

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

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER ENVIRONMENTAL SERVICES, INC.)
FOR APPROVAL OF A WASTEWATER TARIFF)
RATE FOR WASTEWATER SERVICES TO BE) PSC DOCKET NO. 11-419WW
PROVIDED TO "HOLLAND MILLS")
DEVELOPMENT LOCATED ON THE SOUTH SIDE)
OF WALKER ROAD, SOUTHEAST OF MILTON)
SUSSEX COUNTY, DELAWARE)
(FILED SEPTEMBER 27, 2011))

ORDER NO. 8125

AND NOW, on this 20th day of March, 2012, the Public Service Commission (the "Commission") determines and orders the following:

WHEREAS, on September 27, 2011, Tidewater Environmental Services, Inc. ("TESI") filed with the Commission an application to approve wastewater tariff rates of \$1,380.00 per year for wastewater services to be provided to customers in a development known as "Holland Mills" which is located on the south side of Walker Road, Southeast of the City of Milton, in Sussex County, Delaware. See PSC Order No. 6734(October 11, 2005);¹ and

WHEREAS, on November 8, 2011, the Commission authorized TESI to charge, on a temporary basis, the proposed annual wastewater rates of \$1,380.00 for customers in Holland Mills, subject to refund, in whole or in part, if the Commission later finally determined that such rate was unjust or unreasonable; and

¹ In PSC Order No. 6734, the Commission granted TESI a Certificate of Public Convenience and Necessity to provide wastewater services to two parcels of land proposed for development as a 287 unit subdivision, referred to as the "Holland/Anthem Mills Project," located on both sides of Walker Road, Southeast of Milton, Sussex County, Delaware, and more specifically identified by Sussex County tax parcels numbers 235-26.00-07.00 and 235-26.00-08.00. This Order applies to only to the development known as "Holland Mills."

WHEREAS, on November 10, 2011, pursuant to 29 *Del. C.* §8716(g), the Public Advocate intervened in this docket by filing a Notice of Intervention; and

WHEREAS, pursuant to 26 *Del. C.* §502 and 29 *Del. C. Ch.* 101, on December 20, 2011, the Commission designated Mark Lawrence to act as the Hearing Examiner for this matter, to schedule and conduct, upon due notice, such public comment sessions and evidentiary hearings as may be necessary to have a full and complete record concerning the justness and reasonableness of the proposed initial wastewater tariff rates; and

WHEREAS, on January 19, 2012, the Hearing Examiner held a duly-noticed Public Comment Session at the Holland Mills' Clubhouse in Milton, Delaware; and

WHEREAS, on February 15, 2012, the Hearing Examiner held a duly-noticed evidentiary hearing at which the parties submitted, among other evidence, an executed settlement agreement dated January 18, 2012 (the "Settlement Agreement"), which was executed by all of the parties to the proceeding; and

WHEREAS, the Commission has received and reviewed the Findings and Recommendations of the Hearing Examiner dated March 7, 2012, which document is attached as Exhibit "A" to this Order; and

WHEREAS, the Hearing Examiner recommends that the Commission approve the Settlement Agreement, attached as Exhibit "B" to this Order, because such agreement will produce just and reasonable rates and adopting such agreement is in the public interest; and

WHEREAS, the Commission finds that the proposed annual wastewater tariff rates as set forth in the Settlement Agreement are just and reasonable, and that approval of the Settlement Agreement is in the public interest;

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

1. That the Commission adopts the Findings and Recommendations of the Hearing Examiner dated March 7, 2012, attached as Exhibit "A."

2. That the Commission approves as just and reasonable and in the public interest the jointly proposed Settlement Agreement of the parties, attached as Exhibit "B."

3. That the Commission also approves the initial wastewater tariff rates of \$700.00 per year for the customers of Tidewater Environmental Services, Inc. who reside in the "Holland Mills" development. This initial wastewater tariff rate is hereby approved for implementation effective for wastewater services provided on and after April 1, 2012, until further Order of the Commission.

4. That Tidewater Environmental Services, Inc. shall refund to its Holland Mills wastewater customers all amounts it collected over and above the \$700.00 annual initial wastewater tariff rate approved by this Order.² Such refund amounts, in addition to interest due as calculated in accordance with 26 *Del. Admin. C.* §1003, shall be in the form of a credit issued by Tidewater Environmental Services, Inc. to the wastewater account of each Holland Mills customer.

² The Commission authorized Tidewater Environmental Services, Inc. to begin collecting from its Holland Mills customers a proposed annual wastewater rate equal to \$1,380.00 starting on November 8, 2011, which is \$680.00 more than the initial approved wastewater tariff rate of \$700.00 per year as set forth in this Final Order. See PSC Order No. 8073.

PSC Docket No. 11-419WW, Order No. 8125 Cont'd

5. That within five (5) business days after the date of this Order, Tidewater Environmental Services, Inc. shall file a tariff so as to incorporate the initial wastewater tariff rates of \$700.00 per year for the customers in the Holland Mills development.

6. That the Commission reserves jurisdiction to enter such further Orders as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary

E X H I B I T "A"

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATE: March 7, 2012

MARK LAWRENCE
HEARING EXAMINER

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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. 8091 dated December 20, 2011, reports to the Commission as follows:

I. APPEARANCES

On behalf of the Applicant Tidewater Environmental Service, Inc.:

RICHARDS, LAYTON & FINGER, P.A.

By: TODD A. COOMES, ESQUIRE

Gerard L. Esposito, President

A. Bruce O'Connor, Treasurer

On behalf of the Delaware Public Service Commission:

BY: JULIE M. DONOGHUE, ESQUIRE, Deputy Attorney General

Susan B. Neidig, Senior Reg. Policy Administrator

On behalf of The Division of the Public Advocate:

By: THOMAS E. BROWN, Deputy Attorney General

Michael D. Sheehy, Public Advocate

II. BACKGROUND

A. Procedural History

1. On September 27, 2011, Tidewater Environmental Services, Inc. ("the Company" or "TESI") filed an Application with the Delaware Public Service Commission ("the Commission") seeking approval of an initial tariff rate of \$1,380.00 per year for wastewater services for the Holland Mills' residential community.³ (Exh.3, p.1.)

2. The Company began serving Holland Mills in June, 2011. Tr.-93.) The Holland Mills' development is located southeast of the City of Milton, in Sussex County, Delaware.⁴ (Exh.3, p.1.) The Company currently serves approximately thirty seven (37) customers at Holland Mills. (Tr.-106.)

3. After reviewing the Company's Application and supporting documentation, the Commission initiated this docket pursuant to 26 Del. C. §306(a)(1). By Order No. 8073 dated November 8, 2011, the Commission allowed the proposed \$1,380 annual tariff rate to go into effect on a temporary basis, subject to refund. By public notice, the Commission requested comments from interested persons. Moreover, the Commission directed that, by U.S. Mail, comments be sought from current Holland Mills' residents and the Division of the Public Advocate. ("Public Advocate") On November 10, 2011, the Public Advocate

³ Exhibits from the evidentiary hearing will be referred to as "Exh. ___." References to the transcript from the evidentiary hearing will be referred to as "Tr.-page number." Two (2) exhibits are attached to this Report. Those exhibits will be referred to as Exhibit "A" or "B," using the complete word "Exhibit."

⁴ By Commission Order No. 6734 (Oct. 11, 2005), the Company was issued a Certificate of Public Convenience & Necessity ("CPCN"), thereby permitting the Company to provide wastewater service to the residents of Holland Mills.

intervened in this docket by filing a Notice of Intervention, as permitted by 29 Del. C. §8716(g).⁵

4. Thereafter, the Commission received a significant number of objections to the proposed rate. By Order No. 8091 dated December 20, 2011, the Commission assigned me as the Hearing Examiner. I was required to conduct such public comments sessions and evidentiary hearings necessary to have a full and complete record concerning the justness and reasonableness of the proposed initial tariff rate.

B. Public Comment Session

5. On January 19, 2012, I held a duly-noticed Public Comment Session at the Holland Mills' Clubhouse in Milton, Delaware. Approximately thirty-five (35) Holland Mills customers attended the Public Comment Session. (Tr.-106.)

6. A proposed Settlement Agreement between the parties was posted on the Commission's website on January 18, 2012. At the Public Comment Session the following day, the customers primarily complained that: a) the rate proposed in the Settlement Agreement was excessive; or b) the customers did not understand how the rate proposed in the Settlement Agreement was derived. (Tr. 1-72.) These issues will be discussed later in this Report.

7. I will now discuss the proposed Settlement Agreement which is marked as Exhibit "A" hereto and was marked as Exhibit "6" at the

⁵ On December 20, 2011, I denied the Petitions for Leave To Intervene filed by three (3) Holland Mills' homeowners. (See PSC Order No. 8095 (Dec. 20, 2011)). I held that the homeowners did not have any particularized utility experience which would supplement that of the Commission Staff and the Public Advocate's office, and their respective utility consultants and attorneys. Commission Staff and the Public Advocate were already parties in this case and, by law, were required to represent the homeowners' interests. (*Id.*)

evidentiary hearing. The duly-noticed evidentiary hearing was held on February 15, 2012 at the Commission's office in Dover. The record in this case consists of a hearing transcript of one hundred and thirty four (134) pages and six (6) hearing exhibits.

III. THE PROPOSED SETTLEMENT AGREEMENT

8. **The Proposed Annual Rate.** Although the Company sought an initial tariff rate of \$1,380.00 per year, the parties have now agreed upon an initial tariff rate of \$700.00 per year. In Paragraph 8 of the Settlement Agreement, which is attached hereto as Exhibit "A," the parties have agreed as follows:

"The wastewater tariff rate for TESI's customers in Holland Mills will be \$700.00 per customer per year for wastewater services. The Parties have agreed to this wastewater tariff rate as a compromise of their positions and believe that this rate is within the bounds of the statutory requirement of a just and reasonable rate."
(Exhibit "A", p.3)

9. **Refund to Customers.** The agreed upon rate of \$700 annually is less than the \$1,380 annual, interim rate approved by the Commission on November 8, 2011 in PSC Order No. 8073. (*Id.* at ¶10, p.3.) Thus, the Settlement Agreement also contains a "Refund Plan" which will be implemented subsequent to the Commission's Final Order in this docket. (*Id.*) Pursuant to the Refund Plan, the Company will credit its Holland Mills customers' accounts, the difference between the \$700 annual agreed upon rate and the \$1,380 temporary rate, from November 8, 2011 (when the temporary rate went into effect) through

the date of the Commission's Final Order. (*Id.*) The customer refund will include interest calculated according to Delaware law.⁶

10. **Description of Wastewater Services.** In Paragraph 1 of the Settlement Agreement, the parties describe the current and future wastewater services provided by the Company to Holland Mills' residents:

"...TESI currently provides wastewater service at the Holland Mills development by pumping and hauling wastewater offsite from Holland Mills for treatment and disposal at the TESI-owned wastewater treatment plant located in Milton, Delaware ("Milton Plant"). In or about May 2012, TESI intends to provide wastewater service to Holland Mills via an off-site wastewater force main extension from Holland Mills to the Milton Plant."

Thus, TESI intends to cease pumping and hauling wastewater off-site from Holland Mills about May, 2012. The Developer of Holland Mills is obligated to install a pump station, and has already installed a well. (Tr.-95.) TESI thereafter intends to install a wastewater main pipe extension which will transport wastewater from Holland Mills to the TESI-owned Milton Plant for treatment. (Tr.-94.) The Milton Plant is located approximately three (3) miles from the Holland Mills community. (*Id.*)

11. **Recovery of Future Costs Associated with Main Extension From Holland Mills to Milton Plant.** The parties have agreed that these costs will not be directly billed to customers in their annual tariff rate. In Paragraph 11, the parties agreed as follows:

⁶ Exhibit A, ¶10, p.3. Interest added to all customer refunds will be calculated according to 26 Delaware Adm. Code §1003 (1986) (*enacted pursuant to PSC Order No. 2696 (November 26, 1985)*).

"The Parties agree the full cost of the force main constructed for the purpose of transferring wastewater from Holland Mills to the Milton Plant shall be funded by contributions-in-aid-of-construction,⁷ which TESI will collect from [Developer] Walker Road Development, L.L.C. or its successors and assigns through impact fees.⁸ The Parties agree that once TESI has collected sufficient impact fees equal to the full cost of the force main extension, TESI shall apply the receipt of subsequent impact fees relating to the Holland Mills and the Anthem developments against the balance of preliminary survey and investigation charges."⁹

12. **Allocation of Town of Milton Overhead Expenses In Commission Docket No. 11-329WW.** The Town of Milton is a party in a separate, pending Commission wastewater docket involving TESI, Commission Docket No. 11-329WW. In this docket, the parties have agreed that a total amount of \$15,493 of TESI's expenses for the Town of Milton's expenses relating to Holland Mills will be addressed in Docket No. 11-329WW. (Exhibit "A", ¶12, p.4.)

IV. DISCUSSION

13. The Commission has jurisdiction over this wastewater rate case because the Company is a public wastewater utility with more than fifty (50) customers, according to 26 Del. C. §201(a) and §203D(a)(1).

⁷ Under Delaware law, "contributions in aid of construction" are defined as: "[c]ash, services, funds, property or other value received from State, municipal, or other governmental agencies, individuals, contractors, or others for the purpose of constructing or aiding in the construction of utility plant, and which represent a permanent infusion of capital from sources other than utility bondholders or stockholders." (9 Del. Reg. 1588, §1.3.12 (April 1, 2006).)

⁸ Walker Road Development, LLC. was the Developer of the Holland Mills community. (Tr.- 112)

⁹ In Commission Order No. 6734(Oct. 11, 2005), the Commission granted TESI a CPCN to provide wastewater services to two (2) parcels of land proposed for development as a 287 unit subdivision, referred to as the "Holland/Anthem Mills Project," located on both sides of Walker Road, Southeast of Milton, Sussex County, Delaware, and more specifically identified by Sussex County tax parcels numbers 235-26.00-07.00 and 235-26.00-008.00. Although these communities are located across the street from each other, this case involves the Holland Mills community only. (Tr.-104-5.)

14. 26 Del. C. §201(a) provides, in pertinent part, that “[t]he Commission shall have exclusive original supervision and regulation of all public utilities and also over their rates, property rights, equipment, facilities ... so far as may be necessary for the purpose of carrying out the provisions of this title. Such regulation shall include the regulation of rates...” 26 Del. C. §203D(a)(1) provides that the Commission has jurisdiction over wastewater utilities serving fifty (50) or more customers.

15. 26 Del. C. §512 directs the Commission to “encourage the resolution of matters brought before it through the use of stipulations and settlements,” and provides that the Commission may, upon hearing, approve the resolution of matters through stipulations and settlements “where the Commission finds such resolutions to be in the public interest.” (See 26 Del. C. §§512(a), (c), respectively.)

16. 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.

17. The agreed upon initial tariff rate of \$700 annually 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 raised in this case. (Exh. “A”- Settlement Agree; §§13, 14.) Thus, the parties’ agreement constitutes what is commonly referred to as a “black box” settlement.

18. The specific issues which have been agreed upon by the parties include: a) the initial, annual tariff rate of \$700, which is approximately 51% of the rate increase originally requested by the Company; b) the customer refund; c) the recovery of future costs associated with the wastewater main extension from Holland Mills to the Company's Milton Plant; and d) that the allocation of Town of Milton Overhead Expenses will be addressed in Commission Docket No. 11-329WW.

19. Staff's Consultant Robert Henkes testified at the evidentiary hearing as to how the \$700 annual rate and the other issues described above were agreed upon. Mr. Henkes first testified that he "was engaged by the [Commission Staff] to conduct a review and analysis of TESI's wastewater tariff filing for Holland Mills and to develop an appropriate tariff rate for Holland Mills..." (Tr.-109.) The Company's Application also included a Pro-Forma Income Statement. (Exh.3.)

20. Staff's Henkes addressed the Company's projected test period of anticipated revenues and expenses, as described in the Company's Application. (Tr.-111.) The Company used a projected test period of May 1, 2012 through April 30, 2013, as opposed to historical data, because the Company did not begin serving the Holland Mills community until June, 2011.¹⁰ (Exh.3; Tr.-93, 111) The Company's Application also contains projections for the two (2) following years:

¹⁰ Although the Company began serving the Holland Mills community in June, 2011, prior to November 8, 2011, the date the temporary rate became effective, the Company did not charge the residents of Holland Mills for wastewater service. (Tr.-102, 110.)

May 1, 2013 through April 30, 2014, and May 1, 2014 through April 30, 2015. (Exh.3.)

21. Staff' Henkes maintained that four (4) major adjustments to the Company's projected test year were required. These adjustments included: a) deleting from rate base the \$453,000 force main to Milton investment because it will be paid entirely from Contributions-In-Aid-of-Construction; (Tr.111-12) b) deleting an additional \$6,400 of depreciation expenses associated with that force main; (Tr.-112.) c) deleting \$5,150 of property taxes which will not become due, thereby reducing the Company's revenue requirement; (*Id.*) and d) eliminating the Company's proposed deferral of the \$14,500 cost of pumping and hauling while the force main is being constructed, thereby reducing the Company's revenue requirement. The Company had proposed deferring this item at the rate of \$2,900 annually for the next five (5) years. (Tr.-113.)

22. Michael Sheehy testified that the Public Advocate's office agreed with the four (4) adjustments raised by Staff, as described in the preceding paragraph. (Tr.-120.) Like Staff, the Public Advocate recommends that the settlement be approved by the Commission. (TR.-117, 121-22.)

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

fair rate of return;¹¹ and b) the settlement obviates the need to fully litigate the complex issues raised by the Company's Application regarding the Holland Mills community, thereby saving costs, governmental resources and attorney's fees. (Tr.-118)

24. As the Public Advocate testified, the Settlement is clearly a product of extensive negotiations, conducted after Staff and the Public Advocate completed their thorough discovery and investigation. (Tr.121.) It reflects a mutual balancing of various issues and positions. (Tr.120.) It is also evident that the parties all believe that the agreed-upon, initial annual tariff rate will produce just and reasonable rates for TESI's ratepayers at Holland Mills.

VI. RECOMMENDATION

25. In summary, for the reasons set forth above, I find that the proposed Settlement Agreement will produce just and reasonable rates, and that it is in the public interest to adopt the Settlement Agreement. Therefore, I recommend that the Commission approve the Settlement Agreement which is attached hereto as Exhibit "A." A proposed Order implementing the foregoing Recommendation is attached hereto as Exhibit "B."

Respectfully submitted,

Date: March 7, 2012

/s/ Mark Lawrence
Mark Lawrence
Hearing Examiner

¹¹ 26 Del. C. §303. The primary objective of rate-making by the Commission is to establish rates "sufficient to yield a fair return to the utility upon the present value of property dedicated to public use." Public Service Commission v. Wilmington Suburban Water Corp., 467 A.2d 446, 447 (Del. Supr. 1983)

E X H I B I T “B”

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SERVICES, INC. FOR APPROVAL OF A)
WASTEWATER TARIFF RATE FOR WASTE)
WATER SERVICES TO BE PROVIDED TO)
“HOLLAND MILLS” DEVELOPMENT)
LOCATED ON THE SOUTH SIDE OF)
WALKER ROAD, SOUTHEAST OF MILTON)
SUSSEX COUNTY, DELAWARE)
(Filed September 27, 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. TESI was granted a Certificate of Public Convenience and Necessity to provide wastewater services to customers in the Holland Mills development, located on the south side of Walker Road, Southeast of the City of Milton, in Sussex County, Delaware (“Holland Mills”), in PSC Order No. 6734. TESI currently provides wastewater service at the Holland Mills development by pumping and hauling wastewater offsite from Holland Mills for treatment and disposal at the TESI owned wastewater treatment plant located in Milton, Delaware (“Milton Plant”). In or about May 2012, TESI intends to provide wastewater service to Holland Mills via an off-site wastewater force main extension from Holland Mills to the Milton Plant.

2. On September 27, 2011, TESI filed an application with the Delaware Public Service Commission (the “Commission”) requesting approval of a wastewater tariff rate of \$1,380.00 per customer per year for wastewater services provided to customers in Holland Mills. There was no wastewater rate in effect for Holland Mills at that time.

3. On November 8, 2011, as provided in PSC Order No. 8073, the Commission authorized TESI to charge, on a temporary basis and subject to refund, its proposed wastewater tariff rate to its customers in Holland Mills pending the Commission’s determination of whether the proposed rate is just and reasonable. The Commission also solicited from interested persons or entities any comments or objections to the proposed rate.

4. On November 11, 2011, the PA filed a statement of intervention in this proceeding.

5. The Commission received a significant number of objections and comments to the application and, pursuant to 26 *Del. C.* § 502 and 29 *Del. C. Ch.* 101, in PSC Order No. 8091 dated December 10, 2011, assigned this matter to Hearing Examiner Mark Lawrence (the “Hearing Examiner”) to schedule and conduct, upon due notice, such public comment sessions and evidentiary hearings as may be necessary to have a full and complete record concerning the justness and reasonableness of the proposed tariff rate.

6. 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; but 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.

7. A public comment session will be held on this proceeding on January 19, 2012, at the Holland Mills clubhouse, and this Settlement will be discussed during such session.

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

8. The wastewater tariff rate for TESI's customers in Holland Mills will be \$700.00 per customer per year for wastewater services. The Parties have agreed to this wastewater tariff rate as a compromise of their positions and believe that this rate is within the bounds of the statutory requirement of a just and reasonable rate.

9. TESI shall file a tariff so as to incorporate this stipulated wastewater tariff rate within five (5) business days after the Commission approves this Settlement by final order.

10. Since the wastewater tariff rate agreed to in this Settlement is lower than the temporary rate placed into effect on November 9, 2011, Holland Mills customers are entitled to a refund from the date the temporary rate was placed into effect. TESI will refund the amounts collected from Holland Mills customers over and above the \$700.00 annual rate through a credit to the customers' account, with interest on the refunded amounts calculated in accordance with *26 Del. Admin. C. § 1003*.

11. The Parties agree the full cost of the force main constructed for the purpose of transferring wastewater from Holland Mills to the Milton Plant shall be funded by contributions-in-aid-of-construction, which TESI will collect from Walker Road Development, L.L.C. or its

successors and assigns through impact fees. The Parties agree that once TESI has collected sufficient impact fees equal to the full cost of the force main extension, TESI shall apply the receipt of subsequent impact fees relating to the Holland Mills and the Anthem developments against the balance of preliminary survey and investigation charges.

12. In determining the stipulated wastewater tariff rate for TESI's customers in Holland Mills, a total expense amount of \$15,493 was reflected as Milton overhead expenses allocated to Holland Mills. The Parties agree this same expense amount of \$15,493 for Milton overhead expenses allocated to Holland Mills will be included as a credit to Milton overhead expenses in the TESI base rate case, PSC Docket No. 11-329WW.

III. ADDITIONAL PROVISIONS

13. 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.

14. 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 case. 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 the Parties agree the resolution of the issues herein taken as a whole results in a just and reasonable rate and is in the public interest.

15. This Settlement pertains only to PSC Docket No. 11-419WW. 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.

16. 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 a just and reasonable rate, and that no Party will oppose such a determination. 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.

17. 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 testimony, file briefs, or otherwise take positions as it deems appropriate in its sole discretion to litigate the issues in this proceeding.

18. 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.

19. 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.

20. 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.

21. 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.

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

23. 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]

Date: 01/18/12 **TIDEWATER ENVIRONMENTAL SERVICES, INC.**

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

Date: 01/18/12 **DELAWARE PUBLIC SERVICE COMMISSION STAFF**

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

Date: 01/18/12 **DIVISION OF THE PUBLIC ADVOCATE**

By: /s/ Michael Sheehy
(Print Name)
(Title) Public Advocate