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Case Name (If known)  Application of Virginia-American Water Company For a general increase in rates

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Application of Virginia-American Water Company
For a general increase in rates
Case No. PUE-2015-00097

Dear Mr. Peck:

Enclosed for electronic filing in the above-captioned proceeding, please find the Comments on Report of Howard P. Anderson, Jr., Hearing Examiner of the Counties of Westmoreland and Northumberland.

Please do not hesitate to call if you have any questions in regard to the enclosed.

Highest regards,

M. Ann Neil Cosby

Enclosure

cc: K. Beth Clowers, Esq.
William H. Harrison, Esq.
Frederick D. Ochsenhirt, Esq.
Service List
COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY
For a general increase in rates

COMMENTS ON REPORT OF
HOWARD P. ANDERSON, JR.,
HEARING EXAMINER

Westmoreland County, Virginia ("Westmoreland"), and Northumberland County, Virginia ("Northumberland") (together the "Counties") by counsel, state the following comments to the November 29, 2016 Report (the “Report”) of Howard P. Anderson, Jr., Hearing Examiner (the "Hearing Examiner").

COMMENTS

A. Background.

The History of the Case and Summary of the Record are recited at length in the Report and accurately and thoroughly encapsulate the filings and testimony presented in these proceedings.\(^1\) In the interest of brevity and judicial economy the Counties will not include the case history or record summary herein.

B. Specific Comments on the Report.

The Counties support the Findings and Recommendation of the Hearing Examiner set forth in the Report, with the exception of Finding 16 and the recommendation that a WWISC should be

\(^1\) Report at 3-93.
approved for a period of three years in the Alexandria District.\textsuperscript{2} For the reasons stated herein, the Counties respectfully request that the WWISC be denied in all respects.

1. **The requested WWISC constitutes single issue ratemaking and should be rejected.**

In the Report, the Hearing Examiner recommends that a three-year WWISC be approved for the Alexandria District, with a 7.5% cap, and subject to specific limitations and safeguards enumerated in the Report (the “Pilot WWISC”).\textsuperscript{3} The Pilot WWISC is recommended based on the Hearing Examiner’s findings, among other things, that 1.) there is a need for infrastructure replacement, 2.) Virginia-American Water Company (the “Company”) must file a base rate case to recover the investment, and 3.) the WWISC would provide “a dedicated, ongoing revenue stream to address the accelerating need for infrastructure...” and “could potentially extend the time between [rate base cases]”\textsuperscript{4}. However, the Report fails to reconcile these findings with those of Senior Hearing Examiner Skirpan in Case No. PUE-2014-00066 (the “Rulemaking Proceeding”). In the Rulemaking Proceeding, Hearing Examiner Skirpan found that current ratemaking practices already permit accelerated infrastructure replacement and that a separate rate mechanism is unnecessary.\textsuperscript{5}

In the Rulemaking Proceeding, Hearing Examiner Skirpan determined that “in regard to the need for a separate rate mechanism, there is little, if any evidence that [the petitioning utilities] will be unable to address aging infrastructure concerns through the existing ratemaking process.”\textsuperscript{6} Citing the testimony of the Company’s own president, William Walsh, and its Manager of Rates and Regulations for the Mid-Atlantic Division, Gary L. Akmentins, Hearing Examiner Skirpan determined that the Company did not need a replacement infrastructure surcharge because “the current ratemaking

\textsuperscript{2} Id. at 126-27.
\textsuperscript{3} Id. at 127.
\textsuperscript{4} Id. at 123.
\textsuperscript{5} See Report of Alexander F. Skirpan, Jr., Senior Hearing Examiner, Case No. PUE-2014-00066 (June 8, 2015) at p. 52 (the “Rulemaking Report”).
\textsuperscript{6} Id.
process permits accelerated infrastructure replacement.” Hearing Examiner Skirpan explained that “[o]ne way the current ratemaking process permits infrastructure replacement is through depreciation of existing plant in service.” He cited Company testimony “that while the useful life and replacement cycles for mains may be more than a hundred years, the cost of these mains are recovered through depreciation expense over ‘approximately 70 years.’” Hearing Examiner Skirpan concluded “[t]his depreciation expense is available for investment in new plant, including the replacement of aging infrastructure, each year without the need to file a rate increase (all other things remaining equal).” He also found that other ratemaking practices, including but not limited to the incorporation of projected rate-year investments “may help to adequately accommodate the replacement of aging infrastructure.”

In this proceeding, the Company also failed to offer any evidence that current ratemaking practices, including, but not limited to depreciation of existing plant in service and/or the incorporation of projected rate-year investments, cannot adequately provide for infrastructure recovery. The Report is similarly silent on this issue. However, the Counties’ witness D. Wayne Trimble did testify in this proceeding (as he did the Rulemaking Proceeding), that the current ratemaking process permits infrastructure replacement through depreciation of existing plant in service and other ratemaking practices. Mr. Trimble testified that there are other existing ratemaking practices, such as the incorporation of projected rate-year investments that can adequately accommodate the replacement of aging infrastructure. In addition, accounting practices such as depreciation expenses on assets, amortization, deferred tax, and interest on debt allow utilities to finance capital improvement programs

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7 Id. (citing the testimonies of William Walsh and Gary L. Akmentins).
8 Id.
9 Id. (citing the testimony of William Walsh).
10 Id.
11 Id.
12 Ex. 23 (Trimble Direct) at 7.
to pay for aging infrastructure.\textsuperscript{13}

During the hearing, Mr. Trimble testified that "[none] of the Company witnesses have disputed that there are other mechanisms that would allow the infrastructure costs to be front ended. Particularly, I haven't heard anyone today talk about depreciation expense. That's what depreciation expense is for, it's for replacement."\textsuperscript{14} He added "[Company witness] Mr. Akmentins restated the Company's position that it wanted to put a WWISC in place, but he never disputed the fact that the current rate making process is sufficient for the Company to recover its infrastructure costs. He said it was the Company's position that replacement is best achieved through a process outside of a base rate case, but it didn't really give a reason why."\textsuperscript{15}

Michael D. Youshock, the Engineer Manager for American-Water was the only Company witness who directly addressed whether infrastructure replacement costs can be managed through existing ratemaking practices. In his rebuttal testimony, Mr. Youshock testified that current ratemaking regulations are insufficient to cover the Company's infrastructure costs.\textsuperscript{16} However, Mr. Youshock failed to address why the use of depreciation of plant in service or any of the various other accounting practices that Mr. Trimble and the Senior Hearing Examiner mentioned were not available to the Company during the rate setting process to pay for an accelerated infrastructure program. Instead, Mr. Youshock testified summarily that "making the company file full base rate cases when the state's regulatory treatment does not keep up with accelerating ongoing capital expenditures, resulting in regulatory lag causing negative cash flow and risk to returns or every time the trajectory of necessary capital spending changes is a wasteful transaction costs and discourages expenditures in the Company."\textsuperscript{17} Mr. Youshock did not address any of the current mechanisms

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{13} Id. at 8.
\item \textsuperscript{14} Tr. 205.
\item \textsuperscript{15} Tr. 208.
\item \textsuperscript{16} Ex. 73 (Youshock Rebuttal) at 1.
\item \textsuperscript{17} Id. at 1-2.
\end{itemize}
\end{footnotesize}
available to the Company, including but not limited to the use of deprecation of plant in service, that can and do provide additional revenues for infrastructure replacement.

Mr. Youshock also ignored that the Commission has approved base rates that include budgeted infrastructure replacements. Mr. Trimble testified that the Commission has approved rates for utility companies based on greater than cost-based estimates such that budgeted infrastructure improvements are already being considered within the traditional ratemaking process. He also testified that the Commission has approved budgeted cost-of-service figures and has allowed construction work in progress to be included in rate base beyond the rate year in several of the Company's previous rate cases. In this case, Mr. Akmentins testified that the Company's projected budget for infrastructure replacement goes through March, 2017. However, as Staff has recommended approval a forecasted rate base and does not object to construction work in progress, and as plant assets, construction work in progress, and all the adjustments that go with rate base also go through March, 2017, if the rates are approved by the Commission, then regulatory lag is not an issue. For all of these reasons, the Company's assertion that it must recover its infrastructure costs through a WWISC as opposed to recovery through base rates, because "in order to recover for these types of investment on a timely basis, the Company would be required to file more frequent base rate cases, which if successful would result in larger and more frequent rate increases" is not true.

As such, even if the Hearing Examiner determined that a WWISC will provide a dedicated and ongoing revenue stream to fund accelerated infrastructure costs (at least in the Alexandria District), the evidence in the proceeding has established that there are other ratemaking tools that currently exist

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18 Ex. 23 (Trimble Direct) at 8-9.
19 Id.
20 Tr. 205-06.
21 See Ex. 12 (Akmentins Supplemental Direct) at 7; See Rulemaking Report at 52 (The Senior Hearing Examiner expressly rejected any contention that the Company would be required to file annual base rate cases to recover for infrastructure investments on a timely basis); Tr. 208-09 (Mr. Trimble also noted during the hearing that annual base rate cases are not required now and have not been required in the past to capture the Company's accelerated investment in infrastructure).
and which can be used to adequately fund accelerated infrastructure costs within the framework of a
traditional rate base case. The Report, however, is silent on this issue. It does not address why the
tools and practices identified by Senior Hearing Examiner Skirpan in the Rulemaking Proceeding as
being available to provide for the recovery of accelerated infrastructure costs are not available to the
Company in this case. As such, the Pilot WWISC should be rejected as unnecessary single-issue
ratemaking where the evidence does not support its approval.

The WWISC should also be rejected because it seeks recover of infrastructure replacement
costs which are well within the Company's control. Whether requested by rule or as part of a rate
case, the WWISC remains a request for single-issue ratemaking, which is appropriate only in "rare
and exceptional situations such as where costs are large, volatile, and outside the control of the
utility."\(^2\) In the Rulemaking Proceeding, the Senior Hearing Examiner determined that where a 100-
year replacement cycle exists for water and wastewater distribution facilities, water utilities have the
flexibility to plan for and control the replacement of such facilities.\(^3\) The same 100-year
infrastructure replacement cycle is alleged in this case, and the Company has provided no evidence to
refute the Senior Hearing Examiner's finding that it is unable to plan for and control the replacement
of infrastructure in each service district to accelerate current replacement rates.\(^4\) Given the
Company's ability to control it elongated infrastructure replacement costs, and the viability of existing
tools and accounting practices to recover these costs in a traditional rate base case, the requested
WWISC is not warranted on any grounds and the Pilot WWISC should be rejected.

2. If the Pilot WWISC is adopted the Commission should not permit its expansion
to other districts where main replacements can be adequately addressed through
a rate base case.

In the Report, the Hearing Examiner recommends that the Commission approve the Pilot

\(^{2}\) See Rulemaking Report at 51.
\(^{3}\) Id. at 52.
\(^{4}\) See Application at ¶ 17.
WWISC subject to a number of limitations and safeguards, including limiting the WWISC "to the mains and main related infrastructure in the Alexandria District...for a period of three years at which time it may be ended, expanded, or otherwise modified" 25 While the Counties disagree that the Pilot WWISC should be approved under any circumstances (for the reasons stated above), should the Commission approved the Pilot WWISC, it should not be expanded to the Eastern District (or any other district) where the Company's alleged cost to replace existing water mains is a small percentage of its total rate base.

The Report does not define or otherwise explain how the Pilot WWISC might be "expanded" after three years. As such, it is unclear whether such "expansion" is intended to mean the expansion of the WWISC to include additional service districts, like the Eastern District. To the extent the Hearing Examiner is recommending the "expansion" of the Pilot WWISC solely within the Alexandria District, the Counties have no comment. However, to the extent potential "expansion" of the Pilot WWISC would include other service districts, including the Eastern District, the Counties object to such potential expansion given that such costs may easily and more equitably be recovered in a rate base case. Currently, the Company has indicated that while the projected main replacements for 2017-2020 for the Alexandria District are over $23 million and represent over 80% of the Company's total costs, the costs for the Eastern District are substantially lower. 26 The replacement costs for the Eastern District are listed at just over $1.5 million, and represent only 5.4% of the Company's total replacement costs. 27 Even if the Commission approved the Pilot WWISC for the Alexandria District due to the significant main replacement costs, the same rationale does not apply in the Eastern District (or any other district). To the contrary, because the proposed main replacement costs for the Eastern District represent a small percentage of district's rate base, it is unnecessary and inequitable to impose

25 Report at 124 (emphasis added).
26 See Report at 73, figure entitled "Projected Main Replacements by District, 2017-2020.
27 Id.
such a charge on residents of the district where a rate base case can effectively account for such costs.

Accordingly, the Counties support the Findings and Recommendation of the Hearing Examiner set forth in the Report, with the exception of Finding 16 and the recommendation that a WWISC should be approved for a period of three years in the Alexandria District.\(^\text{28}\) For the reasons stated herein, the Counties respectfully request that the WWISC be denied in all respects, or that if the Pilot WWISC is approved, it not be permitted to be expanded to the Eastern District or any another service district.

Respectfully Submitted,

WESTMORELAND COUNTY,
VIRGINIA AND
NORTHUMBERLAND COUNTY,
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\(^\text{28}\) Report at 126-27.
CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2016, a copy of the foregoing was sent by electronic and US mail to:

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