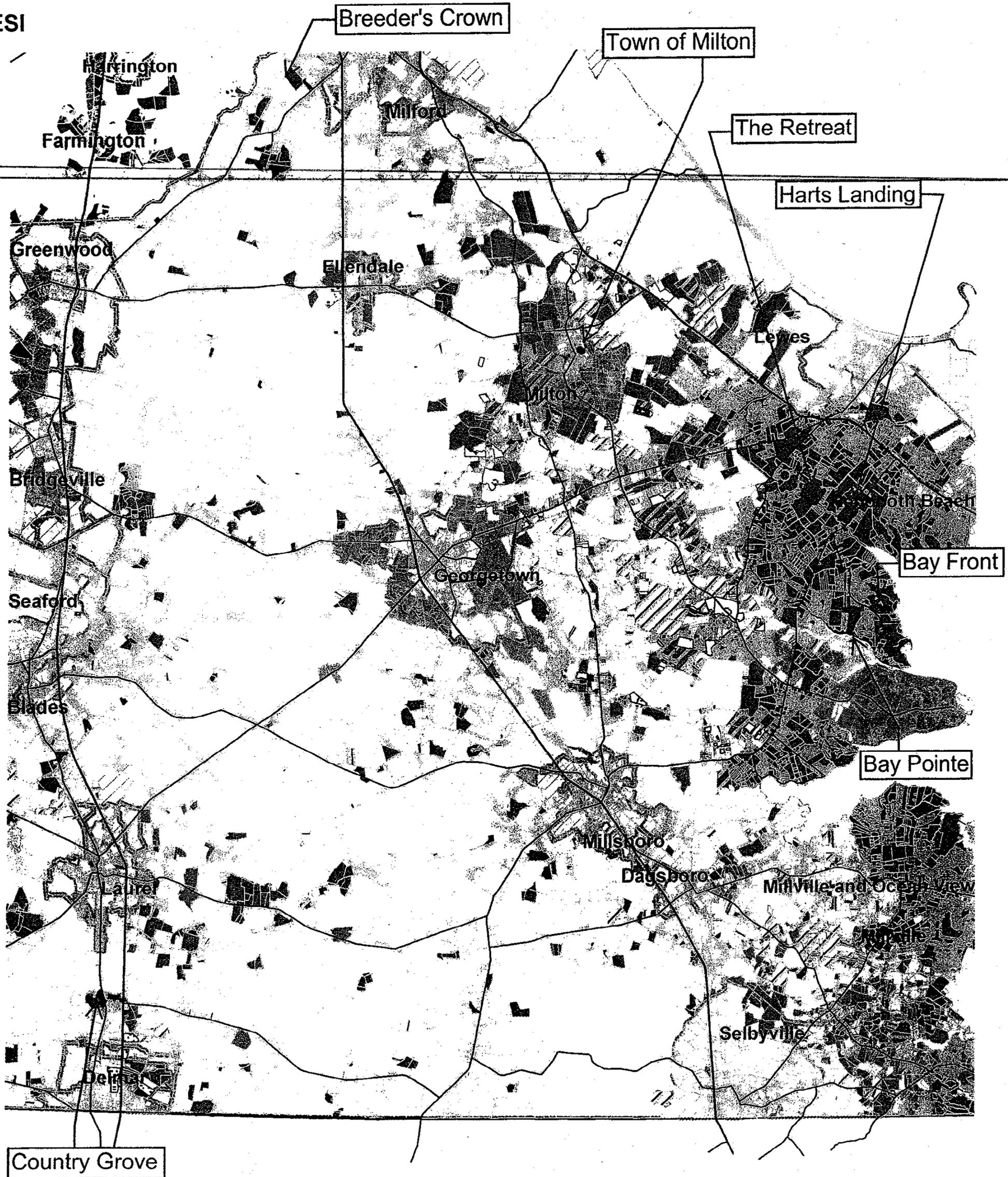
Thank you for your time, attention, and assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,


Seth L. Thompson

c: parties (via email)
Mayor Newlands

TESI



Exh. 2