BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission : R-2014-2428742

Office of Small Business Advocate : C-2014-2443461

Office of Consumer Advocate : C-2014-2441636

Ernest G. Bradmon : C-2014-2443459

James A. Schoenecker : C-2014-2444152

Mary Ellen McConnell : C-2014-2445595

Gino Joseph Manetta : C-2014-2445592

AK Steel : C-2014-2442667

West Penn Power Industrial Intervenors : C-2014-2442317

Pennsylvania State University : C-2014-2445681

:

v. :

:

West Penn Power Company :

:

and :

:

Petition of West Penn Power Company : M-2013-2341991

For Approval of Smart Meter Deployment Plan :

**RECOMMENDED DECISION**

Before

Dennis J. Buckley

Katrina L. Dunderdale

Administrative Law Judges

**TABLE OF CONTENTS**

[1. HISTORY OF THE PROCEEDING 1](#_Toc414345284)

[A. Introduction 1](#_Toc414345285)

[B. Public Input Hearings 7](#_Toc414345286)

[C. Description of the Company 21](#_Toc414345287)

[D. Rate Requests 21](#_Toc414345288)

[1. Residential Class 22](#_Toc414345289)

[2. Commercial Class 22](#_Toc414345290)

[3. Industrial Class 22](#_Toc414345291)

[II. TERMS AND CONDITIONS OF SETTLEMENT 23](#_Toc414345292)

[A. Terms of the Settlement 23](#_Toc414345293)

[B. Legal/Policy Standards for Settlement Approval 24](#_Toc414345294)

[C. Other Provisions of Partial Settlement 32](#_Toc414345295)

[III. DISCUSSION OF PARTIAL SETTLEMENT 35](#_Toc414345296)

[A. Partial Settlement of the Rate Case 35](#_Toc414345297)

[B. West Penn’s Statement in Support 35](#_Toc414345298)

[C. OCA’s Statement in Support 52](#_Toc414345299)

[1. Revenue Allocation (Settlement ¶ 11 B(1); Exh. 3) 53](#_Toc414345300)

[2. Residential Rate Design (Settlement ¶ 11(B)(1); Exh. 4) 54](#_Toc414345301)

[3. Storm Damage Reserve Account (Settlement ¶ 11(A)(5)) 54](#_Toc414345302)

[4. Universal Service And Customer Assistance Programs (Settlement ¶ 11(C) 55](#_Toc414345303)

[5. TARIFF (Settlement Exh. 1) 56](#_Toc414345304)

[6. Customer Service and Reliability (Settlement ¶ 11(D)) 56](#_Toc414345305)

[D. OSBA’s Statement in Support 58](#_Toc414345306)

[1. Small C&I Rates 58](#_Toc414345307)

[2. Cost of Service and Cost Allocation 59](#_Toc414345308)

[3. Revenue Allocation 59](#_Toc414345309)

[4. Rate Design 59](#_Toc414345310)

[5. Smart Meters 60](#_Toc414345311)

[6. Conclusion 60](#_Toc414345312)

[E. BIE’s Statement in Support 60](#_Toc414345313)

[1. Rate Increase(Joint Petition ¶ 11.A.1) 60](#_Toc414345314)

[2. Overall Rate of Return and Return on Equity 61](#_Toc414345315)

[3. Roll Smart Meter Costs into Distribution Rates (Joint Petition ¶ 11.A.2) 62](#_Toc414345316)

[4. Amortization of Legacy Meters (Joint Petition ¶ 11.A.3 64](#_Toc414345317)

[5. Amortization of Deferred Storm Damage Expense (Joint Petition ¶ 11.A.4 65](#_Toc414345318)

[6. Storm Reserve Account (Joint Petition ¶ 11.A.5) 65](#_Toc414345319)

[7. Fully Projected Future Test Year Reporting Requirements (Joint Petition ¶ 11.A.6) 66](#_Toc414345320)

[8. DSIC and Smart Meter ROE (Joint Petition ¶ 11.A.7 67](#_Toc414345321)

[9. Revenue Allocation and Rate Design (Joint Petition ¶ 11.B.) 68](#_Toc414345322)

[10. The Settlement Satisfies the Public Interest 69](#_Toc414345323)

[F. West Penn Power Industrial Intervenors’ Statement in Support 70](#_Toc414345324)

[G. Pennsylvania State University’s Statement in Support 72](#_Toc414345325)

[H. CAUSE-PA’s Statement in Support 73](#_Toc414345326)

[I. EDF’s Statement in Support 75](#_Toc414345327)

[J. Walmart’s Statement in Support 75](#_Toc414345328)

[K. AK Steel’s Statement in Support 77](#_Toc414345329)

[L. ALJs’ Recommendation Concerning Base Rate Increase Request 77](#_Toc414345330)

[M. ALJs’ Recommendation Concerning Smart Meter Charge 80](#_Toc414345331)

[IV. DISCUSSION – LITIGATED ISSUE 82](#_Toc414345332)

[A. Burden of Proof 82](#_Toc414345333)

[B. Proposed LED Street Lighting Service Offering 84](#_Toc414345334)

[C. West Penn’s Position 85](#_Toc414345335)

[1. Fixture Selection, Cost, Sizes and Useful Life 87](#_Toc414345336)

[2. Non-Fixture Costs 89](#_Toc414345337)

[3. The Company’s Cost of Service Study 90](#_Toc414345338)

[4. Per Fixture Distribution Rate 91](#_Toc414345339)

[D. PennFuture’s Position 92](#_Toc414345340)

[1. Public Benefit 96](#_Toc414345341)

[E. ALJs’ Recommendation Concerning LED Street Lighting Service Offering 97](#_Toc414345342)

[V. CONCLUSIONS OF LAW 98](#_Toc414345343)

[VI. ORDER 99](#_Toc414345344)

1. HISTORY OF THE PROCEEDING

A. Introduction

West Penn Power Company (West Penn or Company) is an electric distribution company providing electric distribution service subject to the jurisdiction of the Pennsylvania Public Utility Commission (Commission) in parts of western Pennsylvania.

On August 4, 2014, West Penn filed Tariff Electric-Pa. P.U.C. No. 38 (Tariff No. 38) and Tariff Electric-Pa. P.U.C. No. 40 (Tariff No. 40) to become effective May 3, 2015 and requested an increase to the base rates charged to ratepayers. Tariff No. 38 pertained exclusively to service portions of Pennsylvania State University’s University Park Campus, and Tariff No. 40 pertained to service in the entirety of West Penn’s service area including other Pennsylvania State University campuses and approximately 100 accounts at University Park not subject to Tariff No. 38.

Specifically, West Penn requested the Commission approve an increase to its annual distribution revenue totaling $115.5 million (or 8.4%) of total electric operating revenue. The Company’s proposed increase consisted of the sum of: (1) an increase in distribution base rate operating revenues of $78.619 million, including the roll-in to base rates of the smart meter revenue requirement; (2) proposed increases in charges under the Company’s Default Service Support and Hourly Pricing Default Service Riders totaling $7.351 million; and (3) a proposed increase of $29.565 million associated with establishment of a Universal Service Charge Rider.

Also on August 4, 2014, three related FirstEnergy Companies (the Companies) filed tariff supplements requesting increases to the base rates charged to ratepayers by the electric distribution companies. The three companies and the amount of the requested increase to its annual distribution revenue are:

1. Pennsylvania Electric Company – $119.8 million or 8.6% of total electric operating revenues;
2. Pennsylvania Power Company – $28.5 million or 8.7% of total electric operating revenues; and
3. Metropolitan Edison Company – $151.9 million or 11.5% of total electric operating revenues.

By Order entered October 2, 2014, the Pennsylvania Public Utility Commission suspended the filings by operation of law until May 3, 2015, and instituted an investigation to determine the lawfulness, justness and reasonableness of the proposed rates, rules, and regulations.

In addition to the four filings, FirstEnergy filed on behalf of all four utilities separate pro-forma tariff supplements on August 1, 2014 to implement the Smart Meter Technologies Charge (SMT-C) Rider pursuant to the Smart Meter Deployment Dockets for the Companies. These filings, referred to as “M Docket” proceedings, were made in compliance with a prior Commission Order where the Commission directed the electric distribution companies to file by August 1st of each year the SMT-C Rider Rates for the Residential, Commercial and Industrial Customer Classes for service rendered on or after January 1st and continuing through December 31st of each year.

On September 30, 2014, Administrative Law Judge Dennis J. Buckley (ALJ Buckley) issued the First Prehearing Order which scheduled the Initial Prehearing Conference for October 8, 2014, and which directed the parties to submit prehearing memoranda on or before October 6, 2014.

On October 2, 2014, the Commission suspended West Penn’s Tariff No. 38 and Tariff No. 40 by operation of law until May 3, 2015 and directed the Office of Administrative Law Judge to hold appropriate evidentiary proceedings and to render a Recommended Decision in each proceeding.

Notices of Appearance were filed on behalf of the Bureau of Investigation and Enforcement (BIE), the Office of Small Business Advocate (OSBA), the Office of Consumer Advocate (OCA) and the West Penn Power Industrial Intervenors (WPPII). Formal complaints were filed by OSBA, OCA, WPPII, AK Steel Corporation (AK Steel) and Pennsylvania State University (PSU), in addition to formal complaints filed by four individual residential customers: Ernest G. Bradmon; James A. Schoenecker; Mary Ellen McConnell; and Gino Joseph Manetta. Petitions to Intervene were filed by: the Utility Workers Union of America Local 102 (UWOA); Pennsylvania Rural Electric and the Allegheny Electric Cooperative (PREA/AEC); Noble Americas Energy Solutions LLC (Noble Americas); Environmental Defense Fund (EDF); Citizens for Pennsylvania’s Future (PennFuture); Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); and Wal-Mart Stores East, LP and Sam’s East, Inc. (Walmart).

The Administrative Law Judges conducted a prehearing conference with the active parties on October 8, 2014 and established a litigation schedule. As a result, twelve public input hearings were scheduled around the state in seven different locations in order to obtain the input from customers and ratepayers about the proposed increases. The Office of Administrative Law Judge conducted those public input hearings on six different dates in November 2014 in: Warren, New Castle, Erie, Washington, Uniontown, Reading and East Stroudsburg.

At the prehearing conference, the parties discussed a Motion to Compel filed by OCA against the Company because the Company refused to comply with reasonable discovery requests. After discussion at the prehearing conference, the Company agreed to voluntarily extend the suspension period from May 3, 2015 to May 19, 2015 in order to provide all parties to conduct discovery. The parties agreed, however, the Company would be permitted to recoup through a surcharge any revenues lost at the approved rates for the period from the statutorily prescribed end of suspension (i.e., May 3, 2015) through May 19, 2015, which is the new suspension date.

On October 22, 2014, the presiding officers issued the Second Prehearing Order commemorating the discussions at the initial prehearing conference. In that order, the parties were advised the evidentiary hearings would commence on Tuesday, January 13, 2015 and end on Friday, January 16, 2015. The parties were further advised in that order that the four base rate proceedings were not consolidated with each other and should proceed separately but concurrently. However, the presiding officers held in abeyance a final decision on consolidation until after October 31, 2014 and permitted the parties an opportunity to present a comprehensive plan. In the same order, the presiding officers advised the parties that the four SMT-C Rider Services dockets would not be consolidated but would be considered along with the corresponding base rate proceedings.

On October 29, 2014, the Company filed a suspension tariff supplement extending the suspension period from May 3, 2015 to May 19, 2015.

On October 30, 2014, ALJ Buckley issued a Prehearing Order Granting the Motion to Compel Filed by the Office of Consumer Advocate, which ordered the Companies to provide the information requested in OCA’s Interrogatories Set II.

On October 31, 2014, the Companies submitted a proposal in which the Companies’ proposed written statements “will clearly demarcate the sections specifically pertaining to each Company (i.e., on a Company-by-Company basis) that is being addressed in that statement and will provide separate exhibits or schedules, as applicable, setting forth or addressing adjustments related to each such Company. The parties will endeavor to address common issues in a manner that avoids duplication and undue repetition.” In addition, the Companies proposed to submit only one main brief and one reply brief for all issues in all four base rate case dockets, and would follow a common table of contents delineating substantive areas being addressed. The other active parties authorized the Companies to indicate there was an agreement amongst the parties to use this method of proceeding forward. The presiding officers rejected this plan by Interim Order dated November 18, 2014.

On November 7, 2014, ALJ Buckley issued an Order Granting Petition to Intervene of Wal-Mart Stores East, LP and Sam’s East, Inc.

On November 18, 2014, the presiding officers issued the First Interim Order in which the requests to consolidate the four base rate proceedings into one proceeding were denied. The presiding officers indicated the four base proceedings (with the corresponding Smart Meter Charge litigated simultaneously but separately) would be litigated side-by-side and would have separate hearing records, separate witness statements, separate exhibits, and separate briefs.

On November 25, 2014, in response to allegations and testimony obtained at the public input hearings in these proceedings, the presiding officers conducted a second prehearing conference with the parties, and indicated each utility would be assigned one date in January 2015 when the applicable evidence could be presented and admitted into the record. The parties were advised the base rate evidentiary hearings, scheduled for the week of January 11, 2015, would be conducted separately for each utility in conjunction with the corresponding Smart Meter proceeding. Specifically the parties were told the separate utilities would be handled on separate days. Thereafter, on December 5, 2014, the presiding officers issued an order discussing various procedural and substantive issues. The presiding officers again requested the parties present a proposal how the parties want to present evidence at the hearings (to be conducted on January 13, 2015 through January 16, 2015) including providing the presiding officers with a witness matrix in which the parties would indicate the level of anticipated cross-examination.

On December 5, 2014, the presiding officers issued an Order which outlined for the active parties the six specific issues raised in the public input hearings. The presiding officers ordered the Companies to address these issues either within its rebuttal testimony due on December 18, 2014 or in a separate filing due by December 26, 2014. The parties will be given an opportunity to respond on or before January 7, 2015. The Companies were required to provide a witness matrix for the hearings scheduled in January 2015. Lastly, the parties were reminded the Smart Meter proceedings and the base rate proceedings were not consolidated but could be handled simultaneously as required by the Commission in the suspension order.

On December 9, 2014, the presiding officers issued a Third Interim Order reminding the parties that the eight dockets were not consolidated. Specifically, the presiding officers indicated the specific dates when each utility’s evidence would be handled, starting with West Penn on Monday, January 12, 2015; Penn Power on Tuesday, January 13, 2015; Penelec on Wednesday, January 14, 2015; and Met-Ed on Thursday, January 15, 2015. Any testimony not admitted previously due to a lack of time could be moved for admission on Friday, January 16, 2015. Accordingly, the parties were advised to ensure all written statements and exhibits are separate for each utility if the parties hope to submit the same into the hearing record in these proceedings. No written statement and/or exhibit would be admitted into the hearing record if it lists or covers factual information for more than one utility.

On December 10, 2014, the parties submitted a list of problems and concerns, witness availability, a witness matrix, and then proposed a process for how the evidentiary hearings would be conducted. In brief, the parties proposed to present testimony based on subject matter and without separating the testimony between the testimony unique to one base rate proceeding versus any other base rate proceeding. The parties made no proposal concerning the handling of the Smart Meter proceedings. The parties also provided a list of witnesses grouped by subject or issue area. The parties made no provision for how testimony would be solicited from two witnesses from the Industrial Customer Group who are not available all four days in January 2015.

On December 17, 2014, the presiding officers issued a Protective Order at the request of the Company.

On December 29, 2014, the presiding officers issued the Fourth Interim Order which clarified the dates of the evidentiary hearings and outlines the progression of witnesses during the evidentiary hearings.

The active parties engaged in settlement discussions during the discovery and evidentiary phases of this proceeding. These discussions resulted in a Partial Settlement which settled all but one issue concerning a LED lighting issue between the Company and PennFuture, which was briefed by the Company and PennFuture.

On January 15, 2015, the presiding officers conducted an evidentiary hearing with the four FirstEnergy companies and all active parties, at which time the parties presented evidentiary statements and exhibits for admission into the hearing record. All parties waived cross-examination of each other’s witnesses and the presiding officers admitted the written statements and exhibits into the hearing record. A complete list of all the written statements and exhibits is listed in the transcript of the evidentiary hearing.

On February 4, 2015, the Company submitted a Joint Petition for Partial Settlement in which it was joined by BIE, OCA, OSBA, PSU, WPPII, Walmart, EDF, CAUSE-PA, and AK Steel. The Company provided a copy of the Settlement to the formal complainants. On February 10, 2015, ALJ Dunderdale sent a letter to all the formal complainants in all four base rate proceedings in which the formal complainants were advised as to how to communicate their acceptance of or objection to the Petition for Partial Settlement. Formal complainants were advised that all responses, whether to accept or object, were to be postmarked by Thursday, February 19, 2015.

On February 23, 2015, ALJ Dunderdale issued the Fifth Interim Order which closed the hearing record.

On February 23, 2015, the presiding officers received hand-written correspondence dated February 19, 2015 from a formal complainant, Gino Joseph Manetta, indicating he objected to the Partial Settlement because the Partial Settlement had not been published. On February 26, 2015, the presiding officers received a fully-executed Signature Page dated February 22, 2015 from another formal complainant, Mary Ellen McConnell, who indicated she wanted to join the Joint Petition for Partial Settlement.

B. Public Input Hearings

The Commission received approximately eighteen (18) formal customer complaints in the four base rate matters. Accordingly, the presiding officers scheduled twelve public input hearings in seven different locations within the Company’s service territory as well as the service territories of the other three FirstEnergy-related companies. These public input hearings were scheduled in order to provide customers with an opportunity to comment and testify concerning this proceeding.

The Company was directed to provide notice to the public through advertisements in newspapers of general circulation within the service area. The testimonies provided at the various public input hearings are located at Transcript pages 72 through 549. The number of individuals appeared and testified at the public input locations are as follows:

Warren, Pennsylvania on November 5, 2014

Afternoon session: 0

Evening session: 0

New Castle, Pennsylvania on November 7, 2014

Afternoon session: 2

Evening session: 0

Erie, Pennsylvania on November 10, 2014

Afternoon session: 9

Evening session: 3

Washington, Pennsylvania on November 13, 2014

Afternoon session: 6

Uniontown, Pennsylvania on November 13, 2014

Evening session: 23

East Stroudsburg, Pennsylvania on November 17, 2014

Afternoon session: 4

Evening session: 8

Reading, Pennsylvania on November 18, 2014

Afternoon session: 0

Evening session: 4

New Castle, Pennsylvania

Marge Davis Harding testified in New Castle, Pennsylvania. West Penn Power is her electric distribution company and FirstEnergy Solutions is her electric supplier. She has been a customer of West Penn Power for sixty years and is a volunteer team leader for the American Association of Retired Persons (AARP). She testified about the struggles of senior citizens to afford an increase totaling from 11% to 18% when household budgets are carefully constructed. An increase in the electric costs will put an enormous hardship on customers, especially older customers who have a strong desire to live in their own homes within the community. Ms. Harding urges the Commission to carefully consider the rate increase and consider the impact on FirstEnergy’s customers, especially those customers on fixed incomes.

Ralph Cambro testified in New Castle, Pennsylvania and has been a customer of Penn Power for 36 years. He testified there should be some period of time, with progress in energy discoveries, when customers, such as himself, will be granted a rebate for all the higher rates they have had to pay. He pointed out that the Commission can give the utility company permission to increase its rates but no one is increasing his retirement income or assistance. He says he is at the mercy of the utilities that charge higher rates and there is nothing he can do to stop it. Mr. Cambro testified Penn Power’s customer service has always been good and calls have been timely recognized and acknowledged.

Washington, Pennsylvania

Elaine Stetor testified in Washington, Pennsylvania, and has been a customer of West Penn. She is retired now and questioned why she has been paying every month since September 2011 for a Smart Meter which she does not have. She questioned where the money collected for Smart Meters is kept, how much money is in that location and how much more money is going to be collected for Smart Meters, especially since the money is paying for something the customers do not have and do not want. She testified that West Penn should not get any more money for these Smart Meters from this point in time.

Robert Stetor testified in Washington, Pennsylvania, and has been a customer of West Penn. He is retired now and questioned what was the purpose of the Smart Meters. He testified West Penn never communicated the purpose of the Smart Meters, yet periodically West Penn sends him a notice telling him that he uses more electricity than his neighbors use. He questioned whether he will be penalized in the future for using a higher amount of electricity at certain times of the day. He testified he does not want a Smart Meter in his residence because it’s an invasion of his privacy and he wants to refuse it. He noted his monthly bills include a charge for the Smart Meter in every month from September 2011 until May 2014 when the charge disappeared from the monthly bill. He questioned what caused the change and contends he didn’t receive any communication from West Penn explaining the change. He complained that he wanted answers to his questions at the time of the public input hearing.

James Joseph Dixon, Jr. testified in Washington, Pennsylvania, and is a union, heavy-machine operator for West Penn. He is also a customer of West Penn. He testified his last monthly bill totaled $105 of which $33.31 was the West Penn Power charge and $70 was due to FirstEnergy Solutions. He testified he has a Smart Meter but the $70 going to FirstEnergy makes no sense to him. He testified he worked recently at FirstEnergy’s Bruce Mansfield Station where the profit from just one of the three units totaled $2 million per day. He testified one of the higher executives at FirstEnergy received a $28 million bonus, plus a megawatt of power costs $37 to generate but is sold for $400. He testified the Company is receiving enough profit and is just being greedy. Lastly, he testified the quality of electric service has decreased over the years since he built his home in 1993, and he has to use his gas-powered generator often.

Larry Kelley testified in Washington, Pennsylvania, and has been a customer of West Penn. Mr. Kelley retired from West Penn after 35 years as a lineman. He questioned how many Smart Meters are actually installed and, of those installed, do any of them work. He testified the first batch of Smart Meters installed by FirstEnergy didn’t work and had to be replaced with new ones. He questioned why costs were going up but FirstEnergy still closed power plants after installing scrubbers so the plants could continue to work into the future. He complained the utility hasn’t hired anybody for the line crew, substation workers, meter readers or service centers for many years and yet the current employees in those areas of work are expected to continue to provide the same service in the same area with the same quick response time. He requested the Commission provide information on the Smart Meters, and to find out if the Smart Meters are working some place and to determine exactly what they do. He testified the response time has dropped when breaks in electric service occur because of the problem of getting enough workers to come out during emergencies.

Vincent Evans testified in Washington, Pennsylvania, and has been a customer of West Penn. Mr. Evans testified the Commission is not doing its job if it only held one public input hearing in Washington County during the afternoon of a workday because a substantial portion of the customers have been deprived the opportunity to attend and testify. He also testified the economy slackened off and, therefore, the costs for the utility to provide the commodity has been going down, not up. He testified Smart Meters are being rolled out as if the installation is a foregone conclusion. He seriously questions the health and safety of using Smart Meters because of the RF emissions from Smart Meters which can cause serious health consequences. He expressed concern about the continuously emitted radiation from the Smart Meters, similar to the radiation from cell phones, which will continuously bathe his home in radiation once installed. He requested the Commission allow him to opt out of using a Smart Meter or else require the utility to install shielded meters to protect the residential occupants. He also said a more appropriate manner of notifying ratepayers and consumers about scheduled public input hearings would be through flyers included with the monthly billing statements because most people do not read a newspaper regularly.

Laura Hough testified in Washington, Pennsylvania, is a township supervisor for West Pike Run Township, Fayette County, and has been a customer of West Penn. She testified approximately one-half of the township consist of lower-middle class income households, and an increase in the electric rate would impose an undue burden on the taxpayers of her township and of Washington County. She testified Washington County is currently undergoing a county-wide property tax reassessment which will result in most property owners seeing their tax liability rise, in addition to the projected increased cost in obtaining health care insurance under the Affordable Care Act. She expressed concern that, by increasing the cost of a basic commodity such as electricity, more of the township’s residents will fall off into the poverty level and be forced to rely on food stamps more. She testified that the township does not support Smart Meters and thinks customers should have the right to reject the installation of a Smart Meter within their home. She requested to know to what extent the rate increase was related to the closure of several coal-fired power plants in this region. She complained the Company failed to indicate what is the purpose and function of the Smart Meters. She complained that notice and advertisement about the scheduling of the public input hearing was inadequate because it was printed in a newspaper with shrinking circulation, should have been scheduled outside of normal work hours, and notice should have been provided to municipal officers. She suggested using e‑mail notification to township and municipality officers using the Pennsylvania State Association of Township Supervisors (PSATS) and Pennsylvania State Association of Boroughs (PSAB).

Uniontown, Pennsylvania

Thomas J. Hall, Jr. testified in Uniontown, Pennsylvania, and has been a customer of West Penn. Mr. Hall currently is a 37-year employee of West Penn. Mr. Hall requested the Commission ask the utility to detail where the increased revenues will be used and that the Commission should insist on learning the answer directly from the Company. He complained the work force in the local area has been cut which has resulted in poor maintenance and poor service reliability with old equipment that has not been maintained. He inquired whether any portion of the revenue increase will go towards hiring new employees because the size of the current work force is insufficient to complete the regular and expected work load. He testified the Commission should insist the Company specify if any of the increased revenue will be used to make major investments in infrastructure. He testified the local area has poles in use which are the original poles installed in the 1940s and 1950s. He inquired whether the Company would be required to manage the money paid by ratepayers better than it has done in the past. He testified two power stations locally were recently shut down and then the Company sent letters telling customers they had to cut back on consumption. He complained the Company’s actions drove up the price of electricity and now the Company wants more money for providing electricity after it told its customers it does not have enough megawatts to provide for current needs. He inquired whether the utility’s CEOs and executives were going to take a pay cut because this increase will cause ratepayers who are senior citizens, retired and/or economically depressed to pay more money for electricity while the CEOs and executives sacrifice nothing. He cited to all the money spent investing in new technology at the Hatfield and Mitchell power stations but now the places are idle and will never operate again, which eliminates 2,000 megawatts of electricity off the grid.

Timothy Alan Hawkins testified in Uniontown, Pennsylvania, and has been a customer of West Penn. He is a serviceman working for West Penn. He testified every aspect of the company has been ignored from the power stations, to infrastructure, to poles, to lines, and company vehicles – no maintenance is done. The current number of linesmen is approximately one-half of the number employed previously. Previously there were 39 mechanics but now only 17 mechanics remain to handle all of the equipment currently in use from pulling machines, to bucket trucks and to pickup trucks. He testified there are air switches in place that have been out of service and requiring repair for months. There are cross-arms that have been split for two years, requiring replacement. He complained about how FirstEnergy spends millions of dollars on naming rights for Cleveland’s stadium out in Ohio and wondered how much money does FirstEnergy take from Pennsylvania consumers and ship to Ohio, because he does not see any money being used locally. He testified about street light bulbs that require replacement but the company sends out workers to replace the whole head instead which will get reported as a capital cost. He’s been told, when replacing an arrestor on a pole, to change out the cut-out as well because it improves the capital cost budget line. He also testified a large number of people in the area maintain generators due to poor reliability.

Robert Yatsko testified in Uniontown, Pennsylvania, and has been a customer of West Penn. He is a township supervisor in Fayette County, Pennsylvania. He testified that a few years previous customers were forced to pay a surcharge to pay for upgrading the Hatfield Power Plant with the assurance the money collected through the surcharge would be returned eventually. However, he said the Company closed the power plant and laid off the employees. He also testified that correspondence from FirstEnergy indicating the CEO (Tony Alexander) received $18.3 million in compensation in 2011 and $23.3 million in compensation in 2012. The same FirstEnergy correspondence also indicated a total of $40 million in compensation was paid out by the Company to the top five officers at FirstEnergy. He complained the compensation should have been less with more money going back into the Company especially since there were senior citizens trying to pay their electric bills. He also complained three local areas (Middletown, Easterville and Walthersburg) lose electric service four to five times each week. He noted the local fire department has to baby-sit West Penn’s electric lines for hours when they are brought down by a tree or accident because it takes the Company that long to send out a crew to fix the electric line. He also noted the township pays $31 per street light per month but when a street light burns out, it will take West Penn two to three months to fix it. Meanwhile, West Penn charges the township $31 each month for the burned out street light.

Edward D. Yanik, Sr. testified in Uniontown, Pennsylvania, and he testified on behalf of senior citizens in Fayette County who cannot afford to pay taxes, food, utilities, etc. while on a limited budget. He complained the government is supposed to be for the people but now the government is against people. He testified he has been a coal miner for 22 years but FirstEnergy is shutting down local power plants and coal mines. Citizens are now out of work and unable to find new jobs. He complained the street light beside his home has been burned out for two months but West Penn does not come out to fix the lights, even though West Penn now wants this increase.

David Corob testified in Uniontown, Pennsylvania, and he used to work for Allegheny Power and for the Company for 37 years at the Hatfield Power Station. The Company installed scrubbers at the power plant which cost between $700 and $800 million for which the ratepayers started paying. When he built his home in 1988, his employer, West Penn, told him to build a total-electric home and he’d receive credits on his heat pump. After he did that, he got a letter from West Penn telling him that he used too much electricity. He testified he didn’t understand what the Company’s plan was but he found the behavior of the Company to be predatory. He testified he is now disabled and retired. West Penn has told them they wasted the money the Company spent on the power plant before they closed it but West Penn still thinks it deserves a rate increase.

Earl Gillen testified in Uniontown, Pennsylvania, and has been a customer of West Penn. Mr. Gillen is a retired West Penn lineman. He testified when he worked as a lineman, there were 175 linemen but now there are only 8 or 9 linemen. He testified when FirstEnergy took over Allegheny Power, he was told he would get a special electric rate between 3:00 p.m. and 8:00 p.m. He signed up for the special rate, West Penn called every day and changed the end time to 7:00 p.m. In July 2012, he signed up for a two-year deal which West Penn now tells him is not over until December 2014. He testified his home is located at the end of the service line and lightening blew off the arrestor. He testified it took West Penn almost a year for him to get a new arrestor plate and the only reason he got it when he did was because he knew the lineman personally. He complained FirstEnergy has ripped the people off but when he tried to call them, he is put on hold. He complained the FirstEnergy CEO receives $27 million and now wants $37 million but he should be forced to come down and live like a working person.

Susan Salada testified in Uniontown, Pennsylvania, and has been a customer of West Penn. She is a home health and hospice worker whose husband is a retired state employee and veteran. She complained the rate hike is phenomenal. Their house is a 1340 square foot home that is all-electric using a heat pump because the utility told them they would save money in the long run. Their budget bill amount at the start of 2014 was $225 but now they must pay $275 per month but her income hasn’t gone up, the service hasn’t improved and they do not have any smart technology. She complained the seniors are selling their homes and leaving because they cannot afford food, and they will not be able to afford this rate hike. She testified that if the utility is going to raise the rates and expect the working class to pay for it, then the utility better give them better jobs.

Dale Salada testified in Uniontown, Pennsylvania, and agreed with his wife’s testimony. He added the budget monthly amount two years ago was only $160 but now it’s up to $280. He noted there were two perfectly good coal-fired power plants nearby, one of which FirstEnergy spent nearly $700 million to fix and then closed one year later. He thinks the Company should be forced to use technology that is perfectly functional and available until they can transition to different technology.

Thomas Ronald Thompson testified in Uniontown, Pennsylvania, and has been a customer of West Penn. He is retired. He testified he has been paying for a Smart Meter for two years but he does not have a Smart Meter yet. He noted the charge for the Smart Meter used to be on the bill until June 2013 when the charge disappeared from the monthly bill. When he called the utility he was told the charge was blended into one of the other bills where he wouldn’t be able to see what was included. He questioned what gave the utility or Harrisburg the moral or ethical right to charge customers for something that hasn’t been installed yet. He testified the Company came out to his house for two days and installed a new standard meter. No reason was given for why he got a new meter except that the utility couldn’t read it.

Diana Ryan testified in Uniontown, Pennsylvania, and has been a customer of West Penn. She is retired but works part-time in order to pay her bills. She is on Social Security and can show from her bills over the last ten years that the cost of her electric service has gone up. She testified the United States is getting to look as bad as the country she visited on a recent mission trip – with a large division between the rich and the poor. She testified this increase is an example of how the rich at the utility company are getting richer while she and others on Social Security have to struggle to pay for utilities and food.

Joe Petrucci testified in Uniontown, Pennsylvania, and has been a customer of West Penn. He has been a township supervisor in Menallen Township, Fayette County, Pennsylvania for 24 years. He testified on behalf of the 2,200 households in Menallen Township, where approximately forty percent (40%) of the households are occupied by senior citizens on fixed incomes. Many of those citizens must live on Social Security income alone. The average Social Security check in Menallen Township is approximately $900 per month while the typical electric bill is approximately $90 per month. If West Penn’s base rate increase is approved, the average citizen will have to pay $8.10 more per month for electric service but the Social Security increase this year is only $16.20 per month. He testified that, if approved, one-half of the income increase for his constituents will have to go to West Penn for the monthly increase in bills. He testified the Commission is made up of mostly lawyers and people of affluence but he hopes the Commission will put this increase into perspective when considering the base rate increase.

Ken Masella testified in Uniontown, Pennsylvania, and has been a customer of West Penn. He is retired and questions whether West Penn really needs an increase. He cited an article from the *Tribune Review* newspaper in August 2014 which indicated West Penn had to pay a fine for failing to reduce electricity usage. He cited to his monthly bills which shows a higher kilowatt usage than is actually consumed and that he has to pay appreciably more for the periods of time compared with what he really would be paying if West Penn only used the total number of kilowatt hours. He testified that if all the customers are paying for more electric service than they consumed, then West Penn does not need a rate increase.

Steve Visocky testified in Uniontown, Pennsylvania, and has been a customer of West Penn. He is retired from the Pennsylvania State Correctional Department. His residence is an all-electric home and he receives calls from West Penn almost every month telling him his usage is the highest in his neighborhood. He testified the other people who live near him use other sources of heat and do not use electricity to heat their homes. He testified he installed a new high-efficiency heat pump and keeps his thermostat set at 68 degrees in the winter. His monthly bills in the summertime are lower, when they use their air conditioning but only on an occasional basis, but in the winter he pays at least $500 each month for electric service. He testified the electric lines along Kelly Road are in poor condition and the neighborhood loses power in the wintertime for a day or more. As a senior, he finds it hard to pay for his utility service plus food plus the medical care his wife needs at home. He testified there should be a break given to seniors on limited income.

Bill Hughes testified in Uniontown, Pennsylvania, and has been a customer of West Penn. He works as a civil engineer for Pennsylvania’s Department of Transportation. He testified he agreed with the comments made prior to his testimony and wanted to add to the points they made. He testified that, prior to FirstEnergy shutting down the power plants, a feasibility study concluded the grid could handle the shut downs and there was enough power on the grid to meet needs. However, he complained that, less than one year later, the Commission was contemplating a rate increase because there was not enough power on the grid. He questioned whether someone made a mistake in the feasibility study or what happened that caused this switch from having enough power on the grid to not having enough power on the grid. He complained the Commission should never have deregulated the electric industry because the suppliers are all in collusion to keep the cost of supplying electricity too high. He testified electric service should be run by the government instead of for-profit companies. He also testified this country became great because of the hard-working people like the ones attending the public input hearing who know how to work hard, and the country was not built by CEOs who make $27 million.

Andrew Sinclair testified in Uniontown, Pennsylvania, and has been a customer of West Penn. He is employed by West Penn as a technician currently and previously worked at both the Mitchell and Hatfield power stations. He testified the problem, when West Penn wanted to impose a surcharge after the polar vortex in 2014, could have been avoided if those power stations had not been shut down. Because the utility had to buy electricity outside the jurisdiction, it cost too much. He testified, since FirstEnergy bought West Penn, the lines have been ignored. He testified if the power goes out at 11:00 p.m., West Penn will not respond until 8 hours later in the morning. He testified the Commission lets the utility get away with closing power stations and then shopping for electricity during the winter when it’s more expensive. He testified West Penn is a horrible company that is raping Pennsylvania, and it’s not right that West Penn is begging the Commission for more money while it pays its CEO an extravagant rate.

Marygrace Butela testified in Uniontown, Pennsylvania, and has been a customer of West Penn. She is the elected local real estate tax collector for Dunbar Township, Fayette County, Pennsylvania. She testified she has been a customer since 1978 and West Penn has always provided her with safe and reliable service. She testified she has had people visit her in her office, most of whom were elderly, who spoke about dishonest suppliers with fluctuating rates. She saw one elderly gentleman’s bills which went from $150 per month to $2,000 in one month. She testified it’s unfortunate FirstEnergy closed two coal-fired generation plants which needed to conform to new environmental regulations but Pennsylvania’s representatives and governor should have done more to help these plants to become compliant through low-cost loans and grants. If the state government had done more to help, these electric plants would still be in operation and local people would still have their jobs. She testified FirstEnergy’s CEO made $23.3 million in compensation in 2012 and more than $40 million was paid to FirstEnergy’s five top officials. She testified that because of the compensation amounts and how West Penn workers are treated, the Commission should deny the rate increase.

Crystal Thornton testified in Uniontown, Pennsylvania, and has been a customer of West Penn. She testified she is an engineer and she wants everyone to complain to the legislators about Smart Meters because Smart Meters are going to put meter readers out of a job by 2019. She testified she does not know where the money is going. Her grandmother will have to move out of her home where she has lived for 52 years because she cannot pay her bills which FirstEnergy wants to increase. She testified people at the public input hearing laugh when senior citizens testify they do not know how they will pay for their home but it’s no laughing matter. Every day she spends time thinking and wondering how she will help her grandmother to stay in her own home while FirstEnergy refuses to sign the new union contract.

Cherri Smith testified in Uniontown, Pennsylvania, and has been a customer of West Penn. She is a postal worker and she questions whether FirstEnergy’s decision-making capability is under consideration because they closed two electric plants. She testified the local power plants were operating at 90% power last winter but if one of them had stopped working, there was no back-up plant available. She testified it does not make sense to her that FirstEnergy would be penalized for not reducing customer usage but questioned how revenue will be increased if usage is reduced.

Robert Yanik testified in Uniontown, Pennsylvania, and is a retired coal miner. He testified there is a discrepancy between what his electric meter records as his usage and what usage the utility company charges him. He started taking a picture of his meter each time because he noticed he was charged for more usage than he actually used. His average monthly bill is usually between $85 and $94 but in July 2014 his bill was $213. When he inquired with the utility company, the utility company told him the higher bill was a “makeup” bill but didn’t explain what that term meant. He does not understand why his bills go up and why the utility cannot explain it.

Keith Melville testified in Uniontown, Pennsylvania, and has been a customer of West Penn. He is a substation electrician for West Penn for 32 years and has seen customer service drop dramatically. At one time, there were over 1,000 employees on the physical work force side but now there are less than 690. He testified that, while previously five or six employees did the work, now the work has to be completed by only one or two employees. He testified maintenance has been slashed and operations are run on a shoestring. The current examination levels are cursory examinations depending on the operations on a piece of equipment. There are currently breakers in operation which are one year past replacement and current equipment is being used on tighter and tighter margins. As a result the equipment is becoming more unreliable. He also testified the regulated side of the business is being squeezed in order to prop up the generation side of the business but the profits made in the generation side aren’t used to upgrade the equipment. Money is taken from the ratepayers on the distribution side and pumped into the generation side while costs on the distribution side are kept as low as possible. As a result, he testified that West Penn is getting a better rate of return than approved by the Commission and providing it to the generating side of FirstEnergy’s business.

David Campbell testified in Uniontown, Pennsylvania, and has been a customer of West Penn. He is a construction worker and he questioned whether the FirstEnergy staff and lawyers present at the public input hearing are going to do anything about the complaints aired at the public input hearing. He testified as a construction worker he spends a lot of overtime hours working to repair power plants inside and outside the territory and state but they will always need constant work because the companies will not spend the money needed to make lasting repairs. He testified the senior citizens and workers are the ones who have to pay for these increases and they cannot afford the increases. His 83-year-old neighbor receives only $500 each month and uses a coal furnace to heat her home. She cannot afford to pay an additional $8 to $13 more each month. He also questioned why no one explains what a “surcharge” is meant to pay when it appears on the bills because it looks like the company is hiding costs in the “surcharge”.

Dennis Hull testified in Uniontown, Pennsylvania, and he works for the Fayette County Sheriff’s Department. He testified FirstEnergy closed two power plants, laid off many people and now wants to raise the base rate. He questioned what happened with all the money saved when the plants were shut down or were the shut downs an attempt to break the union. He agreed the Smart Meter was smart because it was taking his money from him but he wasn’t getting more for his money. He testified he has been paying for a Smart Meter for three years but he does not have one and the utility only says it is coming soon. He inquired where all the money taken from him for a Smart Meter went because he does not have a Smart Meter.

Roy Nelson testified in Uniontown, Pennsylvania, and has been a customer of West Penn. He is an employee of West Penn and he testified a lot more than two power plants were shut down. He testified a total of seven power plants were shut down by FirstEnergy since it took over Allegheny Power. With all that power coming from those power plants, the cost of electricity on the grid was kept low due to the greater supply but now FirstEnergy gets more money from using fewer power plants because the supply is low. He opposes the rate increase because it’s not right for FirstEnergy to make customers pay so that FirstEnergy can make even more profit.

C. Description of the Company

As noted by the parties in the Partial Settlement, West Penn is a “public utility” and “electric distribution company” (EDC) as those terms are defined in Sections 102 and 2202 of the Public Utility Code, 66 Pa.C.S.A. § 102 and § 2803. As such, West Penn provides electric distribution, sales, transportation, and/or supplier of last resort services to retail customers in portions of twenty-four counties in Pennsylvania: Adams, Allegheny, Armstrong, Bedford, Blair, Butler, Cameron, Centre, Clarion, Clinton, Elk, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lycoming, McKean, Potter, Somerset, Washington and Westmoreland.

D. Rate Requests

West Penn’s increase request, as filed, initially proposed increased rates designed to produce an increase to its annual distribution revenue totaling $115.5 million (or 8.4%) of total electric operating revenue. The impact of the initial request and the Partial Settlement are described below for each of the three major rate classes:

1. Residential Class

Under the Settlement Rates, the monthly residential distribution customer charge will increase $0.81 (or 16.2%), from $5.00 to $5.81. This increase in the distribution customer charge is in lieu of the Company’s proposed monthly distribution customer charge of $7.35, which represents a $2.35 increase (or 47.0%). In addition, under the Settlement Rates, the bill for a typical residential customer that uses 1,000 kWh per month will increase by $12.15 per month, from $92.47 to $104.621 (or 13.1%), including default service generation, taxes and other rider surcharges. In comparison, in the Company’s proposed filing, the bill for a typical residential customer that uses 1,000 kWh per month would have increased by $13.62 per month, from $92.47 to $106.092 (or 14.7%), including default service generation, taxes, and other rider surcharges.

2. Commercial Class

Under the Settlement Rates, the monthly distribution customer charge for a Schedule 30 customer will increase $17.42 from $0 to $17.42 (there is no customer charge under current rates). This increase in the distribution customer charge is in lieu of the Company’s proposed monthly distribution customer charge of $17.79, which represents a $17.79 increase. In addition, under the Settlement Rates, the bill for a typical Schedule 30 customer with monthly billing demand of 40 kW and 250 hours use of demand will increase by $26.29 per month, from $754.47 to $780.76 (or 3.5%), including default service generation, taxes and other rider surcharges. In comparison, in the Company’s proposed filing, the bill for a typical Schedule 30 customer with monthly billing demand of 40 kW and 250 hours use of demand would have increased by $30.26 per month, from $754.47 to $784.73 (or 4.0%), including default service generation, taxes, and other rider surcharges.

3. Industrial Class

Under the Settlement Rates, the monthly distribution customer charge for a Schedule 46 customer will increase $4.04 from $0 to $4.04 (there is no customer charge under current rates). This increase in the distribution customer charge is the same as the monthly distribution customer charge in the Company’s proposed filing. In addition, under the Settlement Rates, the bill for a typical Schedule 46 customer with monthly billing demand of 20 MW and 474 hours use of demand will increase by $5,538.53 per month, from $370,737.95 to $376,276.48 (or 1.5%), including default service generation, taxes and other rider surcharges. In comparison, in the Company’s proposed filing, the bill for a typical Schedule 46 customer with monthly billing demand of 20 MW and 474 hours use of demand would have increased by $13,618.41 per month, from $370,737.95 to $384,356.36 (or 3.7%), including default service generation, taxes, and other rider surcharges.

II. TERMS AND CONDITIONS OF SETTLEMENT

The Joint Petitioners agreed to a settlement covering all but one issue in the proceeding. The issue reserved for litigation concerns Penn Future’s challenge to West Penn’s Light Emitting Diode (LED) Street Lighting Service. Joint Petitioners agreed to a base rate increase, to an allocation of that revenue increase to the rate classes and to rate design for the rate classes to recover the portion of the rate increase allocated to such classes. The Joint Petitioners are in full agreement the Settlement is in the best interests of West Penn and its customers.

The terms and conditions of the Settlement are set forth fully in Section II Terms and Conditions to the Partial Settlement filed with the Secretary’s Bureau on February 4, 2015, incorporated herein by reference, beginning at numbered paragraph 11 through and including numbered paragraph 19.

A. Terms of the Settlement

The Partial Settlement consists of the 21-page Joint Petition containing the terms and conditions of the Partial Settlement. In addition, there are six (6) exhibits attached to the Settlement. Exhibits 1 and 1A to the Partial Settlement set out, respectively, the new Tariff Electric Pa. P.U.C. No. 40 and the new Tariff Electric Pa. P.U.C. No 38 governing the interchange of electric energy with PSU. Exhibit 2 to the Partial Settlement sets out the Summary of Distribution of Revenue for all rate classes. Exhibit 3 to the Partial Settlement is the Revenue Allocations. Exhibit 4 to the Partial Settlement is the Revenue Effects of the Proposed Rates. Exhibit 5 to the Partial Settlement is the Default Service Support Charge Rider/Hourly Pricing Rider. Exhibit 6 to the Partial Settlement is the Cost Baseline for Savings of Smart Meter Deployment. In addition there are ten Statements in Support, marked as Statement A through Statement J, submitted by West Penn, OCA, OSBA, BIE, WPPII, PSU, CAUSE-PA, EDF, Walmart and AK Steel, respectively.

B. Legal/Policy Standards for Settlement Approval

The policy of the Commission is to encourage settlements and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code §§5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that would otherwise have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Warner v. GTE North, Inc., Docket No. C-00902815, (Commission Opinion and Order entered April 1, 1996); Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991); Pa. Pub. Util. Comm’n v. York Water Co., Docket No. R-00049165, (Commission Opinion and Order entered October 4, 2004). For the following reasons, we find that the proposed settlement embodied in the Settlement Petition is in the public interest and, with the minor clarifications set forth herein, recommend that it be approved without modification.

The essential terms of the Partial Settlement are contained in paragraph no. 11 which provides, as quoted below:

11. The Settlement consists of the following terms and conditions:

A. Revenue Requirements

1. The rates set forth in Exhibits 1 and 1A have been designed to produce an increase in distribution base rate operating revenues of $59.9 million for the twelve months ending April 30, 2016, to become effective no later than May 19, 2015, as shown in the proof of revenues provided as Exhibit 2. As agreed upon in exchange for an extension of the statutory suspension period, the Company will recoup, through a surcharge, revenues lost at the final approved rates from May 3, 2015 (the end of the statutory suspension period) through May 19, 2015 (the date the Settlement Rates must become effective).[[1]](#footnote-1) The Company will implement such a surcharge at the same time it begins to charge the Settlement Rates. The surcharge will be calculated separately for residential, commercial, and industrial customer classes, with the residential and commercial classes determined consistently with the definition of those classes set forth in the Company’s Price to Compare Default Service Rider, while the industrial class shall be determined consistently with the first paragraph of the Availability section of the Company’s Hourly Pricing Default Service Rider. The surcharge will be stated on a per-kWh basis for the residential and commercial classes and on a per kW basis for the industrial class. The surcharge will remain in effect, for each class, until the lost revenue, determined for such class, is collected over a period not to exceed three months from the date the surcharge is initiated.
2. The Company’s total revenue requirement includes $44.176 million associated with smart meter deployment. Once the aggregate investment and expense revenue requirements exceeds $44.176 million, the Company may begin deferring costs that are eligible for recovery under its SMT-C Rider (Rider G). When the $44.176 million threshold revenue requirement is exceeded and the Company begins deferring costs in excess of that amount, the Company will file a smart meter rate under Rider G to recover all investment and expense revenue requirements in excess of the $44.176 million included in base distribution rates.
3. The Company’s unamortized investment associated with legacy meters will be amortized over a five-year period, beginning on the date the Settlement Rates become effective.
4. The Company’s claim for deferred storm damage expenses shall be amortized over a five-year period, beginning on the date the Settlement Rates become effective.
5. A Storm Reserve Account will be established and maintained on the Company’s balance sheet beginning on the date the Settlement Rates become effective. The Company’s total revenue requirement includes $9 million to be recovered for purposes of funding this reserve, which represents a five-year average of historical expenses related to storm damage excluding expenses related to damage from extraordinary storm events, which the Company received Commission approval to defer. Expenses related to storm damage, excluding those expenses related to damage from extraordinary storm events, will be recorded in the Storm Reserve Account in order to eliminate any impact of such expenses on the Company’s income statement. Expenses related to damage from extraordinary storm events will be accounted for separately in accordance with the current practice of petitioning the Commission for approval to defer such expenses. Both revenues received and costs incurred by the Company in support of other regulated utilities, including other jurisdictional and non-jurisdictional affiliated companies, for assisting during storm events will be reflected in the reserve account.
6. On or before August 1, 2015, the Company will provide to the statutory advocates an update to West Penn Exhibit RAD-47, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ended March 31, 2015. On or before July 1, 2016, the Company will provide to the statutory advocates an update to West Penn Exhibit RAD-46, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ended April 30, 2016. In West Penn’s next base rate proceeding, the Company will prepare a comparison of its actual expenses and rate base additions for the twelve months ended April 30, 2016 to its projections in this case. However, it is recognized by the Joint Petitioners that this is a black box settlement that is a compromise of Joint Petitioners’ positions on various issues.
7. The purposes:
8. Calculating a distribution system improvement charge (“DSIC”) if a DSIC is hereafter proposed by the Company and approved by the Commission; and
9. Calculating the incremental revenue requirement associated with smart meter deployment that exceeds the smart meter revenue requirement being recovered in the Settlement Rates as described in paragraph 11(A)(2) of this Joint Petition and therefore eligible for recovery through the Company’s SMT-C Rider.

B. Revenue Allocation and Rate Design

1. The revenue allocation to each tariff and rate schedule reflected in the Settlement Rates is set forth in Exhibit 3 to this Joint Petition. Rate design for each tariff and rate schedule comprising the Settlement Rates is explained in Exhibit 4 to this Joint Petition. The allocations and rates set forth in Exhibits 3 and 4 and incorporated in the Settlement Rates reflect the Joint Petitioners’ agreement with regard to rate structure, rate design and distribution of the increase in revenues in this case.

C. Uncollectible Accounts Expense and Universal Service

1. Default service-related uncollectible accounts expense, including applicable gross receipts tax of 5.9%, of $7.351 million has been excluded from the Settlement Rates and will be recovered, beginning on the date the Settlement Rates become effective, through the Company’s Default Service Support Rider for the residential and commercial classes, and through the Hourly Pricing Default Service Rider for industrial class customers. The amounts of uncollectible accounts expense shall be those set forth in West Penn Exhibits LWG-1 and LWG-2, copies of which are appended hereto as Exhibit 5.
2. A Universal Service Charge (“USC”) Rider will be established for purposes of recovering costs associated with the Company’s Universal Service Plans as approved by the Commission, including but not limited to the following programs: (a) the Customer Assistance Referral and Evaluation Services (“CARES”); (b) the Customer Assistance Program (“CAP”); (c) Dollar Energy Fund; (d) Gatekeeper; and WARM (the Company’s Low Income Usage Reduction Program (“LIURP”)). Beginning on the effective date of the Settlement Rates, the charge imposed under the USC Rider will be 0.406 cents per kWh to recover $27.8 million in Universal Service costs, subject to subsequent reconciliation of actual costs and revenues as of the end of the applicable reconciliation period.
3. In the event that the average annual CAP participation in the preceding reconciliation year exceeded 22,500, actual costs recovered through West Penn’s USC Rider shall reflect CAP Credits and actual Pre-Program Arrearage Forgiveness Credits for all customers up to the 22,500 participation level. The Company shall offset the average annual CAP Credits and Pre-Program Arrearage Forgiveness Credits by 13.5% per participant for the preceding reconciliation year for any and all CAP customers exceeding the 22,500 participation level.
4. The Company will designate $350,000 in LIURP dollars to be collected through the USC Rider to its WARM program. These funds will supplement the Company’s 2015-2018 Universal Service and Energy Conservation Plan (“USECP”) WARM budget as tentatively approved by the Commission on December 18, 2014 at Docket No. M-2014-2407728. The purpose of this additional funding is to conduct a pilot to enable the Company to provide whole-house WARM program energy efficiency and conservation measures and repair or replacement of non-functioning fossil fuel heating systems, including electrical service upgrades, ducts, flue, and chimney repairs if needed. Under this pilot, the Company will serve up to fifty homes by April 30, 2017. Any funds not expended by April 30, 2017 will be carried over to supplement the 2018 LIURP. In the event that the West Penn 2015-2018 USECP WARM budget is not approved by the Commission, the Company nevertheless commits to designate $350,000 to be recovered through the USC Rider as a supplement to the approved budget for the purposes of conducting the pilot.

D. Customer Service and Operations

1. Regarding call answering times, the Company agrees to achieve and maintain an annual call answer rate of at least 80% of calls answered within thirty seconds beginning with the twelve-month period ended December 31, 2016.
2. Regarding the number of residential disputes that did not receive a response within thirty days, the Company agrees to reduce this number to no more than sixty beginning with the twelve-month period ended December 31, 2016.
3. The Company agrees to take necessary actions to: (i) consistently meet the twelve-month performance standards established by the Commission for SAIFI, SAIDI and CAIDI by the end of the first reporting quarter of 2016 (i.e., March 31, 2016); (ii) consistently meet the three-year performance standards established by the Commission for SAIFI, SAIDI, and CAIDI by the end of the calendar year 2017; and (iii) to strive towards the achievement of reliability performance that is at or better than the performance benchmarks established by the Commission.[[2]](#footnote-2)
4. In each calendar year until the Company files its next base rate case where the performance standards are not met by the Company, the Company agrees to provide a report to the statutory advocates discussing the reasons for the performance failure and outlining corrective actions the Company will take to achieve the missed performance standard. The Company agrees to convene a collaborative to discuss the corrective actions and receive additional input if such a collaborative is requested by the statutory advocates.
5. The Company shall ensure that its policies and procedures are designed to ensure that it will read meters at least every other month in compliance with Chapter 56 of the Commission’s regulations.
6. The Company shall document the specific basis for failure to issue a bill based on an actual meter reading every other month pursuant to Chapter 56 if such occurs. The documentation shall categorize the reasons for not reading the meters at least every other month and provide total numbers of failed readings by category. The Company shall provide this documentation through an annual report to be submitted to the statutory advocates on or before March 31 of each year until the Company files its next base rate case.
7. The Company shall revise its website and customer education materials within ninety days of the Final Order in this proceeding to explicitly inform its customers, in plain language, of the Company’s standard policy to issue bills based on actual meter readings every other month. The Company’s website shall also explain, in plain language, that customers may provide actual readings in months when the Company would provide an estimated bill and the procedure for self-readings.
8. The Company shall provide its recently modified estimated billing algorithm to the statutory advocates and furnish Company personnel to answer questions about the operation of the algorithm. The Company shall also audit the accuracy and performance of the new algorithm and provide a report of its accuracy, and any modifications if necessary, within ninety days of the conclusion of the first full year of utilizing the modified algorithm.

E. Smart Meters and Energy Efficiency

1. For purposes of measuring savings achieved from the Company’s deployment of smart meters, a cost baseline will be set as of April 30, 2016 from which savings will be measured for the following categories: (1) meter reading; (2) meter services; (3) back-office; (4) contact center; (5) theft of service; (6) revenue enhancements; (7) distribution operations; and (8) load research. Savings in an additional category, avoided capital costs, will be measured using March 31, 2014 as the baseline from which to calculate savings. The cost savings baselines shall be those set forth in West Penn Exhibit LWG-3. A copy of West Penn Exhibit LWG-3 is appended to the Joint Petition as Exhibit 6.
2. The Company will add the following reporting metrics to its Annual Progress Report under its Smart Meter Technology Procurement and Installation Plan filed at Docket No. M-2013-2341991:

* Home area network (“HAN”) devices: Number of utility AMI meters with consumer devices registered to operate with the HAN chip.
* AMI meter installs: Number of smart meters installed, number of smart meters that have been installed and registered.
* Customer complaints: Number of formal and informal PUC complaints related to AMI meter deployment, broken down by type of complaint and resolution. AMI meter deployment includes installation, functioning or accuracy of the AMI meter, and HAN device registration.
* Reduction in greenhouse gas (“GHG”) emissions: reduction associated with reduced truck rolls associated with meter readings and increased efficiencies. This reporting will commence once the realization of this benefit has been determined and reflected in the smart meter baseline savings as of April 30, 2016.
* Voltage and VAR controls: Number and percentage of distribution lines using sensing from an AMI meter as part of utility’s voltage regulation scheme.

1. The Company agrees to host an informational meeting with representatives of EDF and any interested statutory parties in Akron, Ohio, with respect to the Company’s smart meter and smart grid deployment efforts, including discussion of customer data access, Volt/VAR best practices, and measuring GHG emission reductions.
2. Multi-Family Low-Income Energy Efficiency Pilot: West Penn will increase efforts within its service territory to provide energy efficiency services to multi-family buildings which house low-income households. To accomplish this, West Penn commits to:

* Reach out to the Pennsylvania Housing Finance Agency with the intent to develop a partnership in order to reach and serve multifamily buildings housing eligible occupants;
* Continue coordination efforts with the U.S. Department of Energy (“DOE”) Weatherization program providers who are serving residential low-income consumers and work with the Pennsylvania Department of Community and Economic Development to coordinate WARM, Act 129 and DOE funded energy efficiency efforts within affordable multifamily housing within West Penn’s service territory.
* Coordinate and leverage resources with its Act 129 programs to provide energy efficiency services to multi-family buildings which house low-income households. To the extent that the Commission directs that electric distribution companies file Phase III Act 129 Plans, the Company will propose a project for implementation, as permitted by Commission requirements, for inclusion in that Plan.

F. General

1. Nothing contained herein is intended to limit the authority of the Commission, the Bureau of Consumer Services, the Bureau of Safety and Compliance, or other Bureaus of the Commission from performing their duties.
2. Nothing in these terms waives or alters any party’s right to seek an audit or investigation of any of the Company’s reliability, customer service, or estimated billing issues with the Commission, as well as evaluate the impact of the reforms recently adopted by the Company and as described by Mr. Strah in his rebuttal testimony (West Penn Statement No. 11‑R).
3. The Company agrees that should it fail to consistently meet the requirements set forth in this Settlement regarding reliability, customer service, or estimated meter reading, it shall not make a request for any return on equity premium award based on reliability or customer service performance in its next base rate proceeding.
4. The terms provided for in this Settlement do not encompass all of the changes made to Chapter 14 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1401 et seq., by Act 155 of 2014, as the Commission had not provided guidance on how to incorporate Act 155 of 2014 into tariffs at the time this Settlement was negotiated. Nothing contained herein shall preclude the Company from proposing further tariff changes at a later date based on Commission directives or guidance relating to implementing the provisions of Act 155 of 2014, or as otherwise necessary to implement the changes contained in Act 155 of 2014.

C. Other Provisions of Partial Settlement

In addition to the specific terms to which the parties have agreed in order to settle the rate proceeding, there are certain general, miscellaneous terms to which the parties also agreed. These terms are included in Paragraphs Nos. 14 through and including 19, which are quoted in full below:

14. The Commission’s approval of the Settlement shall not be construed as approval of any Joint Petitioner’s position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement. Accordingly, this Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

15. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any Joint Petitioner in this or any other proceeding, if it were fully litigated.

16. This Settlement is being presented only in the context of this proceeding in an effort to partially resolve the issues presented in this proceeding in a manner that is fair and reasonable. The Settlement is the product of compromise. This Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement.

17. This Settlement is conditioned upon the Commission’s approval of the terms and conditions contained herein without modification. In reaching this Settlement, the Joint Petitioners thoroughly considered all issues, including those related to the Company’s reliability and operations, raised in the testimony and evidence presented by the parties to this proceeding and during public input hearings. As a result of that consideration, the Joint Petitioners believe that the settlement agreement meaningfully addresses all such issues raised and therefore should be approved without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, the Settlement may be withdrawn upon written notice of the Commission and all active parties within five business days following entry of the Commission’s Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Joint Petitioner elects to withdraw the Settlement as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

18. All Joint Petitioners shall support the Settlement and make reasonable and good faith efforts to obtain approval of the Settlement of the ALJs and the Commission without modification. If the ALJs in their Recommended Decision, recommend that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions with respect to any issues resolved by the Settlement. However, to the extent any terms and conditions of the Settlement are modified, or additional matters are proposed by the ALJs in their Recommended Decision, the Joint Petitioners do not waive their rights to file Exceptions in support of the Settlement. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed. The Joint Petitioners further reserve the right to file Exceptions to the compliance filing in the event that any of the exhibits therein are inconsistent with the Joint Petition and the exhibits attached thereto.

19. This Joint Petition may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument.

In addition to the specific terms and additional settlement provisions specified by the parties in the Partial Settlement, the parties to the Partial Settlement provided the following statements plus individual Statements in Support. Paragraphs Nos. 12 and 13, as quoted in full below, provide:

12. West Penn, OCA, BIE, OSBA, WPPII, CAUSE-PA, PSU, Walmart, EDF and AK Steel have attached hereto as Statements A-J, Statements in Support setting forth the bases upon which they believe that the Settlement, including the Settlement Rates, is fair, just, reasonable, non-discriminatory, lawful and in the public interest.

13. The Joint Petitioners submit that the Settlement is in the public interest for the following additional reasons:

* The Settlement provides for an increase in annual base rate distribution revenues of $59.9 million, or approximately 4.4% (based on total electric operating revenue), in lieu of the $78.619 million, or 5.7% (based on total electric operating revenue), increase in base rate distribution revenues originally requested.
* The Settlement amicably and expeditiously resolves a number of important and potentially contentious issues. The administrative burden and costs to litigate these matters to conclusion would be significant.
* The Settlement Rates will allocate the agreed upon revenue requirement to each customer class in a manner that is reasonable in light of the rate structure/cost of service positions of all Joint Petitioners.
* The Joint Petitioners arrived at the Settlement terms after conducting extensive discovery, submitting testimony and engaging in in-depth discussions. The Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein. Thus, the Settlement is consistent with the Commission’s rules and practices encouraging negotiated settlements (*see* 52 Pa. Code §§ 5.231, 69.391, 69.401), and is supported by a substantial record.

III. DISCUSSION OF PARTIAL SETTLEMENT

It is the policy of the Commission to encourage parties to contested on-the-record proceedings to settle the dispute. *See*, 52 Pa.Code §5.231. Settlements eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion, which may include review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings not only benefit the individual parties to the proceeding, but also the Commission and all ratepayers of the respondent utility.

A. Partial Settlement of the Rate Case

The Partial Settlement submitted in this case represents a complete and full settlement of all but one issue which concerns West Penn’s Light Emitting Diode (LED) Street Lighting Service and will be discussed separately. Below are the parties’ Statements in Support, offered to support the parties’ request through the Partial Settlement that the Commission approve the Partial Settlement in its entirety and without modification.

B. West Penn’s Statement in Support

West Penn asserts the increase in customer rates and total annual operating revenues under the Settlement must be viewed in the context of the period since the Company’s last increase in base rates became effective because, if approved, the customers of West Penn will have experienced no increase in distribution base rates in over twenty years. *See* West Penn St. 1, pp. 4-5. This interval was due to a number of factors but a significant contributor to West Penn’s ability to forestall a rate case was its aggressive management of operating and maintenance (O&M) expenses and, in particular, administrative and general (A&G) expenses. West Penn St. 1, p. 23. In addition to continuous efforts to diligently control expenses on a day-to-day basis, West Penn benefited from various initiatives that allowed it to control all expenses and, in particular, A&G expenditures including:

1. **Capturing economies of scale and maximizing merger related synergies.** Various mergers FirstEnergy Corp. (FirstEnergy), West Penn’s parent, have created a single holding company structure which captures economies of scale by providing various services on a shared basis across all of FirstEnergy’s subsidiaries, uses standardized programs and business processes that adopt the best practices identified among the various operating subsidiaries and maximizes the savings achievable from the various business combinations by eliminating duplication, capturing other economies of scale and implementing best practices. West Penn St. 1, p. 12.
2. **Aggressive management of indirect labor-related costs.** Most of the Other Post-Employment Benefits (OPEBs) formerly provided to FirstEnergy Service Company employees and utility supervisory, management, and non-bargaining unit employees have been eliminated and the Company has aggressively managed employee benefit costs while maintaining a competitive compensation package in order to contain labor-related costs. *Id.* at 12-13.
3. **Focus on maintaining and enhancing reliability.[[3]](#footnote-3)** The Company aggressively pursues projects to replace aging or vulnerable infrastructure in order to enhance reliability and directly reduce maintenance expenses. Despite West Penn’s successful efforts to manage and contain O&M expenses, four principal factors were major contributors to the Company’s need to increase its distribution base rates: (1) growth in the distribution rate base; (2) depreciation expenses associated with increased investments in plant in service; (3) Increased depreciation expense related to retirement of legacy meters; and (4) deferred storm damage expense recovery.

Due in large part to the factors above, and despite its success in containing O&M expenses, West Penn’s overall rate of return at present rates is projected to be 4.78% for the fully projected future test year and the indicated return on common equity under present rates is anticipated to be 4.18% (West Penn Ex. CVF-1), which is inadequate because a return at that level is insufficient to support the substantial amounts of additional investment the Company will be required to make to maintain and enhance reliability, replace aging infrastructure, and fully implement its Smart Meter Plan while continuing to provide customers with safe, reliable and high-quality service. West Penn St. 1, p. 25.

The Joint Petition also contains six additional provisions that pertain to revenue requirement and cost recovery, which consist of the following:

(1) Smart meter revenue requirements will be recovered within the base rate instead of using the SMT-C Rider. West Penn proposed to reduce the SMT-C to zero upon the conclusion of this case (*see* West Penn St. 7, pp. 8-9 and West Penn St. 7-R, p. 4). West Penn cited to Section 2807(f) of the Public Utility Code, 66 Pa.C.S. § 2807(f), as statutory authority for an EDC to recover smart meter plan costs in base rates, as the Commission affirmed in its Opinion and Order entered August 3, 2010 in Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123950 (August 3, 2010 Order) *see* West Penn St. 7, p. 9).[[4]](#footnote-4) West Penn noted no party disagreed with this proposal and OCA previously endorsed the roll-in to base rates of smart meter revenue requirements (*see* August 3, 2010 Order, pp. 4-6). West Penn asserts the settlement reflects the recovery in base rates of revenue requirement equaling $44.176 million which is associated with the smart meter deployment and, the Company incurs revenue requirements associated with smart meter deployment that exceed $44.176 million, those incremental costs may be deferred. At that point, the Company would be entitled to file a smart meter rate under its SMT-C to recover revenue requirements in excess of the amount included in base rates.

(2) The Company will retire its legacy meters well before the end of the service lives previously used to calculate annual depreciation – and recover the cost – of such meters. Consequently, the Company proposed to recover its unrecovered investment in legacy meters by amortization over a period of five years from the date rates established in this case will become effective.

(3) The Company proposed to amortize the deferred cost of distribution-related non-capital storm expenses previously received the Commission’s approval to defer incurred in connection with a severe storm that affected its service area in February 2010. Previously, the Commission approved a plan for the Company to defer these expenses and the Partial Settlement permits the Company to amortize the expenses over five years, not over three years as originally proposed by the Company.

(4) Originally the Company proposed recover a normal level of storm damage expenses within its base rates and that a rate adjustment mechanism (i.e., a Storm Charge Rider) be established under Section 1307 of the Public Utility Code, 66 Pa.C.S.A. § 1307, to impose a charge or credit on customers’ bills to reflect the difference, on an annual basis, between the storm damage expenses recovered in the Company’s base rates and the storm damage expenses it actually incurs (West Penn St. 3, pp. 26-32). After discover and negotiation, the parties agreed to use a plan suggested by BIE’s witness, Lisa A. Boyd, who recommended establishing a storm cost reserve account funded by an appropriate allowance in base rates and trued-up through an annual reconciliation in conjunction with a rider to recover or refund differences identified in the annual reconciliation (BIE St. 5, pp. 21-26). The Company will establish a Storm Reserve Account that does not involve the creation of a rider to annually true-up the reserve account with the difference between storm costs included in base rates and actual storm costs. This Storm Reserve Account will likely reduce the risk the Company would collect either too little or too much of its actual storm damage expenses and will mitigate volatility in revenue requirement and the corresponding volatility of customer rates caused by fluctuations in storm damage expenses. The expenses related to extraordinary storm events will be subject to deferral based on the Company’s filing separate petitions to obtain Commission approval of such deferrals. The costs thus deferred will be separately identified and claimed in subsequent base rate proceedings.

(5) The parties agreed to specific updates to Company Exhibits RAD-47 and RAD-46, to be submitted to the statutory advocates by August 1, 2015 and July 1, 2016, respectively, to report actual capital expenditures, plant additions, and retirements. Plus, in the Company’s next base rate case, the Company will provide a comparison of projected to actual expenses and rate base additions for the fully projected future test year in this case. The Joint Petitioners expressly agreed these updates are for informational purposes only and do not suggest any agreement among the parties as to specific components of the revenue requirement that is being recovered in the Settlement Rates (except to the extent specifically stated in other provisions of the Joint Petition).

(6) The revenue requirement elements of the Settlement reflect a matrix of compromises and, therefore, specific ratemaking adjustments are not spelled out in the Joint Petition, subject to limited exceptions. Certain of those exceptions (e.g., smart meter revenue requirements, agreed amortizations, and the Storm Reserve Account) were explained previously. The Joint Petitioners recognized it is important to resolve the rate of return on equity that should be used by the Company in computing: (1) incremental revenue requirements associated with smart meter deployment that exceed the smart meter revenue requirements being recovered in the Settlement Rates (as previously explained, under Paragraph 11.A.2, such excess revenue requirements would be eligible for recovery under the Company’s SMT-C); and (2) a DSIC, in the event such a charge is proposed by the Company and approved by the Commission. To that end, the Joint Petitioners agreed the Company shall use the rate of return on equity as calculated for electric utilities and published in the “Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities” (TUS Quarterly Earnings Report) for the most recent period prior to the time that a DSIC or SMT-C rate is calculated[[5]](#footnote-5) because the TUS calculation is a recognized and accepted benchmark return on equity for use in calculating revenue requirement under the DSIC and other similar riders.[[6]](#footnote-6) Moreover, TUS regularly updates its calculation to reflect changes in market-determined equity costs based on a clearly stated methodology and data base.

4. **The revenue requirement provisions of the Settlement are reasonable and in the public interest.** Applying ratemaking principles and the standards employed by the Commission for assessing settlements, the revenue level set forth in the Settlement is reasonable, in the public interest and should be approved. The interval since the Company’s last base rate case and the significant increase in its plant in service since that time present a compelling case for significant rate relief, which assessment BIE and OCA confirmed when each concluded the Company is entitled to a substantial increase in operating revenues.

The Company points out the Settlement carefully balances: (1) the right of the Company and its investors “to earn a return on the value of the property which it employs for the convenience of the public” and “to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties”; with (2) the right of customers to pay rates that are commensurate with “business undertakings which are attended by corresponding risks and uncertainties” without providing the utility “profits . . . realized or anticipated in highly profitable enterprises or speculative ventures.”[[7]](#footnote-7) That balance is assured by parties which are legally obligated to protect consumers and the public interest vigorously which parties concluded the settlement rates are just and reasonable. The Company carefully considered the proposed revenue increase in light of its obligation to investors to secure a reasonable opportunity to earn a fair return, to maintain the financial stability of its business, and to obtain needed capital on reasonable terms. The careful balance of interests achieved by the Settlement avoids what could have been a significant expenditure of time, money and other resources by the parties and the Commission to individually resolve a number of issues and proposed adjustments that have now been subsumed by the inter-related compromises that led to the Settlement. Those savings are in everyone’s interest and, in themselves, are another important reason why the Settlement promotes the public interest.

5. **Revenue Allocation and Rate Design.** Although the Joint Petitioners could not agree to accept either the Company’s COS study or the alternatives proposed by other parties, they all acknowledged a COS study should be used as a guide, rates should be designed to move all classes closer to their indicated cost of service, and the Commission has long recognized the movement toward cost of service should be tempered by the concept of gradualism in order to avoid large, disruptive, one-time increases to any particular customer class. The Company used that approach to develop its proposed revenue allocation and rate design in this case (West Penn St. 4, pp. 10-12).

The allocation of the revenue increase under the Settlement Rates was subject to careful consideration and detailed negotiations among the Joint Petitioners who were able to reach agreement on the allocation among customer classes of the revenue increase under the Partial Settlement. That allocation is within the range proposed by the Joint Petitioners, provides for reasonable movement toward the system average rate of return by the various customer classes as measured by the Company’s COS study, and is consistent with the Commonwealth Court decision in Lloyd v. Pa. Pub. Util.Comm’n, 904 A.2d 1010 (Pa Cmwlth. 2006). Moreover, “there is no single cost of service study or methodology that can be used to answer all questions pertaining to costs”[[8]](#footnote-8) nor is there any “set formula for determining proper ratios among rates of different customer classes.”[[9]](#footnote-9)

The litigation positions regarding rate design differed somewhat from each other related principally to the level of customer charges and, in particular, the customer charges for the Residential class. The Joint Petitioners agreed the Residential customer charge should be $5.81 per month in lieu of a charge of $7.35 per month proposed originally by the Company.

The Company points out the Settlement provisions concerning the revenue allocation and rate design are reasonable and in the public interest.The allocation of revenue responsibility is one of the most contentious parts of a rate proceeding because it is a “zero sum” exercise among the non-utility parties – any revenue responsibility not borne by a particular rate class must be borne by one or more other rate classes. Establishing a reasonable revenue allocation requires a careful balancing of the countervailing interests of the non-utility parties representing the various customer classes. Accordingly, this aspect of a rate proceeding is particularly well suited to achieving a reasonable overall outcome based on the give-and-take of the settlement process. That give-and-take process herein resulted in a complete settlement of all contested issues involving revenue allocation and rate design among a wide array of parties representing the interests of residential, commercial and industrial customers. While settlement negotiations among parties representing a wide array of customer and stakeholder interests can, in itself, assure a reasonable outcome, the revenue allocation under the Settlement Rates also comports with well-accepted ratemaking principles, in that the Settlement Rates make appropriate progress in moving all classes closer to their cost of service consistent with the principle of gradualism.

With respect to rate design, the Partial Settlement reflects the need to recover the customer component of total cost of service in the customer charge, while recognizing that increases in the customer charges can impact low-usage customers. Accordingly, the agreement provides for an increase in the Company’s residential customer charge, but in a lesser amount than the customer charge the Company originally proposed. The residential customer charge has the agreement of parties representing residential customers (OCA) and the low-income segment of the residential class (CAUSE-PA). For all the foregoing reasons, the proposed revenue allocation and rate design are reasonable, appropriately balance the interests of all parties, and are in the public interest.

6. **Uncollectible Accounts Expense will now be recovered through the Default Service Support Rider and Hourly Pricing Default Service Rider.** Currently, West Penn recovers all uncollectible accounts expense in its distribution rates (West Penn St. 7, p. 6). However, West Penn’s most recent Default Service Program proceeding concluded with a settlement approved by the Commission’s Final Order at P-2013-2391368 entered July 24, 2014, in which West Penn proposed in its next base rate case to unbundle all uncollectible accounts expense associated with providing default service and with its purchase of receivables (POR) from electric generation suppliers (EGSs) pursuant to its Commission-approved POR program. Accordingly, West Penn proposed herein to remove default service and POR related uncollectible accounts expense from its base rates and to recover such expenses through its Default Service Support Rider and Hourly Pricing Default Service Rider. *Id.* at 6-7. No party opposed West Penn’s proposal to make this change. That amount will be recovered, beginning on the effective date of the Settlement Rates, through the Company’s Default Service Support Rider, with respect to the residential and commercial classes, and the Hourly Pricing Default Service Rider, with respect to the industrial class.

7. **Universal Service changes.** Currently, West Penn recovers Universal Service program costs through its distribution base rates while its sister companies (Met-Ed, Penelec and Penn Power) have Universal Service Charge (USC) Riders in their respective tariffs that employ a reconcilable adjustment clause to recover their Universal Service program costs. (West Penn St. 6, at 32 and 33). West Penn proposed to adopt a USC Rider modeled after the Commission-approved USC Riders in those sister companies. Approving the proposed USC Rider will extend to West Penn the same form of cost recovery that has been used successfully, with Commission approval, by its sister companies in Pennsylvania for a number of years and is consistent with Commission policy and practice authorizing the recovery of Universal Program costs through a reconcilable rider.[[10]](#footnote-10) The proposed USC Rider will provide for full and timely recovery of Universal Service program costs and, in that way, will facilitate West Penn’s effort to increase expenditures and enhance existing programs to properly assist West Penn’s low-income customers. Per-customer benefits provided under West Penn’s Universal Service programs would need to be materially expanded to match the benefit levels being provided by its sister companies and, therefore, West Penn proposed establishing the initial charge for its USC Rider sufficient to recover $27.8 million annually commencing on the effective date of the Partial Settlement. *Id.* at 33 and 36.

No party opposed West Penn’s proposal to implement a USC Rider. West Penn’s recovery will be subject to reconciliation of actual costs and revenues at the end of the applicable reconciliation period. While not opposing the establishment of West Penn’s USC Rider, OCA and CAUSE-PA made certain proposals that related to, respectively, Universal Service program costs and the development of a pilot program for whole-house energy efficiency measures. Under the Settlement, the Joint Petitioners agreed the CAP Credits and Forgiveness Credits will be offset by 15% for each new CAP participant above a baseline of 22,500 participants. This provision will apply to future changes in the USC Rider rate and has no impact on the base rates.

CAUSE-PA, through its witness, Mitchell Miller, recommended West Penn explore the expansion of its WARM program (West Penn’s Low Income Usage Reduction Program (LIURP)) in order to direct a greater level of services to multi-family buildings with low income occupants (CAUSE-PA St. 1, p. 13). Therefore, under the Settlement, the Joint Petitioners agreed the Company should designate $350,000 in LIURP funds to be recovered under the USC Rider as a supplement to the approved budget to conduct a pilot program providing whole-house energy efficiency and conservation measures and repair or replacement of non-functioning fossil fuel heating systems, including electric service upgrades, ducts, flues and chimney repairs, if needed. Additional terms of the pilot are set forth in Paragraph 11.C.4 of the Joint Petition.

These uncollectible accounts expense and Universal Service provisions of the Partial Settlement are reasonable and in the public interest because they implement clear directives from prior cases, were not opposed by any party and are prima facie in the public interest. The Universal Service provisions affirm the importance of the Company’s Universal Service programs as an efficient means of helping low-income customers deal with the cost of electric service, and the establishment of a USC Rider for West Penn will facilitate its efforts to increase expenditures and enhance existing programs that assist low-income customers. Theses interrelated provisions advance Pennsylvania’s public policy to provide reasonable assistance to low-income Pennsylvanians to help them meet their electricity costs and, therefore, are clearly in the public interest.

The costs of the bill credits and arrearage forgiveness afforded CAP participants are borne by all the Company’s residential customers and the Partial Settlement provides carefully crafted provisions for an “offset” of Universal Service costs to reflect savings in uncollectible accounts expenses and cash working capital expected to occur by reason of future increases in the number of CAP participants. Thus, the Partial Settlement promotes the public interest by providing a reasonable means of continuing the Company’s CAP program while mitigating somewhat the costs of that program that are borne by all residential customers.

The pilot program that is to be initiated pursuant to Paragraph 11.C.4 is designed to test initiatives that will assist low-income consumers through energy efficiency and conservation measures. These measures help reduce usage and, in that way, reduce the costs that low-income consumers bear. The purpose and goal of the pilot is to promote public policies to help low-income consumers meet their electricity costs and to increase the efficient use of electricity. Accordingly, these provisions also are in the public interest.

7. **Customer service and Operations.** The Company asked the Commission to recognize, through an increment to its allowed return on equity, the Company’s efforts to control O&M expenses, its overall management efficiency, its focus on customer service, its dedication to maintaining and enhancing reliability, and its support of Pennsylvania’s competitive retail energy market (West Penn St. 1, pp. 11-20, 25-26), and the Company catalogued the major initiatives undertaken to improve customer service and enhance or maintain reliability,[[11]](#footnote-11) which consisted of the following: (1) integration of three call centers; (2) enhanced communications during major storms; (3) recognition for customer service; (4) customer referral programs; (5) portable CAP benefits; (6) maintaining reliable electric service, call center performance, residential dispute responses, and reliability metrics and reporting.

**a. Integration of three call centers.** Back in 2007, after careful review and detailed planning, FirstEnergy integrated the technology and operations of the two call centers, which increased efficiencies and enabled a number of service enhancements. In 2012, FirstEnergy integrated the technology and operations of the former Allegheny Energy call center with its two other call centers, which built upon the efficiencies and service enhancements seen previously. Because FirstEnergy integrated the technology and operations of multiple call centers, West Penn is on track to achieve the goal of answering 70% of all the calls it receives within 30 seconds pursuant to a commitment made in the Partial Settlement approved by the Commission as part of the proceeding which granted approval in the FirstEnergy/Allegheny Energy merger. Additionally, West Penn’s average speed of answer has decreased from 145 seconds in 2011 to 104 seconds for the first six months of 2014.

**b. Enhanced communication during major storms.** The Company materially enhanced communication with customers, local governments, emergency service providers and first responders during major storm events by adopting and effectively using social media and internet-based access to storm and restoration-related information. For the second year in a row, FirstEnergy’s mobile-optimized website and smart phone “app” have been recognized among the top performers in a customer satisfaction survey conducted by J.D. Power. In 2013, the number of customers visiting the FirstEnergy website(s) via a smart phone or tablet tripled over the previous year, which is why FirstEnergy continues to make it easier to manage electric accounts and report power outages using mobile tools.

**c. Recognition for customer service.** As a part of the FirstEnergy family of utilities, the Company was recognized by the Edison Electric Institute’s National Key Accounts Customer Advisory Group for providing outstanding customer service in 2014 for the second time, FirstEnergy having received similar recognition in 2006. Additionally, the Company earned a score that was above its segment average in the J.D. Power 2014 Electric Utility Residential Customer Satisfaction Study.

**d. Customer referral programs.** The Company implemented a customer referral program that, since its implementation in August 2013, enrolled over 100,000 residential and small commercial customers with competitive retail suppliers.

**e. Portable CAP benefits.** The Company offered fully portable CAP benefits since generation rate caps expired, which has enabled its low income customers to access competitive retail electric markets while preserving their ability to take full advantage of the benefits available under the Company’s Universal Service programs, regardless of their shopping status.

**f. Maintaining reliable electric service.** The Company made system enhancements and implemented specific initiatives designed to enhance reliability and provide customers with high-quality, dependable service. The Company submitted extensive evidence demonstrating it had provided, and continues to provide, safe, reliable and efficient service that complies with and, in fact, exceeds in quality the requirements of applicable Commission regulations. *See* West Penn Sts. 11-R and 11-S. At the same time, the Company explained it is committed to a goal of continuous improvement and accepted the challenge of improving performance in all aspects of its service. Through the course of settlement negotiations, the Company and OCA reached agreement, with concurrence by the other Joint Petitioners, about call center performance, residential dispute responses, and reliability metrics.

8. **Meter Reading and Estimated Bills.** The Settlement contains a series of provisions dealing with meter reading and estimated bills which include; establishing procedures intended to improve how often meters are read every other month; will document the specific basis for why if meters are not read every month; will revise the Company’s website to show policy of reading meters every other month; and will provide the estimated billing algorithm in use at the time of the Settlement to the statutory advocates and furnish Company personnel to answer questions about the operation of the algorithm.

9. **The customer service and operations provisions of the Settlement are reasonable and in the public interest.** The customer service and operations provisions of the Settlement are an excellent example of the way a settlement can promote the public interest by affording parties the flexibility to design creative and innovative solutions that may not have been possible through litigation. Specifically, the Settlement provides for an inter-related series of commitments by the Company to measure its performance in a number of areas against agreed service metrics and to implement policies and procedures designed to enhance customer service and reliability.

Among these commitments are a series of provisions addressing issues surrounding the Company’s meter reading, use of estimated bills, its estimation process and customer education related to those matters. Each of these provisions has been developed in collaboration with OCA and its expert, Ms. Alexander, who has consulted in this area for many years and is a former state public utility commissioner. The Settlement sets important goals that will enhance customer service, reliability and operations in a meaningful way to the benefit of all customers and, for that reason among others, promotes the public interest.

10. **Smart Meters and Energy Efficiency.** Previously, the Commission directed West Penn to provide information on cost savings measures achieved from the deployment of smart meters and an explanation of how cost savings will be calculated in future SMT-C rate filings. *See* Docket No. M-2013-2341991. The Company requested that cost savings measures be addressed in the Company’s next base rate proceeding, instead of its August 1, 2014, annual SMT-C filing. The Company’s August 1, 2014 annual SMT-C filing was approved by the Commission’s Secretarial Letter issued on December 5, 2014, and its revised SMT-C rate became effective on January 1, 2015 (West Penn St. 7-R, p. 4).[[12]](#footnote-12) Accordingly, as part of its August 4, 2014 base rate filing, West Penn proposed a baseline for purposes of measuring savings achieved from the deployment of smart meters as well as the means for determining how cost savings resulting from smart meter deployment will be identified and flowed through to customers.

In the Suspension Order (p.5), the Commission found that the smart meter cost savings issue should be considered in West Penn’s base rate proceeding. Consistent with its request and the terms of the Suspension Order, the Company submitted cost baselines for calculating savings from smart meter deployment. No party submitted any testimony regarding the baselines proposed by the Company, and all of the Joint Petitioners are in agreement that the Company’s proposed baselines should be approved without modification.

Accordingly, Paragraph 11.E.1 of the Joint Petition sets forth that agreement and provides that, for purposes of measuring savings achieved from the Company’s deployment of smart meters, a cost baseline will be set as of April 30, 2016 from which savings will be measured for the following categories: (1) meter reading; (2) meter services; (3) back-office; (4) contact center; (5) theft of service; (6) revenue enhancements; (7) distribution operations; and (8) load research. Paragraph 11.E.1 further provides that savings in an additional category, “avoided capital costs,” will be measured using March 31, 2014 as the baseline from which to calculate savings.

With respect to matters broached by EDF, the Company agreed to host an informational meeting with representatives of EDF with respect to the Company’s smart meter and smart grid deployment efforts, including discussion of customer data access, Volt/VAR best practices and measuring GHG emission reductions. Included as part of the Settlement, the Company agreed to add the following reporting metrics to its Annual Progress Report under its Smart Meter Technology Procurement and Installation Plan filed at Docket No. M-2013-2341991:

• Home area network (HAN) devices: Number of utility AMI meters with consumer devices registered to operate with the HAN chip.

• AMI meter installs: Number of smart meters installed, number of smart meters that have been installed and registered.

• Customer complaints: Number of formal and informal PUC complaints related to AMI meter deployment, broken down by type of complaint and resolution. AMI meter deployment includes installation, functioning or accuracy of the AMI meter, and HAN device registration.

• Reduction in greenhouse gas (GHG) emissions: reduction associated with reduced truck rolls associated with meter readings and increased efficiencies. This reporting will commence once the realization of this benefit has been determined and reflected in the smart meter baseline savings as of April 30, 2016.

• Voltage and VAR controls: Number and percentage of distribution lines using sensing from an AMI meter as part of utility’s voltage regulation scheme.

1. **Multifamily Low-Income Efficiency Pilot (Joint Petition, Paragraph 11.E.4).** The Company, in conjunction with the pilot program it agreed to implement (*see* Paragraph 11.C.4), will coordinate with the state and federal agencies identified in Paragraph 11.E.4 and will also coordinate its efforts under the pilot with its Act 129 of 2008 energy efficiency and conservation programs to deliver energy efficiency services to multi-family buildings containing low-income households.
2. **The smart meter and energy efficiency provisions of the Settlement are reasonable and in the public interest.** The smart meter issues the Commission transferred to this case relate to setting reasonable baselines for calculating savings from smart meter deployment which are to be flowed through to customers in the future through the SMT-C Rider. No party took issue with them and all Joint Petitioners have expressly agreed to their adoption. Because the “baselines” involve costs that are recovered in the Company’s base rates, referring the baseline issue to this proceeding was the most efficient way to reach a reasonable conclusion and avoid the possibility of inconsistent results between this case and a separate proceeding dealing solely with the smart meter baselines. Each of those goals is consistent with, and promotes, the public interest. Also, the Company will add reporting metrics to its Annual Progress Report for its Smart Meter Technology Procurement and Installation Plan filed at Docket No. M-2013-2341991, which reporting metrics will help to assess and possibly promote energy efficiency efforts. The Company will host an information meeting with EDF and interested statutory parties on energy efficiency, conservation and related environmental issues.

These issues, which might have resulted in complicated litigation if this case were not settled, were resolved in a collaborative fashion through the settlement process. Accordingly, the Settlement efficiently and expeditiously identified a means of satisfying all parties’ interests in a way that continued litigation was unlikely to achieve. For that reason, and because of the inherent merits of the provisions agreed to, these provisions promote the public interest.

11. **The Company Summary: The Settlement is in the Public Interest.**

The Settlement is reasonable, supported by record evidence, and in the public interest for the following principal reasons:

(a) The revenue requirement provisions provide for Settlement Rates that are within the “constitutional range of reasonableness,”[[13]](#footnote-13) are consistent with the legal standards, and reflect a careful balance of the interests of customers with those of the Company and its investors. As such, the Settlement Rates protect customers from paying excessive rates while allowing the Company and its investors a reasonable opportunity to earn a fair return on their investment in property devoted to public service and to obtain additional capital needed to meet the Company’s service obligations.

(b) The rate structure and rate design provisions resolve a number of contentious issues in a manner that is acceptable to parties representing every major customer class and service classification. While the parties could not agree to a single, specific cost of service methodology, they generally agree the Settlement Rates provide for reasonable progress in moving all major customer classes closer to their cost of service consistent with the Commission-approved principle of gradualism.

(c) The Settlement facilitates the Company’s expansion of benefits available under its Universal Service Programs, will initiate an innovative pilot program for testing energy efficiency initiative for multi-family buildings containing low-income households, and resolves a contested issue pertaining to Universal Service in a manner that helps to ameliorate the impact on residential customers of the costs of the Company’s Universal Service programs.

(d) The Settlement reaches agreement with regard to objective metrics for measuring customer service and reliability performance and contains commitments for implementing policies and procedures designed to enhance customer service and reliability, including specific commitments dealing with meter reading, estimated bills, estimation procedures and customer education related to those matters.

(e) The Settlement addresses and resolves the smart meter baseline issue that the Commission referred to this proceeding, and adds reporting metrics intended to provide information that may help to better assess smart meter, energy efficiency, conservation and various environmental matters.

(f) The Settlement meaningfully addresses all issues raised, achieves the benefits discussed while also conserving the time, resources and money that would otherwise have to be expended if this case were to be fully litigated and customers are direct beneficiaries of these savings. The Settlement, therefore, should be approved without modification.

C. OCA’s Statement in Support

OCA asserts that, after reviewing the Company’s filing, OCA recommended an annual operating revenue increase of approximately $32.88 million. OCA St. No. 1 at 8. However, after engaging in discovery and discussions, OCA agreed, under the Settlement, the Company should be permitted an increase in annual operating revenues of $59.9 million. Settlement ¶ 11(A)(1). This $59.9 million increase is $18.72 million less than the amount originally requested by the Company and, on a distribution revenue only basis, the increase is 19.04%, as compared to the original request in which the Company’s requested $78.6 million increase represented a 24.99% increase in distribution revenue.

OCA points out the increase includes revenue related to distribution and smart meters, as well as a storm reserve account that will be created under the Settlement, plus amortizations of expenses for storm damages that had previously been approved for deferred accounting treatment by the Commission, as well as expenses associated with legacy meters. The Settlement provides for a five-year amortization period for both deferred storm damage expenses and legacy meter expenses, instead of a three-year amortization period originally requested by the Company. Settlement ¶¶ 11(A)(3)-(4).

OCA avers the revenue increase under the Settlement is (1) within the range of likely outcomes in the event of full litigation of the case; (2) is reasonable; (3) yields a result that is in the public interest, particularly when accompanied by other important conditions contained in the Settlement such as Tariff modifications and the customer service, estimated billing, and reliability terms; and (4) provides adequate funding to allow the Company to improve its customer service and reliability metrics and maintain the safety and adequacy of its distribution system. As such, OCA submits the agreed-upon increase agreed is in the public interest and in the interest of West Penn’s ratepayers, and should be approved by the Commission.

1. Revenue Allocation (Settlement ¶ 11 B(1); Exh. 3)

Under the Settlement, West Penn can increase base rates by amounts designed to produce a $59.9 million increase in annual operating revenues, in lieu of the increase of $78.6 million originally proposed by the Company. If approved, the residential customer class will receive an overall increase in distribution revenue of $49.89 million per year (83% of the total increase) or a 24.46% increase.[[14]](#footnote-14) A residential customer using 1000 kWh per month will see their average total bill rise by $12.15 per month, from $92.47 to $104.62 rather than the $13.62 per month increase proposed by the Company. This increase is $1.47 less per month than the increase originally proposed by the Company. On a total monthly bill basis, a customer using 1,000 kWh would see a 13.14% increase rather than the 14.73% increase proposed by the Company.

OCA views the Settlement to be within the range of reasonable outcomes that would result from the full litigation of this case and believes the Settlement allocation is consistent with moving all classes toward the system average rate of return. OCA believes the Settlement is in the public interest by balancing the need to allocate costs according to cost of service with the need to adhere to the ratemaking principle of gradualism. The Settlement allocation represents a compromise of the parties that moves all classes closer to the system average without providing any one class with an allocation that would cause rate shock. OCA avers the Settlement is reasonable, yields a result that is just and reasonable, is in the public interest, and should be approved.

2. Residential Rate Design (Settlement ¶ 11(B)(1); Exh. 4)

The Settlement provides that West Penn’s monthly residential customer charge will increase from $5.00 to $5.81, or 16%. Settlement ¶11(B)(1); Exh. 4. OCA submits that eliminating most of the customer charge increase will benefit residential customers by providing a customer charge $1.54 lower than the Company’s proposed charge and by recovering the remaining revenue through the energy charges. In this way, the energy charges can provide necessary signals to customers regarding conservation. See OCA St. No. 3 at 34.

OCA submits the agreed-upon residential rate design is reasonable and consistent with sound ratemaking principles. Combined with a $18.7 million lower revenue increase than the Company sought, these rate design changes result in rates that are significantly below the rates originally proposed by the Company and within the range of the likely outcomes in the event of full litigation of the case.

3. Storm Damage Reserve Account (Settlement ¶ 11(A)(5))

In its filing, the Company proposed to adopt a new Storm Damage Charge Rider (Storm Rider) to recover storm damage expenses. OCA opposed the creation of a Storm Rider for a number of reasons. See OCA St. No. 5 at 66-73; OCA St. No. 1R. After discovery and discussions, the parties agreed to the creation of a storm reserve account structured in the way OCA witness Smith described in his Rebuttal Testimony.

The Settlement provision addresses the concerns raised by OCA in that it maintains the checks and balances provided by Commission oversight that would have been removed with the use of the Storm Damage Charge Rider, plus this method allows the Company to account for storm expenses based on a five-year average of historical storm damage expenses, while continuing to require the Company to petition the Commission for approval for deferral accounting of extraordinary storm damage expenses. For these reasons, the creation of a storm reserve account in the Settlement is in the public interest and should be approved.

4. Universal Service And Customer Assistance Programs (Settlement ¶ 11(C)

OCA points out the Settlement addresses some of the key concerns raised by OCA regarding the Company’s proposed cost recovery mechanism for its universal service program. As currently structured, the USC Rider would double-recover uncollectible expenses and would allow for the recovery of costs that should be subject to base rate recovery rather than recovery through the Rider. OCA St. No. 4 at 4. In the alternative, OCA recommended the Company offset its CAP credits by an amount equal to a percentage of the incremental CAP credits in order to reflect the double-collection of bad debt expenses that would occur if the Company is permitted to pass 100% of the incremental CAP credits through the USC Rider. OCA St. No. 4 at 7.

To address these issues, OCA recommended that, “[f]or any and all CAP customers exceeding the 21,680 participation level on an average annual basis, the Company shall offset the actual CAP Credits by 25.0% and shall offset the actual Pre-program Arrearage Forgiveness Credits by 65.9%.” OCA St. No 4, Sched. RDC-4-WP. Accordingly, the Settlement provides that:

In the event that the average annual CAP participation in the preceding reconciliation year exceeded 22,500, actual costs recovered through West Penn’s USC Rider shall reflect CAP Credits and actual Pre-Program Arrearage Forgiveness Credits for all customers up to the 22,500 participation level. The Company shall offset the average annual CAP Credits and Pre-Program Arrearage Forgiveness Credits by 13.5% per participant for the preceding reconciliation year for any and all CAP customers exceeding the 22,500 participation level.

Settlement ¶ 11(C)(3).

OCA submits this Settlement provision adequately addresses Mr. Colton’s concerns regarding the need for offsets to avoid double-recovery of CAP Credits and arrearage forgiveness credits for purposes of this Settlement. The Settlement provisions are therefore reasonable and in the public interest.

5. TARIFF (Settlement Exh. 1)

In its filing, the Company proposed to re-write its Tariff as presented by Company witness Bortz. See West Penn St. No. 3. OCA, through witness Alexander, presented testimony on the issue of the Tariff re-write and identified four high-level concerns with the proposed re-write, as follows: 1) the Company sought to eliminate some consumer protections that were more liberal than those under Chapter 56 of the Commission’s regulations, 52 Pa. Code § 56.1, *et seq.*; 2) the proposed Tariff was not entirely clear as to whether certain language complies with Chapter 56; 3) the Company’s use of the phrase “sole discretion” throughout the proposed Tariff; and 4) the proposed Tariff did not explicitly explain the Company’s billing policies relating to estimated billing. See OCA St. No. 5 at 75-76.

As part of the settlement process, certain changes were made to West Penn’s Tariff. The Company agreed to remove certain terms and reinsert or insert other language in response to OCA’s concerns and the concerns of other parties. Accordingly, OCA submits all of the modifications to West Penn’s Tariff will aid customers in understanding the Company’s Rules and policies, while lessening potential confusion. The Tariff modifications will also allow customers to be more informed about their rights and is in the public interest.

6. Customer Service and Reliability (Settlement ¶ 11(D))

OCA pointed out there has been evidence presented about the deterioration of the Company’s reliability of service. OCA St. No. 5 at 5, 20-21. Regarding customer service, a number of metrics, based on the Commission’s Consumer Activities Report and Evaluation (UCARE), showed the Company performs at below average levels in most categories. OCA St. No. 5 at 6, 23-33, 52-60. OCA contended West Penn’s customer service performance was lacking, particularly in the areas of bi-monthly meter reading and reliance on estimated meter readings that did not always appear to be in compliance with Chapter 56. OCA St. No. 5 at 24, 28-29, 30-33. Plus, West Penn received a large number of informal customer complaints about service interruption and quality from 2009 – 2013. OCA St. No. 5 at 21. Furthermore, OCA noted the Company’s website did not explicitly state the Company’s policy to read residential meters every other month and issue an estimated bill in months in which an actual read was not taken. OCA St. No. 5 at 45-46. Lastly, the Company had a large number of cases in which an actual meter read was not obtained for three or more consecutive months, and there was a pattern of customer complaints about estimated bills and required payments. OCA St. No. 5 at 56-60.

OCA points out in its Statement in Support that the Settlement provides for a number of customer service, estimated billing, and reliability provisions designed to ensure the Company’s customers receive adequate and reliable service and customer service performance at reasonable levels. Relating to customer service, the Company will improve, then maintain a call answering rate of at least 80% within thirty seconds beginning with the twelve-month period ending December 31, 2016, and the Company will reduce the number of residential customer disputes not receiving a response within thirty days to no more than sixty beginning with the twelve-month period ending December 31, 2016. Settlement ¶ 11(D)(1) & (2).

Furthermore, the Settlement includes a number of provisions designed to address the issues related to estimated billing, based in part on OCA’s witness testimony and the public input testimony on this issue. See Public Input Hearing Transcript at 168-183 (Erie, PA on Nov. 10, 2014). The Company committed a variety of policy and procedural changes, documentation efforts, revision of website and customer education materials, as well as providing the estimated billing algorithm to statutory advocates and a commitment to audit the accuracy and performance of the algorithm and provide a report and proposed modifications (if necessary) after the first year of use.

OCA avers these Settlement provisions provide the Company’s customers with clear information about how the Company bills its residential customers, includes new mechanisms in which the parties can review the performance of the Company’s meter reading and estimated billing policies (and thus better ensure compliance with Chapter 56 and the issuance of reasonable bills to customers), provides an assurance from the Company that it will consistently meet the Commission’s System SAIDI, SAIFI, and CAIDI for both twelve-month and three-year performance standards[[15]](#footnote-15) and a commitment the Company will strive to achieve reliability performance at or better than the Commission’s performance benchmarks. OCA submits that these provisions are in the public interest.

OCA submits that the reliability provisions provide affirmative benefits and are in the public interest. These initiatives could add to and enhance the commitments that were the focus of OCA’s concerns. The reliability benefits in the Settlement are designed to help the Company achieve and maintain an adequate and reliable level of service and are in the public interest.

D. OSBA’s Statement in Support

1. Small C&I Rates

OSBA deemed that small business customers were generally represented in the proposed Rate 20 and Rate 30 rate classes and OSBA did not object to the Company’s proposal to modify the existing eligibility requirements for those classes, or to create a large general service class (Rate 35) in this proceeding.  In general, OSBA agrees with the Company’s proposal to gradually harmonize eligibility requirements and tariff designs for all of the First Energy EDCs.  OSBA hopes West Penn will eventually adopt the policy of the other First Energy Companies in segregating classes by service voltage, but this issue is not formally reflected in the settlement.

2. Cost of Service and Cost Allocation

OSBA notes the company’s rebuttal cost allocation study generally corrected the data entry and programming errors which originally concerned OSBA, and with respect to the methodological issues, the settlement takes no explicit position with respect to cost allocation methodology.

3. Revenue Allocation

With respect to revenue allocation to small business customers, OSBA concluded that the Company’s revenue allocation proposal was not fully consistent with either its own cost allocation study or OSBA’s cost allocation study.  However, the settlement reduces the revenue requirement for both Rate 20 and Rate 30, with the relative reduction being considerably larger for Rate 30 which action is consistent with OSBA’s position.  OSBA notes further the settlement revenue requirements for both Rate 20 and Rate 30 lie within the range of litigation positions of the various parties (appropriately scaled back) and OSBA concluded small business customers are treated fairly in the settlement.

4. Rate Design

With respect to rate design for the Rate 20 class, OSBA generally agreed with the Company’s proposed approach of adopting a customer charge and flat energy charge, suggesting only that changes to the Company’s filed position increase the emphasis on the customer charge.  Directionally, the Joint Settlement reflects this proposal, in that the scaleback of the proposed customer charge is less than the scaleback of the energy charge. Regarding rate design for the Rate 30 class, OSBA generally agreed with West Penn’s proposed approach of adopting a customer charge/demand charge/energy charge tariff structure.

5. Smart Meters

OSBA took no position with respect to the Smart Meter issues encompassed at the M‑Dockets in the four FirstEnergy rate cases, and presented no testimony on these issues. For those reasons, OSBA did not oppose the resolution of West Penn’s Smart Meter issues as contained in the partial settlement.

6. Conclusion

OSBA contended the partial settlement of this proceeding avoids the litigation of many of the complex, competing proposals and saves significant costs of further and more extended administrative proceedings. Such costs are borne not only by the Joint Petitioners, but ultimately would be borne by the Company’s customers as well. Avoiding extended litigation of this matter serves judicial efficiency, and allows OSBA to more efficiently employ its resources in other areas.

OSBA acknowledges the Joint Petitioners have not sought, nor would they be able, to agree upon the specific rate case adjustments which support their respective conclusions but OSBA is in full agreement the Settlement is in the best interest of customers, the Company and the public interest.

E. BIE’s Statement in Support

1. Rate Increase(Joint Petition ¶ 11.A.1)

As proposed, West Penn requested a revenue increase of $115,535,000. BIE analyzed the ratemaking claims including, but not limited to, operating and maintenance expenses, taxes, rate base, and the cost of common equity and initially recommended a revenue increase of $36,293,000. In the Settlement, Joint Petitioners agree to an increase in base rates to allow the Company the opportunity to recover an increase of $59,900,000, which includes distribution revenue, smart meters and storm reserves, in lieu of the $115,535,000 originally requested, which represents a $55,635,000 savings for customers.

After engaging in extensive discovery and settlement discussions, BIE fully supports the revenue level compromised upon in the Settlement. Although the Settlement does not reflect agreement upon individual issues, the parties have agreed to an overall increase to base rates that is substantially less than what was requested by the Company. Line-by-line identification and ultimate resolution of every issue raised in the proceeding is not necessary to find that the Settlement is in the public interest nor could such a result be achieved as part of a settlement but this black box settlement benefits ratepayers because it allows for the resolution of a contested proceeding at a level of increase that is below the amount requested by the regulated entity and in a manner that avoids the significant expenditure of time and resources related to further litigation. The Settlement rates significantly moderate the increase initially proposed by the Company and, BIE believes, properly balances the interests of all parties. Accordingly, BIE submits the proposed Settlement is in the public interest.

2. Overall Rate of Return and Return on Equity

By Order dated December 5, 2014, the ALJs directed that “Any settlement agreement filed by the parties must specify the Rate of Return and the Return on Equity though not the methodology used to arrive.”[[16]](#footnote-16) The Order recognized that settlements are traditionally black box in nature as they are silent about the specific items that comprise the revenue requirement; however, it nevertheless states that it is “expected that financial data submitted in support of any filed tariff Supplements will support the results of settlement petition(s).”[[17]](#footnote-17)

The ALJs’ concern about obtaining this information appears to stem from an issue raised at the Uniontown public input hearing and the ALJs believed articulating a specific ROE in the Settlement is necessary because there is some concern that the return on equity is identical for the four Companies. BIE avers it is appropriate and in the public interest to utilize the same cost of common equity for the four Companies. Although BIE’s overall rate of return recommendation for the four Companies differed due to different capital structures and debt cost rates, BIE recommended the same 8.84% cost of common equity for all four Companies.[[18]](#footnote-18) The determination of an appropriate return on common equity in this proceeding entailed a market-based recommendation predicated upon a group of companies with publicly traded common stock and investment risk similar to the Company. Given that the identical analysis was performed for the four FirstEnergy Companies, BIE recommended the identical ROE for those Companies. BIE’s determination of the appropriate ROE was discussed at length in its rate of return testimony, which demonstrates that there is nothing usual with recommending the same ROE for utilities in the same industry with similar risk. The fact that the litigation and potential settlement positions of the parties utilize the identical ROE for the four Companies does not mean that those recommendations are contrary to the public interest and does not necessitate identifying a specific ROE in the Settlement.

The Commission must determine whether the proposed West Penn revenue increase of $59,900,000 contained in the Settlement, in lieu of the $115,535,000 requested in the Company’s filing, is in the public interest. For the reasons provided above, BIE submits that the proposed increase negotiated by the parties is in the public interest and the Commission can make this determination despite the fact the return on equity and overall rate of return is not explicitly provided in the Settlement.

3. Roll Smart Meter Costs into Distribution Rates (Joint Petition ¶ 11.A.2)

West Penn currently has a Smart Meter Technologies Charge (SMT-C) Rider that sets forth a Commission-approved adjustment clause imposing a SMT-C to recover the costs of implementing their Smart Meter Deployment Plan (Smart Meter Plan).[[19]](#footnote-19) The development of Smart Meter Deployment Plans was just one of the requirements of Act 129.[[20]](#footnote-20) Act 129 provides that an EDC is entitled to full and current recovery of the costs associated with implementing a smart meter system, net of any operational and capital benefits the system will create. Act 129 also allows an EDC to recover its net costs either on a current basis through a Section 1307 reconcilable surcharge or in base rates with authority to defer costs incurred between base rate proceedings (66 Pa. C.S. § 2807(f)(7).[[21]](#footnote-21)

BIE notes West Penn proposed to include in their distribution base rate revenue requirements their costs to implement their Smart Meter Plans; to recover those costs in their distribution base rates; and to reduce their SMT-C Rider rates to zero.[[22]](#footnote-22) West Penn also proposed that the SMT-C Rider remain in the Company’s tariff as the mechanism to recover costs of implementing their Smart Meter Plan, net of savings, in excess of such costs being recovered in base rates in the future.[[23]](#footnote-23)

BIE did not oppose the Company’s request to roll smart meter costs into base rates; however, BIE wanted to ensure that the Company did not over-recover such costs through base rates and the SMT-C Rider.[[24]](#footnote-24) Therefore, BIE asserted that the SMT-C Rider should allow full recovery of actual costs, no more and no less, ensuring that customers are paying only costs that the Company incurs.[[25]](#footnote-25)

After a full analysis of the Company’s representation of its smart meter costs and lengthy settlement negotiations, the Joint Petitioners agreed the Company’s total revenue requirement includes $44.176 million associated with smart meter deployment.[[26]](#footnote-26) Furthermore, once the aggregate investment and expense revenue requirements exceed $44.176 million, the Company may begin deferring costs that are eligible for recovery under its SMT-C Rider (Rider G).[[27]](#footnote-27) When the $44.176 million threshold revenue requirement is exceeded and the Company begins deferring costs in excess of that amount, the Company will file a smart meter rate under Rider G to recover all investment and expense revenue requirements in excess of the $44.176 million included in base distribution rates.[[28]](#footnote-28) BIE fully supports the settled upon smart meter cost recovery methodology and believes the settled upon smart meter cost recovery

methodology is consistent with prior Commission decisions,[[29]](#footnote-29) provides stability to West Penn, and provides protection from volatility; all of which are consistent with protecting the public interest.

4. Amortization of Legacy Meters (Joint Petition ¶ 11.A.3

The Joint Petitioners agree the Company’s unamortized investment associated with the legacy meters will be amortized over a five-year period, beginning on the date the Settlement Rates become effective.[[30]](#footnote-30) BIE recognizes that based on the Commission-approved Smart Meter Deployment Plan[[31]](#footnote-31) the Company anticipates they will be replacing 98.5% of all existing (“legacy”) meters with smart meters by December 31, 2019.[[32]](#footnote-32) BIE also notes the Commission recognized that an EDC could seek recovery of “stranded costs” through an accelerated depreciation schedule.[[33]](#footnote-33) Accordingly, BIE did not oppose and now supports the settled upon legacy meter amortization methodology as set forth in the Joint Petition and believes that the settled upon legacy meter amortization methodology is consistent with prior Commission decisions,[[34]](#footnote-34) provides stability to West Penn, and provides protection from volatility; all of which are consistent with protecting the public interest.

5. Amortization of Deferred Storm Damage Expense (Joint Petition ¶ 11.A.4

Pursuant to the Settlement, the parties agree to amortize the Company’s claim for deferred storm damage expense over a five-year period beginning when the Settlement rates become effective, instead of the Company’s original proposal to use a three-year amortization period for the storm costs authorized for deferral by the Commission. The agreed upon five year amortization period contained in the Settlement is in the public interest because it is a moderated position that addresses the Company’s concern about the extended amortization period resulting in an inequitable length of time to recover storm costs and BIE’s concern that the shorter amortization period will allow the Company to continue to receive revenue from ratepayers for an expense long after the cost has been fully recovered by the Company.

6. Storm Reserve Account (Joint Petition ¶ 11.A.5)

BIE notes the Company initially proposed to recover $5,276,000 of storm damage expense through base rates and that all storm costs in excess of this base rate amount be recovered through its proposed Storm Damage Charge Rider (Rider B). Rider B is a newly proposed 1307(e) rider designed to recover storm costs on an annual and fully reconcilable basis. In proposing Rider B, the Company relied on the Commission’s recent approval of PPL’s Storm Damage Expense Rider (SDER).[[35]](#footnote-35)

BIE opposed the Company’s Storm Damage Rider. The Settlement provides that the Company will not establish Rider B as proposed, but instead will establish a Storm Reserve Account. The parties agree the $59,900,000 revenue requirement includes $9,000,000 to be recovered for the purposes of funding the Storm Reserve Account. This $9,000,000 represents a five-year average of storm damage expense, excluding expenses associated with extraordinary storms.[[36]](#footnote-36) The Company will continue to be able to account for extraordinary storm expense through the current practice of petitioning the Commission for approval to defer such expense.

The Storm Reserve Account proposed in the Settlement is in the public interest as it helps self-insure the Company for distribution system storm damage expenses. It protects ratepayers from the potential volatility of an annually variable rider as originally proposed by the Company. Additionally, the Storm Reserve Account is in the Company’s interest because the reserve will be properly funded based on a five year average of experienced storms, which will potentially avoid an unfavorable impact on the Company’s financial statement that could result from year-to-year fluctuations in actual storm costs. Accordingly, BIE maintains the $9,000,000 Storm Reserve Account should be approved in this proceeding without modification.

7. Fully Projected Future Test Year Reporting Requirements (Joint Petition ¶ 11.A.6)

In this base rate filing, West Penn elected to use a Fully Projected Future Test Year (FPFTY) consisting of the twelve months ended April 30, 2016 as permitted under Act 11 of 2012, which allows a utility to project investment and include it in the claimed revenue requirement through the twelve-month period beginning with the first month that the new rates will be placed in effect. By allowing this extended projection, the FPFTY essentially allows a utility to require ratepayers to pay a return on its projected investment in future facilities that are not in place and providing service at the time the new rates take effect and that are not subject to any guarantee of being completed and placed into service.

BIE sought to have West Penn provide interim reports until the Company’s filing of its next base rate case in order to be able to timely review and verify the status of the Company’s rate base projections. In the Settlement, West Penn agreed to provide to BIE, OCA, and OSBA with updates to West Penn Exhibit RAD-47 on or before August 1, 2015 for the twelve months ending March 31, 2015. Also on or before July 1, 2016 the Company will provide an update to West Penn Exhibit RAD-46 to the statutory advocates for the twelve months ending April 30, 2016. In addition, West Penn agreed to provide, as a part of the next base rate case, a comparison of its actual expenses and rate base additions for the twelve months ended April 30, 2016 to the projections in this case. Accordingly, BIE fully supports the Settlement because this condition achieves BIE’s goal of timely receiving data sufficient to allow for the evaluation and confirmation of the accuracy of West Penn’s projections in its next base rate filing.

8. DSIC and Smart Meter ROE (Joint Petition ¶ 11.A.7

The parties agree that for the purpose of calculating a distribution system improvement charge (DSIC), if a DSIC is hereafter approved by the Commission, and calculating the incremental revenue requirement associated with smart meter deployment that is eligible for recovery through the SMT-C Rider, the Company shall use the return on equity noted in the Commission’s quarterly in its quarterly earnings report.[[37]](#footnote-37) With regard to the DSIC ROE, the Commission has interpreted Act 11 and the DSIC Implementation Order to require rate case settlements to include a stipulated ROE for DSIC calculation purposes.[[38]](#footnote-38) The Settlement complies with the Commission’s directive by using the TUS quarterly earnings report for DSIC ROE purposes. Similarly, the FirstEnergy’s Smart Meter Implementation Order states that, “To the extent that the subsequent base rate case is settled, the parties are to establish the applicable ROE to apply for the purposes of the Plan recovery mechanism in that proceeding.”[[39]](#footnote-39) As with the DSIC ROE stipulation, it is similarly appropriate to rely on the quarterly earnings report to establish the applicable ROE for smart meter purposes.

9. Revenue Allocation and Rate Design (Joint Petition ¶ 11.B.)

Pursuant to the Settlement, and as stated in the Joint Petition, the agreed to increase in base rates will allow the Company the opportunity to recover an increase of $59,900,000 in revenue. BIE conducted a complete analysis of the Company’s base rate filing, including a complete analysis of the cost of service study submitted by the Company, in order to offer recommendations of fair and reasonable increases in revenues and rate design.

One of the considerations BIE uses in establishing proposed rates is the resulting rate of return by customer class and the corresponding relative rate of return by class, i.e. how the rate of return for each class compares to the system average rate of return.[[40]](#footnote-40) The optimum goal should be to establish proposed rates so that the revenue received from a particular class is equal to the corresponding costs of providing service to that class.[[41]](#footnote-41) A relative rate of return above 1.00 for a class indicates that the cost of providing service is less than the revenue received from that class.[[42]](#footnote-42) A relative rate of return below 1.00 for a class indicates that the cost of providing service is more than the revenue received from that class.[[43]](#footnote-43) Based on the results of BIE’s analysis of the cost of service studies, BIE made recommendations to move the relative rate of return for each class towards 1.00, which BIE considers the ultimate goal.[[44]](#footnote-44) After a full and complete analysis of the Company’s base rate case filing, including a full analysis of the cost of service studies and the extensive settlement negotiations among the parties, BIE fully supports the revenue allocations and rate design as set forth on Exhibits 2, 3 and 4 attached to the Joint Petition.[[45]](#footnote-45)

Therefore, in consideration of all of the above, BIE fully supports the settled upon revenue allocation and rates design as set forth in the Joint Petition.[[46]](#footnote-46) BIE believes that the settled upon revenue allocations and rate design are consistent with prior Commission decisions; provide stability to West Penn; represent a fair and reasonable rate increase to West Penn customers; and provide protection from volatility; all of which are consistent with protecting the public interest.

10. The Settlement Satisfies the Public Interest

BIE represents all issues raised in testimony have been satisfactorily resolved through discovery and discussions with the Company or are incorporated or considered in the resolution proposed in the Settlement. The very nature of a settlement requires compromise on the part of all parties. This Settlement exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be irreconcilable regulatory differences. Joint Petitioners have carefully discussed and negotiated all issues raised in this proceeding, and specifically those addressed and resolved in this Settlement. Further line-by-line identification of the ultimate resolution of the disputed issues beyond those presented in the Settlement is not necessary as BIE represents that the Settlement maintains the proper balance of the interests of all parties. BIE is satisfied that no further action is necessary and considers its investigation of this rate filing complete.

Based upon BIE’s analysis of the filing, acceptance of this proposed Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense. BIE further submits the acceptance of this Settlement will negate the need for evidentiary hearings, which would compel the extensive devotion of time and expense for the preparation, presentation, and cross-examination of multiple witnesses, the preparation of Main and Reply Briefs, the preparation of Exceptions and Replies, and the potential of filed appeals, all yielding substantial savings for all parties, and ultimately all customers, as well as certainty on the regulatory disposition of issues.

F. West Penn Power Industrial Intervenors’ Statement in Support

WPPII points out the Commission has a strong policy favoring settlements and, consistent with the Commission's policy, the Joint Petitioners engaged in negotiations to resolve the issues raised by various parties. WPPII avers the Settlement is in the best interest of the parties involved and agree the Company should be authorized to file a tariff supplement containing the rates set forth in the Joint Petition. The $59.9 million rate increase achieved in the Joint Petition is just, reasonable, and in the public interest and this resulting rate increase should be allocated pursuant to the terms of the Settlement. The Settlement is in the public interest for the following reasons:

1. As a result of the Joint Petition, expenses incurred by the Joint Petitioners and the Commission for completing this proceeding will be less than they would have been if the proceeding had been fully litigated.
2. Uncertainties regarding further expenses associated with possible appeals from the Final Order of the Commission are avoided as a result of the Joint Petition.
3. The Joint Petition results in an increase in West Penn's rates by $59.9 million, which is approximately 49.3% of the Company's original request of $115.5 million.
4. While the Joint Petition reflects a "black box settlement," which often is the means used to achieve settlement among parties with respect to Rate of Return and Return on Equity issues in a rate proceeding, the Joint Petition addresses concerns about the absence of a stated rate of return on equity by affirmatively establishing a reasonable approach to determine a rate of return on equity for West Penn if a distribution system improvement charge is hereafter proposed by West Penn and approved by the Commission as well as the means by which to calculate the incremental revenue requirement associated with smart meter deployment that exceeds the smart meter revenue requirement being recovered through settlement rates and is therefore eligible for recovery through the Company's Smart Meter Technologies Charge.
5. The Joint Petition provides a just and reasonable means by which to allocate the resulting increase among the West Penn customer classes in a manner that generally moves the customer classes closer to their cost to serve while also recognizing the need for gradualism.
6. The Joint Petition provides a just and reasonable rate design for the large commercial and industrial customer classes by recognizing the need to move the various components of the distribution rate design closer to their respective cost to serve while also acknowledging those customers that receive service at transmission level voltage.
7. The Joint Petition provides a just and reasonable manner of resolving the Company's claim for deferred storm damage expenses and future storm expenses.
8. The Joint Petition reflects compromises on all sides presented without prejudice to any position any Joint Petitioner may have advanced so far in this proceeding. Similarly, the Joint Petition is presented without prejudice to any position any party may advance in future proceedings involving the Company.

In addition, the Joint Petition specifically satisfies the concerns of WPPII by: (1) lowering the revenue increase amount by approximately 50.7%; (2) reasonably allocating the proposed increase among the customer classes; (3) eliminating the proposed rate design changes to Rate Schedules 44 and 46; and (4) eliminating the proposed Storm Rider.

Although Joint Petitioners have invested time and resources in the negotiation of the Joint Petition, this process has allowed the parties, and the Commission, to avoid expending the substantial resources that would have been required to fully litigate this proceeding while still reaching a just, reasonable, and non-discriminatory result. Joint Petitioners have thus reached an amicable solution to this dispute as embodied in the Settlement. Approval of the Settlement will permit the Commission and Joint Petitioners to avoid incurring the additional time, expense, and uncertainty of further litigation of a number of major issues in this proceeding. *See* 52 Pa. Code § 69.391.

G. Pennsylvania State University’s Statement in Support

PSU supports the Settlement because the rates proposed are designed to produce an increase in distribution base rate operating revenues of $59.9 million for the twelve months ending April 30, 2016, to become effective no later than May 19, 2015, as shown in the proof of revenues provided as Exhibit 2 to the Joint Petition instead of the Company’s filed increase request of approximately $78.6 million for such service, including the roll-in of smart meter revenue requirement. PSU avers the Settlement eliminates the Storm Damage Rider Surcharge proposed by the Company which PSU opposed and instead establishes a Storm Damage Reserve Account as proposed by BIE.

The terms of the Settlement represent give-and-take among the Joint Petitioners that was reached after numerous hours of negotiations, that included the subject of cost of service studies and the allocation of the overall increase among the various rate classes and, in particular, to PSU under proposed Tariff No. 38. Corrections to West Penn’s Cost of Service Study show that PSU’s rates for its University Park Campus (which is subject to existing tariff 37 and proposed tariff 38) are too high, producing a substantially higher class rate of return than the system average, resulting in PSU subsidizing other classes of customers.

PSU continues to be concerned about attempts by certain parties to favor outdated cost of service methodologies that incorrectly treat customers or customer classes with superior load factors the same as customers or customer classes with poor load factors and otherwise move in the wrong direction from Lloyd. PSU contends it will be contributing greater than the system average return with the Settlement which allocates no increase to PSU’s University Park Campus under Tariff 38. However, PSU notes the Settlement results in PSU’s movement toward the system average rate of return; removes the proposed Storm Damage Rider Surcharge; and establishes a Storm Reserve Account. The Settlement is in the public interest for these reasons and those in the Joint Petition. PSU also avers the Settlement also provides for revisions to Tariff 38 mutually acceptable to PSU and West Penn to harmonize it with portions of First Energy’s other tariffs, to reflect PSU’s unique situation, and to update it to meet current regulatory requirements. The Settlement is without prejudice or admission to any position any party, including PSU, may take in any subsequent or different proceeding. In addition, the Settlement will enable the parties to avoid the expenditure of significant additional time and expense that would have been necessary to fully litigate this proceeding to a conclusion, which will result in significant savings to all Parties, West Penn’s customers, and will conserve the resources of this Commission.

H. CAUSE-PA’s Statement in Support

CAUSE-PA intervened to address, among other issues, the effect on low and lower income households of the proposed West Penn Power rate increases and the adequacy of its current Universal Service Programs, specifically the Low Income Usage Reduction Program (WARM) and other programs designed to assist low-income customers be better able to pay their bills. Among other provisions, this Settlement provides for a pilot program to address *de facto* heating through as $350,000 supplement to the Company’s WARM, Low Income Usage Reduction Program (LIURP), and further provides for a Multi-Family Low-Income Energy Efficiency Pilot.

Although not all of CAUSE-PA’s positions have been fully adopted, the Settlement was arrived at through good faith negotiation by all parties. The Settlement is in the public interest in that it addresses issues of concern to CAUSE-PA, balances the interests of the parties, and resolves a number of important issues fairly. Substantial litigation and associated costs will be avoided; and if approved, the Settlement will eliminate the possibility of further Commission litigation and appeals, along with their attendant costs.

CAUSE-PA points out the Settlement provides that the Company will designate $350,000 in LIURP dollars to be collected through the USC Rider to its WARM program and these funds will supplement the Company’s 2015-2018 Universal Service and Energy Conservation Plan (USECP) WARM budget as tentatively approved by the Commission on December 18, 2014 at Docket No. M-2014-2407728. The purpose of this additional funding is to conduct a pilot to enable the Company to provide whole-house WARM program energy efficiency and conservation measures and repair or replacement of non-functioning fossil fuel heating systems, including electrical service upgrades, ducts, flue, and chimney repairs if needed.

CAUSE-PA avers the increase in WARM funding for the purposes of this pilot is well justified because the Commission has recognized the on-going concern regarding de facto heating and recently addressed the issue in its December 18, 2014, Tentative Order to the West Penn Power Universal Service Universal Service and Energy Conservation Plan for 2015-2018 (TO), at Docket No. M- 2014-2407728. This pilot will not only serve an immediate need, but will benefit these low-income customers and other rate payers for years into the future. CAUSE- PA, therefore, supports the funding of the pilot within WPP’s service territory, in that it ensures that up to 50 households will receive access to proven weatherization measures that will significantly reduce their usage, enhance their safety, extend their CAP credits, and reduce the costs on other ratepayers who are assisting these households through WPP’s CAP program. In addition, successful completion of the pilot will enable consideration of appropriate expansion to other customers within West Penn’s and the other First Energy Companies’ service territory. Moreover, the Settlement term requires that any funds unused by April 30, 2017, will be carried over to supplement the 2018 LIURP, to ensure funds that may be unspent for the pilot as a result of delays, temporary work reductions due to unforeseen weather, or other factors, will be used for LIURP purposes and continue to benefit customers after the pilot period ends, thus enabling WPP to deliver additional needed usage reduction services to eligible households within the 2015-2018 USECP period.

Under the Settlement provisions concerning the Multi-Family Low-Income Energy Efficiency Pilot, West Penn will increase efforts within its service territory to provide energy efficiency services to multi-family buildings which house low-income households through a variety of enumerated methods. Addressing energy efficiency in multifamily housing within WPP’s service territory is in the public interest and supported by CAUSE-PA. CAUSE-PA notes, “[E]nergy efficiency upgrades in multi-family rental housing are a cost-effective means to reduce energy consumption, maintain housing affordability, and create healthier, more comfortable living environments for moderate- and low-income families.” CAUSE-PA ST 1 at 15:19:-16:1.

CAUSE-PA submits that the West Penn Power Settlement, which was achieved by the Joint Petitioners after an extensive investigation of WPP’s filing, including informal and formal discovery, and the submission of direct, rebuttal, and surrebuttal testimony, is in the public interest. Acceptance of the Settlement avoids the necessity of further administrative and possible appellate proceedings regarding the settled issues at what would have been a substantial cost to the Joint Petitioners and WPP’s customers.

I. EDF’s Statement in Support

EDF notes the Settlement contains a number of conditions which are intended to address the concerns raised by EDF throughout the course of this proceeding. EDF identified the issues which were of principal interest to it and in the public interest which involved reporting of metrics concerning Home area network devices, AMI meter installs, reductions in greenhouse gas emissions, voltage and VAR controls, and establishing meetings with EDF and any other interested statutory parties in respect to smart meter and smart grid deployment efforts, including discussion of customer data access, Volt/VAR best practices, and measuring GHG emission reductions.

Therefore, EDF requests the Commission approve the Settlement as presented, without modification, and with all due haste.

J. Walmart’s Statement in Support

Wal-Mart avers the Partial Settlement is in the public interest and represents a reasonable partial resolution of the issues. While the Partial Settlement does not address all of Walmart’s concerns, Walmart notes the Partial Settlement, taken as a whole, reflects a reasonable compromise amongst numerous competing interests and positions representing a wide range of rate classes and is in support of the Joint Petition and Partial Settlement.

Walmart recommended the Commission consider the impact on customers thoroughly and carefully to ensure that any increase in the Company’s rates are only the minimum amount necessary for the utilities to provide adequate and reliable service. Additionally, Walmart recommended the Commission closely examine the Company’s proposed revenue requirement increase, especially when viewed in light of the proposed use of a fully projected future test year.

With respect to rate design, Walmart advocated distribution rates be set based on the utility’s cost of service, which has the effect of producing equitable rates that reflect cost causation, sending proper price signals to customers and minimizing price distortions. In general, the revenue allocations and rates as set forth in the Joint Petition reflect a reasonable compromise among competing interests to move towards cost of service. The terms of the Partial Settlement are supported by the testimony entered into the record and there is a sound evidentiary basis for the Partial Settlement terms. Walmart avers the Partial Settlement is in the public interest because:

## Settlements conserve administrative resources and reduce the uncertainty, time and considerable expense associated with fully litigating the issues in a proceeding.

## The results achieved from a negotiated settlement in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.

## It provides for an increase in annual base rate distribution revenues of $59.9 million, or approximately 4.4% (based on total electric operating revenue), in lieu of the $78.619 million, or approximately 5.7% (based on total electric operating revenue) increase originally requested by the Company.

## In general, the revenue allocations and rates as set forth in the Joint Petition reflect a reasonable compromise among competing interests to move towards cost of service.

## It was reached after extensive investigation which included substantial discovery and the submission of numerous written interrogatories and voluminous responses thereto and written direct, rebuttal, surrebuttal and rejoinder testimony.

## It was reached after the Joint Petitioners participated in lengthy and extensive discussions and negotiations that resulted in the proposed amicable resolution of all but one of the many complex issues raised in the proceeding.

## There is a sound evidentiary basis for the Partial Settlement terms.

Walmart’s support of the Joint Petition and the Partial Settlement does not imply Walmart’s agreement with each and every aspect of the Partial Settlement on an individual term-by-term basis but, rather, its support, taken as a whole, is based on the premise the Partial Settlement represents a reasonable compromise amongst numerous competing interests and positions in the Distribution Base Rate Filing. Settlement of the numerous complex issues by the parties avoids the uncertainty involved in litigation and the necessity of further costly administrative, and possibly appellate, proceedings regarding the issues resolved the Partial Settlement.

K. AK Steel’s Statement in Support

AK Steel Corporation participated in the case, reviewed the evidence, joined in the settlement and avers it believed the settlement is in the public interest. AK Steel supports the settlement’s adoption by the presiding officers and the Pennsylvania Public Utility Commission.

L. ALJs’ Recommendation Concerning Base Rate Increase Request

The Settlement of this consolidated proceeding constitutes a significant reduction in the revenue increase originally requested by West Penn. The parties engaged in significantly more prehearing activity than normally seen in a typical base rate proceeding, however, handling four base rate proceedings simultaneously is not typical. Despite the difficulty in dealing with often unwieldy and cumbersome data, and after an initial fumble over discovery, the parties endeavored on numerous occasions to facilitate the movement of discovery responses, to engage in meaningful negotiations and to provide clarity to the presiding officers and each other. In addition, the Company and advocates provided excellent Statements in Support to explain, clarify and bolster their relative positions – and advocate for the approval of the Partial Settlement. However, this proceeding (as in the three similar “sister” base rate proceedings) was encumbered by difficulties not related to the size of four base rate proceedings and not typically encountered in a base rate proceeding.

Most notable among the difficulties was public input. West Penn’s proceeding, more than the other three base rate proceedings, generated an inordinate level of consternation, confusion, and all-around grousing than typically is met in a base rate proceeding. The public input was not simply unhappy – it often involved well-informed customers and employees who came to the public input proceedings prepared with facts and prepared to take the Company to task for previous alleged missteps by FirstEnergy management. The level of comments and anger arising from the public input hearings necessitated the presiding officers take additional steps (not typically used because not typically required) to ensure the hearing record contains sufficient documentation that the base rate increase is appropriate.

The Company and the parties did not comply with the presiding officers’ directives. Most notable among the non-compliance was the parties’ refusal to reveal the numerical figure used to determine the rate of return or return on equity. The presiding officers did not require any party to specify exactly the methodology or principle behind how the numerical figures were reached – the presiding officers only required that the number (which is plugged into the calculations that reach the final request for the increased revenue requirement and to which the parties had to agree in order to reach a settlement) be revealed outside the black box settlement. The parties refused to reveal that number.

However, in light of the following two factors, the presiding officers recommend the Partial Settlement should be approved: (1) there is sufficient evidence in the record to justify the agreed-upon base rate increase; and (2) a coinciding proceeding presently before the Commission asks many of the same questions raised by public comment and, based on a recent Motion at a public meeting, the Commissioners intend to pursue the matters to a conclusion.

First, it should be noted there is more than sufficient evidence provided through written statements, admitted exhibits and Statements in Support that the agreed-upon base rate increase is in the public interest. The revenue requirement is within an acceptable and reasonable range which permits the Company to obtain a reasonable rate of return (which will encourage its investors to continue to invest in public service) while providing the Company with much needed additional capital to improve its service obligations. While there will be an increase to the ratepayers’ bills, the increase is less than 9% overall. However, the effect on a residential customer’s monthly distribution charge will be less than $1 more. The presiding officers are cognizant that a 9% overall increase in the billing statements for some customers, especially those who are on limited incomes and/or are elderly, is a sizeable increase. However, the Company has not had a base rate increase in two decades, and funds are needed to improve infrastructure and finish installation of Smart Meters for all ratepayers.

The public comments pointed out, very succinctly and with great ardor, the continuing customer service struggles West Penn continues to experience. Most notable among those deficiencies is the failure of West Penn to read customers’ meters on a bimonthly basis. The Company has a large number of times each year when customers’ meters are not read for numerous consecutive months. This practice needs to be eliminated. The Partial Settlement clearly recognizes the need for change in this area and expresses a plan to improve West Penn’s performance.

The only change the presiding officers must make is to require the Company to include the Commission’s Bureau of Technical Utility Services, when providing updates and reports to statutory advocates about the revenue requirement, customer service benchmark performance, sending reports or establishing collaboratives, pursuant to Paragraphs 11(A)(6); 11(D)(4); 11(D)(6); and 11(E)(3).

It should be noted, West Penn agrees in this Partial Settlement that should it fail to consistently meet the requirements established in the agreement regarding improvements in reliability, customer service and/or estimated meter readings, the Company will not make a request for any return on equity premium award at the next base rate proceeding.

Lastly, it should be noted that an audit proceeding within the Commission is currently pending wherein some of the same issues noted at the public input hearings and in testimony herein have been addressed and will continue to be addressed.[[47]](#footnote-47) At public meeting on February 26, 2015, the Commission determined it will seek additional information and actions from West Penn, as a FirstEnergy company, as a result of findings released in the Focused Management and Operations Audit. Those issues concern reliability benchmarks and standards, worst performing circuits, Priority 3 conditions, damage prevention, new service installation, lack of actual meter readings, overtime and staffing level issues, call center issues, residential customer dispute response times, and management performance. The presiding officers believe the Commission is poised to monitor West Penn in its performance on the very issues addressed here but in a manner which outlasts and exceeds the level of monitoring possible in a base rate proceeding. Therefore, it is obvious that West Penn’s performance on the very issues most irksome to the ratepayers will continue to be addressed going forward.

M. ALJs’ Recommendation Concerning Smart Meter Charge

Upon consideration of the terms and conditions of the Partial Settlement, and the statements of the parties in support thereof, it is our opinion the Partial Settlement is an equitable, fair, and reasonable resolution, and benefits the public interest by permitting the Company to recover all reasonable costs incurred in its provision of electric service to ratepayers, with a reasonable rate of return, and also provides for the deployment of Smart Meters to all ratepayers in the Company’s territory. The presiding officers recommend the Commission should approve the Partial Settlement submitted in this matter.

The filing on August 1, 2015 at Docket No. M-2013-2341991 was handled concurrent with the base rate proceeding herein, pursuant to the Commission’s Suspension Order on October 2, 2014. Through the Partial Settlement, the parties propose the Company should subsume the current Smart Meter surcharge (SMT-C) into the base rate, “zero out” the SMT-C from the monthly billing statements until deployment costs expended exceed $44.176 million and then establish a procedure to determine baseline costs as of April 30, 2016. There are two elements to this proposal.

First, a major portion of the total revenue requirement in this proposed base rate ($44.176 million out of $59.9 million) is associated with the Smart Meter deployment. Because the cost of deployment is so high ($44.176 million), the parties propose the Company should “zero out” the current SMT-C Rider (Rider G) from monthly bills and remove it from current billing statements. The Company will not begin to recover costs through Rider G again until the aggregate investment and expense revenue requirements for Smart Meter deployment exceed $44.176 million, which is the same amount the parties propose should be recovered through this base rate increase. Until that amount is exceeded, the Rider G will disappear from monthly billing statements and will only return if additional deployment costs are incurred before the Company returns in another base rate proceeding.

Second, the Company is required by the Commission to develop a baseline for the costs of deployment in order that the Commission can determine the cost savings, if any, in the future from the use of Smart Meters. The Company resolves to create cost baselines as of April 30, 2016 and has eight categories of measurements it will track starting with the approval of this base rate. In addition, the Company will track one more measurement (avoided capital costs) but will use March 31, 2014 date as a baseline. The baselines are detailed in the Company’s Exhibit (WP Exhibit LWG-3) and also in Exhibit 6 to the Partial Settlement. The Company will also add five reporting metrics to its Annual Progress Report to be filed in its Smart Meter Technology and Installation Plan, docketed at No. M-2013-2341991.

This utility has relatively few Smart Meters in place and must roll out as many Smart Meters to its ratepayers as it can as quickly as it can. This proposed approach – to incorporate the costs of deployment into the base rate and therefore recover those costs as incurred going forward – allows the utility to recover costs, as permitted by statute, but avoids “double-dipping” because the Company will stop collecting money monthly through the use of the Rider G on the monthly bills. In essence, the customers will pay for the deployment but will no longer see that surcharge on their bills because the surcharge will be folded into the base rate in this proceeding.

In addition to requiring the Company to deploy Smart Meters across its territory, the Commission also has required the Company to develop a cost baseline for savings. Over the next few years, the Commission wants to see how the deployment of Smart Meters has impacted various costs, positive or negative. In order to be meaningful statistics, however, there must be a baseline to which all future statistics after that date (April 30, 2016) will be compared. The metrics the parties propose should be captured and tracked by the Company are reasonable and will provide the Commission, as well as the public-at-large and the ratepayers, with valuable information.

These proposed approaches are reasonable and rational approaches to solving two problems: (1) how to get the deployment costs paid quickly and at the time costs are incurred; and (2) how to develop a meaningful cost baseline. These proposals, as specified in the Partial Settlement, are in the public interest because they further the Commission-approved directives in a reasonable and adequate manner and, therefore, should be approved.

IV. DISCUSSION – LITIGATED ISSUE

As noted previously, the remaining issue for litigation concerns the Company’s LED Street Lighting Service.

A. Burden of Proof

Typically in proceedings before the Commission, the public utility has the burden to establish the justness and reasonableness of every element of its rate increase in all proceedings conducted under Section 1308(d) of the Public Utility Code. The standard of proof, which a public utility must meet, is set forth in Section 315(a) of the Public Utility Code (Code), 66 Pa.C.S. §315(a), which specifies that, “[i]n any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceeding upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.”

Pennsylvania’s Commonwealth Court has upheld this standard of proof[[48]](#footnote-48) and has applied it in base rate proceedings, even when the question concerning an element of the base rate increase request was raised by a party instead of the public utility.[[49]](#footnote-49)

In this proceeding, the burden of proof lies squarely with West Penn. West Penn is the public utility seeking permission from the Commission to increase its base rate and seeking permission to implement and/or alter programs. The burden of proof did not shift to a statutory party or individual party (whether an entity or an individual) which challenged the requested rate increase. Instead, the utility’s burden, to establish the justness and reasonableness of every component of its rate request, is an affirmative one and remains with the public utility throughout the course of the rate proceeding.[[50]](#footnote-50)

Under the Public Utility Code, rates charged by public utilities must be just and reasonable and cannot result in unreasonable rate discrimination. 66 Pa.C.S. §§ 1301 and 1304. 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. 66 Pa.C.S. § 315(a); Pa. Pub. Util. Comm’n v. Aqua Pennsylvania, Inc., Docket No. R-00038805, 236 PUR 4th 218, 2004 Pa. PUC LEXIS 39 (August 5, 2004).

As the Commonwealth Court explained: “While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.”[[51]](#footnote-51) Therefore, while the ultimate burden of proof does not shift from the utility, a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment.[[52]](#footnote-52)

Further, a party that raises an issue that is not included in a public utility’s general rate case filing bears the burden of proof. As the proponent of a Commission order with respect to its proposals, PennFuture bears the burden of proof as to proposals West Penn did not include in its filing. Section 315(a) of the Public Utility Code cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose.[[53]](#footnote-53)

B. Proposed LED Street Lighting Service Offering

West Penn proposed to offer LED street lighting to interested customers who wished to obtain LED street lighting service from Company-owned and maintained LED street lighting facilities. West Penn developed the service offering in response to expressions of interest from existing street lighting customers who expressed interest in exploring LED street lighting options. West Penn embodied the offering in a detailed rate schedule which it asserts conforms to the Commission’s tariff and tariff filing requirements.

West Penn would offer the new service to existing customers who currently receive service under one of the six street lighting services available[[54]](#footnote-54) and would like to update the service in order to take advantage of new lighting technology. The new service would also be offered to new customers. The initial term of the contracts would last ten (10) years and could be renewed for successive one-year terms. Distribution costs for the new service would be recovered through a fixed monthly charge for each LED fixture and the street lighting customers would have an unhindered ability to obtain electric generation service from either a competitive electric generation supplier or through default service from West Penn.

West Penn proposed a separate cost of service analysis to develop a fixed charge for LED service levelized over the entire projected fifteen-year service life of the LED fixtures which it would install. West Penn proposed this separate analysis and approach in order to avoid the relatively higher rate which would result over the first several years of the contract term if West Penn had used the traditional approach to develop a cost-based rate. Otherwise, the initially higher rate might have impeded customer acceptance of the new service.

C. West Penn’s Position

West Penn contends it presented substantial evidence demonstrating that its proposed LED service offering is reasonable, properly responds to expressions of interest from prospective customers for LED service from Company-owned and maintained facilities, and, if approved, will provide interested customers with a new, meaningful and reasonable opportunity to begin to receive LED street lighting service.

The Company recognized LED lighting, as a new service, most likely would be adopted by only a small number of customers and would require the Company to invest in, and install, new LED-related equipment dedicated solely to providing LED service to those customers. As a consequence, the traditional approach to developing a cost-based rate would produce a relatively higher rate in the first several years of the contract term. And, while the rate would likely decline over time as LED-related property is depreciated, the initially higher rate might impede customer acceptance of the new service. To address that concern, West Penn prepared a separate cost of service analysis to develop a fixed charge for LED service that is levelized over the entire projected fifteen-year service life of the LED fixtures to be installed.

The proposed levelized charge would recover less than the Company’s full cost of providing LED lighting service in the early years of the newly-initiated LED service and, indeed, the total cost to the Company of providing the service would not be fully recovered over the initial ten-year contract term. In fact, the levelized charge amounts to a discount in the first year of a ten-year contract of 32%. *See* West Penn Statement No. 8-R, p. 10. Those losses would be recovered over time when, in subsequent years, the levelized rate will recover somewhat more than the LED cost of service determined in the traditional (non-levelized) manner.

Thus, while lowering the rate for LED service at the front end of the initial contract term, the levelized approach would recover the full cost of service from the LED class, on a net present value basis, over the expected useful life of the LED property being installed. Notably, no party other than PennFuture took issue with any aspect of the Company’s LED service offering. Additionally, no potential customers, specifically municipalities, intervened in this case to challenge the Company’s LED service offering nor did they voice any informal opposition.

As explained in detail in the rebuttal testimony of Christopher D. Ciccone and Hillary E. Stewart (West Penn Statement Nos. 8-R and 5-R, respectively), the Company’s proposed fixture selection, cost estimates, and distribution rates are fully supported by record evidence and, therefore, the Company’s proposed LED lighting service offering should be approved.

1. Fixture Selection, Cost, Sizes and Useful Life

PennFuture asserts the LED lighting fixtures the Company will use to supply LED service are not the least expensive on the market. Of course, there is no reason to believe that price should be the sole determinant of the equipment a utility purchases to provide service to its customers. Rather, there are many factors in addition to price that weigh on such decisions. For equipment selection, as in other areas of utility management, a utility is entitled to exercise its reasonable judgment in choosing how it will meet its obligation to furnish safe, reliable and efficient service to its customers. Indeed, this concept is enshrined in Commission and appellate court precedent, which expressly recognizes that utility regulators are not a “super board” of directors[[55]](#footnote-55) and are not authorized to micromanage the day-to-day operations of the utilities under their jurisdiction.[[56]](#footnote-56)

Moreover, the Company used a reasonable and prudent method to make its equipment choice. Specifically, the Company selected the GE Evolve series lighting as a result of a rigorous competitive procurement process conducted in May-June of 2014. The Company developed certain minimum specifications for the products for which bids were solicited (*see* Exhibit CDC-3). The bid submitted for the GE Evolve series of lighting was the least expensive and only lighting that met Company standards and specifications. *See* West Penn Statement No. 8-R, p. 2. Moreover, the GE Evolve series is used throughout the utility industry and, clearly, is provided by a well-known and reputable manufacturer.

Additionally, PennFuture’s assertions that the Company’s proposed fixture sizes are unavailable and inappropriate (s*ee* PennFuture/EDF Statement No. 1 - Gormley, p. 6; PennFuture/EDF Statement No. 1 - Woodbury, p. 9) are simply incorrect. The Company’s proposed fixture sizes are available as part of the GE Evolve series and were selected based on the input of potential customers as well as an analysis of the LED offerings of Baltimore Gas & Electric, Duquesne Light, and Progress Energy. Moreover, the wattage of the LED lights that would be installed under the proposed offering will be entirely within the discretion of the customer. *See* West Penn Statement No. 8-R, pp. 4-5.

Although PennFuture contends the Company’s use of a fifteen-year useful life for the LED streetlights is too conservative, its witness candidly admitted that useful life span (15 years) is within the range of service life estimates used by the utility industry which uses between 15-35 years. *See* PennFuture/EDF Statement No. 2 - Woodbury, p. 6. Utility estimates of useful lives differ based on variables that are specific to individual companies, the type of service they offer and the products they use. The Company’s witness, Christopher D. Ciccone, explained the Company, in determining a reasonable useful life, considered not just the LED fixture itself but, in addition, the “driver,” which converts AC voltages to DC voltages for use in the LED fixture. When the driver fails, as a practical matter, the fixture must be replaced. In short, the life of the LED streetlight unit will be limited by whichever component fails first. The Company engineers carefully considered the potential average life of the components of the LED streetlight in addition to the average life of the LEDs themselves and determined, based on reasonable engineering judgment applied to the available evidence, that a fifteen-year average service life is reasonable for its LED street lighting offering. *See* West Penn Statement No. 8-R, pp. 3-4.

Furthermore, if any significant portion of the installed LED equipment actually experiences a useful life longer than the fifteen years used to establish the initial LED rate, then any reduction in revenue requirement that those longer-experienced lives would produce would be taken directly into account in developing rates for subsequent periods. In that way, the benefit of LED lighting surviving longer than the projected useful life, should that occur, will flow to LED customers in the future. The Company’s bottom line is not augmented by its useful life decision because it receives a return on or a return of only its actual investment – neither more nor less.

Finally, the use of a levelizing approach to calculate LED rates significantly reduces the sensitivity of the rates to changes in useful life estimates – a factor that PennFuture’s witnesses did not acknowledge. The use of a levelized rate provides a 32% reduction relative to traditional cost of service and rate design methods. Tinkering with the useful life as PennFuture suggests would not have a meaningful impact on customer costs in the early years of an LED contract in light of the innovative levelizing approach the Company adopted for the express purpose of providing favorable price signals to prospective customers.

2. Non-Fixture Costs

PennFuture contends several categories of the Company’s non-fixture costs (e.g., equipment costs, engineering costs and installation time) are “significantly inflated” or unnecessary. It also makes other general and largely unsupported statements about the cost and productivity of private contractors to try to bolster that contention. PennFuture/EDF Statement No. 1 - Woodbury, pp. 9-10. The Company has, in fact, adequately supported its cost estimates. In addition to describing what each category of cost that its proposal encompasses, the Company explained its estimates were based on the use of utility employees and utility installation equipment (e.g., bucket trucks) to install the LED lights, not private contractors. *See* West Penn Statement No. 8-R, pp. 6-7. That estimate was used for the simple reason that it reflects how the work will actually be done. The Company will use its own employee and existing installation equipment – not private contractors – to do this work.

Notwithstanding PennFuture’s protestations, it is reasonable for the Company to use its existing, well-trained and proficient union work force to install LED street lights, just as the same work force is currently used to install and maintain the Company’s other forms of street lighting. Once again, the manner in which this work is performed is within the reasonable management discretion of the Company and is not subject to second-guessing or micromanaging either by the Commission or by witnesses whose business affiliations would likely create a bias against the use of a utility’s own employees to do this work.

In addition, as explained by Mr. Ciccone and as shown in Exhibit CDC-7, the Company’s cost estimates for each category of work such as, for example, engineering, properly reflect economies of scale that would be realized by installing not less than twelve LEDs (the minimum number that may be contracted for under the proposed LED service offering) instead of one LED at a time. *Id.* at 8.

3. The Company’s Cost of Service Study

PennFuture criticized the manner in which general distribution-related costs (e.g., poles, conductors, and transformers) were allocated among customer classes in the Company’s class cost of service study. Specifically, PennFuture contends that using non-coincidental peak (“NCP”) demands to allocate demand-related costs overstates the cost of service for the street lighting class because such an allocation method does not reflect the “marginal cost” of delivering electricity to street lights that, according to PennFuture, have stable load and operate primarily off-peak. PennFuture/EDF Statement No. 1 - Woodbury, pp. 4-6.

PennFuture did not present an alternative analysis of the cost of service for the street lighting class but, instead, stated that “for street lighting it makes more sense to ‘apply considerable judgment’ and use a coincidental peak approach or a coincidental peak approach with some percentage allocation based on non-coincidental peak.” *Id.* at 6.

However, as explained by the Company’s cost of service expert, Hillary E. Stewart, an NCP allocation is a universally accepted method for allocating distribution demand costs, as evidenced by its endorsement by the National Association of Regulatory Utility Commission’s (NARUC) *Electric Utility Cost Allocation Manual.*  Moreover, the NCP method of allocating distribution demand costs was explicitly approved by this Commission as recently as the last fully litigated electric rate case before it.[[57]](#footnote-57) There is no basis for using a coincident peak allocation for distribution plant, which is inconsistent with the NARUC Manual’s recommendation and has never been approved for that purpose in Pennsylvania. *See* West Penn Statement No. 5-R, pp. 18-19.

PennFuture makes additional unsupported allegations regarding particular cost allocations to street lighting, such as office equipment and call center expense, which should be rejected. PennFuture/EDF Statement No. 1 - Woodbury, pp. 6-7. The Company used accepted, well-established procedures to allocate street lighting costs, and its proposed allocation should not be altered based on PennFuture’s unsubstantiated allegations. Furthermore, there is no evidence to suggest that the changes in the allocation of those costs that PennFuture talked about, but never quantified, would have any material impact on either the overall results of the Company’s cost of service study or on the design of the proposed LED rate.

4. Per Fixture Distribution Rate

PennFuture contends the per-fixture distribution rate proposed for the LED street lighting offering (e.g., $5.52 for a 50 Watt Cobra Head fixture) is unreasonably high because: (1) it does not reflect the maintenance cost savings expected with LED lights; and (2) it is higher than West Penn’s existing customer-owned HPS street lighting distribution rate and the Northeast Utilities LED rate. *See* PennFuture/EDF Statement No. 1 - Gormley, p. 7; PennFuture/EDF Statement No. 1 - Woodbury, pp. 11-12. Neither contention present a valid criticism warranting any change to the Company’s proposed rates for LED street lighting.

First, the Company properly accounted for associated cost savings by not including maintenance costs that are otherwise typically part of the existing HPS lighting distribution rate calculation. *See* West Penn Statement No. 8-R, p. 9. Second, PennFuture’s comparison of the proposed LED rate to other utility rates is inapposite. The cited West Penn rate was developed over twenty years ago and, in any event, is a **customer-owned** HPS street lighting offering, meaning the fixture cost and maintenance cost are **not** included in the rate.

The Company’s proposed LED street lighting rate is for Company-owned lights and, as such, includes fixture costs, which is the primary reason it is higher than the existing West Penn HPS rates cited by PennFuture. Northeast Utilities’ LED rate is also a rate for service provided through **customer-owned** fixtures and, therefore, does not include fixture and maintenance costs. The rate is also structured differently from the Company’s proposed rate in significant ways. *See* West Penn Statement No. 8-R, pp. 9-10. In short, with respect to both the West Penn and Northeast Utilities rates, PennFuture made an “apples-to-oranges” comparison that does not accurately characterize the Company’s proposed rates.

In conclusion, West Penn argued its proposed LED street lighting offering should be approved without modification. The Company set forth a reasonable proposal and went the extra mile by implementing an innovative levelized rate approach to reduce up-front rates for the initial contract term and, in that way, create price signals designed to increase customer acceptance of the new service. Furthermore, the Company proposed a new offering of service not presently provided. If its proposed rate schedule were rejected based on PennFuture’s criticisms – which clearly should not be done – the result would be to deny potential customers any opportunity to adopt Company-owned LED street lighting service. That result is clearly not a reasonable outcome, nor would such an outcome be in the best interests of West Penn’s customers.

D. PennFuture’s Position

PennFuture presented the testimony of George Woodbury and Patrick Gormley in support of its arguments regarding the scope and pricing of the LED street light offering. Mr. Woodbury is the executive vice president of SoILux Technologies, which is a company specializing in street lighting and street lighting technologies as well as matters related to streetlight tariffs, acquisition of utility assets from the utility, and street lighting legislation. Woodbury Direct at pg. 2. Mr. Gormley has twenty-five years of experience selling electrical and lighting products in West Virginia and Pennsylvania for major manufacturers such as Berko, Reese Controls, Spaulding and Cree. His company, originally founded as Gormley Electric, currently operates in western Pennsylvania as Gormley-Farrington and operates in West Virginia as Gormley-Rowsey. Gormley Direct at 1.

In his review of the tariff and accompanying testimony, Mr. Gormley concluded the Company has not recently or adequately developed their LED options and the rates did not reflect true market actualities. In summing up these conclusions, he testified:

First, their estimated cost of acquisition is not consistent with current competitive pricing. When they actually go into the market their costs are likely to be 15% to 25% lower. If the rates are set based on these higher estimates, these costs savings will accrue to the benefit of the utility, and not be enjoyed by the municipality and their citizens. Second, the cost of LED lighting has been declining since its inception and is likely to continue to decline. Again, these market benefits will only go to the utility, not the municipal customer. Third, the four sizes of LED lights proposed by the utility (50 watt, 90 watt, 130 watt and 260 watt) are not even available in the specifications provided by the utility in their rate proposal. They have failed to provide an adequate description of what they would provide under this program. Fourth, the utility’s estimated useful life of an LED street light is overly conservative. The industry’s standard for the end of life for an LED is when it has lost 0% of its original illumination (known as L70). Most competitive LED fixture manufacturers have lifetimes exceeding 100,000 hours and in some cases significantly higher values, exceeding 150,000 hours. 100,000 hours of life translates to around 25 years. These values are calculated at average temperatures that are typically higher than we experience in Pennsylvania. Since LEDs last longer in cooler environments, Pennsylvania’s experience should be even longer life. Also, it is unlikely that many municipalities will choose to replace their LEDs when they have lost 30% of the light. Today, they are using many older high pressure sodium bulbs that have dissipated far more than 30% but haven’t burned out and they do not choose to replace them. If they make similar decisions with LEDs, they will not change them until they have lost 40%, 50% or 60% of their original light. This would extend their effective useful life by many, many years. It is not unreasonable to expect LED street lights to still be in service 40 or 50 years after installation. 50 years of useful life is probably an overly aggressive estimate, but 15 years is unnecessarily conservative. 25 years is probably a safer estimate to make. Fifth, the utility does not appear to make any calculation for the maintenance savings with LED street lights. The cost of changing light bulbs is virtually eliminated. This is a significant savings and must be part of the rate calculation. Sixth, the utility should be responsible for indicating which LED street light is appropriate for changing out each size of existing street lights. The commission cannot adequately evaluate their offering and municipalities cannot do cost benefit analysis if there is no direct comparison. It should also be incumbent on the utility to demonstrate that they are choosing an appropriate offering for at least the most common sizes. Seventh, the utility has not offered a sufficiently low wattage option for very common residential street lights. A 70 or 100 watt high pressure sodium light can be replaced today with a 25 watt LED. The lowest watt option offered by the utility is 50 watts. The 25 watt LED light would cost less than the 50 watt version and obviously use half the energy. This difference greatly impacts the factors considered by the municipality in consideration of the request to transition to LED technology.

*Id*. at 6-7.

In summation, Mr. Gormley testified the Company’s proposed distribution rate for installation costs for LED fixtures for twelve 50 watt LED fixtures is $1254.57 or $104.54 per light. However, this does not accurately reflect installation costs associated with LED fixtures. In 2011, the City of Pittsburgh received competitive bids from contractors to replace high-pressure sodium cobra heads with LED street lights. The winning bid was less than half of that proposed by the Company at $45 per light. *Id*. at 10.

Mr. Woodbury similarly testified as to issues he saw when reviewing the Company’s proposed tariff. He also testified as to the underlying cost of service study (COSS) and some of the shortcomings of the approach taken relative to street lighting. The first issue he noticed is that the Company used a non-coincidental peak method for their allocation of costs. The purpose of these COSS is to determine a causality link between costs and customer classes so these costs can be fairly allocated and the utility can realize an appropriate return on their investment. The principal shortfall of using a non-coincidental peak method of allocating costs is that it essentially does not account for the marginal cost of delivery. Woodbury Direct at 4.

Using the non-coincidental peak method essentially ignores the Company’s marginal cost of distribution as being nearly zero. For street lighting it makes more sense to “apply considerable judgment” and use a coincidental peak approach or a coincidental peak approach with some percentage allocation based on non-coincidental peak. *Id*. at 6.

Converting street lighting systems to LED technology has an enormous impact on municipalities. The major impact is that the higher relative costs of A & G and other overhead are dramatically reduced. Virtually all LED manufacturers now offer minimum ten year warranties and based on independent test lab results the anticipated life expectancy of the LED is over 20 years. Los Angeles has installed over 140,000 LED lights and to date their experienced failure rate is below .8%. As a result the number of customer calls, work orders, repair parts storage, accounting and other overhead is dramatically reduced. The cost of operating an LED system is much lower and the reliability of an LED system is much higher. *Id*. at 8.

Mr. Woodbury observed a number of errors in the Company’s analysis.

The fixture they used was the GE Evolve series, which is an older model. Its efficacy is on the order of 66 lumens per watt, when the current family of fixtures from other manufacturers are producing over 90 lumens per watt with many over 110 lumens per watt. Cree XSP1 HE for example. This fixture is large and weighs over 27 lbs whereas the Cree XSP1 weighs in at 18 lbs and if you use the Cree XSPR it weighs 13.9 lbs. The cost of the GE fixture selected to replace a 50w HPS lamp is $215. The cost of a LED fixture for that application today is under $133. They list costs for LED fixtures beginning with 50watts and going up to 260w. This makes no sense as it implies you would replace a 50 watt HPS lamp with a 50 watt LED which is not true. The DOE Caliper 7 test results indicate that the fixture losses of an HPS fixture are on the order of 35%. When you additionally account for average mean lumens over life and the much higher efficiency of the LED fixture to put foot-candles on the roadway, the 50w HPS fixture can typically be replaced with an LED drawing less than 24 watts. In fact based on the improved response of the human eye to the higher color rendering source I have very satisfactorily replaced a 50 watt HPS lamp with an LED using as little as 19 watts.

*Id*. at 8-9.

Mr. Woodbury also noted the Company had underestimated the life expectancy of an LED fixture. The Company indicated that a fixture has a 5-year limited system warranty. However, independent testing has established that a reasonable life expectancy is 20 years, and a current standard warranty is 10 years with some manufacturers considering 15 years. Thus, the Company begins its analysis with faulty assumptions to arrive at a tariff rate completely out of line with market conditions.

1. Public Benefit

Penelec maintains over 974,000 individual streetlights of varying applications and sizes. If you replaced these lighting units with LED lighting technology, the energy savings that can be achieved would be about 433 Gigawatt Hours (433,000,000 kWh) per year. In addition to this conservation that could be achieved, LEDs offer many other benefits to both the public and the utility itself. These benefits should be encouraged through adoption of a tariff rate in line with market conditions.

LED fixtures offer significant cost savings to municipalities. The cost of electricity, and particularly electricity used to light streets, is a major operational cost for municipalities. LED fixtures can reduce energy usage by 50 to 80%. Additionally, the estimated life of an LED fixture is about five times that of a high pressure sodium fixture. This means that the fixture will not need to be maintenanced as frequently, which will also result in cost savings. In addition, the warranty on an LED fixture is ten years. This provides significant cost savings to the municipality which affords them the opportunity to offset rising cost of services elsewhere and to lower municipal taxes. Gormley Direct at 2.

There are other public benefits of using LED lighting. LED is a white light as compared to the yellow light thrown from high pressure sodium. LED’s white light allows for better visual acuity, which means that drivers and pedestrians can see better under LED lighting. With the same number of foot candles landing on the street, a person would, for example, be able to more easily identify the color of a car under LED light as compared to traditional high pressure sodium.

In addition to the quality of light, LED provides a better distribution than traditional lighting. LED spreads light out, which provides better uniformity and improves a person’s ability to see, which in turn improves safety. Also, LED lights can be aimed so that it targets only the road, in contrast to traditional street lights that shine everywhere. LED lights enables municipalities to eliminate a number of nuisance complaints associated with traditional lights shining where they are not wanted, such as into homes and apartments.

Finally, LED lights benefit utilities by reducing their load. LED lights consumes 50-80% less energy than traditional lights, which reduces KW demand. When lights are on during peak demand periods, LED lights will reduce the cost of electricity because it will save the utilities from having to buy as much power on the spot market. Gormley Direct at 9. LED lights enable utilities to reduce maintenance costs. Given the great benefits afforded by use of LED lights, it is respectfully requested that the approved tariff should be consistent with market actualities.

E. ALJs’ Recommendation Concerning LED Street Lighting Service Offering

West Penn’s proposals for the LED Street Lighting Service Offering are just and reasonable. It has selected an innovative method to make efficient lighting available to customers, and to the benefit of the public in general who benefit from better night-time lighting. This approach it selected allows the average customer (some of whom are individuals) to benefit from a light source that uses less electricity and lasts longer than the conventional lighting. In order to make the new lighting affordable, the cost is spread out over fifteen years. As stated previously, the Company has the burden of proof and we are not persuaded by Penn Future’s arguments, especially absent any specified suggested alternatives, that the proposed offering is not the least expensive to procure, uses unavailable and inappropriate fixture sizes, utilizes a conservative useful life. We conclude West Penn did meet its burden of proof, based upon this record and, consequently, we recommend the proposed change – to implement the proposed LED Street Lighting Service Offering – be approved at this time.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S.A. §§501, 1301, 1308(d).

2. The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. Warner v. GTE North, Inc., Docket No. C-00902815, Opinion and Order entered April 1, 1996; Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

3. The Joint Petition For Partial Settlement submitted by West Penn Power Company, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Pennsylvania State University, West Penn Power Industrial Intervenors, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Environmental Defense Fund, Wal-Mart Stores East, LP, and AK Steel Corporation is just and reasonable and in the public interest.

4. The proposed base rate revenue increase of $59.9 million, as shown in the Proof of Revenue at Exhibit 2 to the Joint Petition For Partial Settlement, is just and reasonable, as required by 66 Pa.C.S.A. §1301, and has been fully supported by the parties to the Joint Petition For Partial Settlement.

5. The revenue allocations to the various customer classes, provided in the Joint Petition For Partial Settlement, produce just and reasonable rates, as required by 66 Pa. C.S.A. §1301.

6. The LED Street Lighting Service Offering, proposed in the filing on August 4, 2014, is just and reasonable, as required by 66 Pa.C.S.A. §1301.

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# VI. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That West Penn Power Company shall not place into effect the rates, rules, and regulations contained in the Original Tariff Electric-Pa. P.U.C. No. 38 and Original Tariff Electric-Pa. P.U.C. No. 40, filed on August 4, 2014, the same having been found to be unjust, unreasonable, and therefore unlawful.

2. That the Joint Petition For Partial Settlement submitted by West Penn Power Company, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Pennsylvania State University, West Penn Power Industrial Intervenors, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Environmental Defense Fund, Wal-Mart Stores East, LP, and AK Steel Corporation, at Docket No. R-2014-2428742, including all terms and conditions as clarified, is hereby approved, with the modifications listed in Ordering Paragraph No. 3.

3. That West Penn Power Company shall provide to the Commission’s Bureau of Technical Utility Services the same information provided to the statutory parties, as specified in the Partial Settlement at Paragraphs No. 11(A)(6); 11(D)(4); 11(D)(6); 11(D)(8); and 11(E)(3).

4. That West Penn Power Company is hereby authorized to file the tariff supplement contained in Exhibit 1 to the Joint Petition For Partial Settlement , to become effective on at least one day’s notice after entry of the Commission’s order approving the settlement, for service rendered on and after May 19, 2015, designed to produce $59.9 million in additional annual base rate operating revenue based upon the pro forma level of operations at April 30, 2016.

5. That West Penn Power Company shall allocate the authorized increase in operating revenue to each customer class and shall implement the rate design as set forth in Exhibit 4 to the Joint Petition For Partial Settlement.

6. That the Formal Complaints filed against the base rate proceeding at R‑2014-2428742 by the Office of Consumer Advocate at C-2014-2441636; Office of Small Business Advocate at C-2014-2443461; West Penn Power Industrial Intervenors at C-2014-2442317; Pennsylvania State University at C-2014-2445681; and AK Steel Corporation at C‑2014-2442667, are satisfied and withdrawn, consistent with the Joint Petition For Partial Settlement.

7. That West Penn Power Company implement the LED Street Lighting Service Offering, as proposed in the August 4, 2014 filing.

## That West Penn Power Company shall comply with all directives, conclusions and agreements in the Partial Settlement that are not the subject of individual ordering paragraphs as fully as if they were the subject of specific ordering paragraphs.

9. That the settlement terms and conditions concerning West Penn Power Company’s Petition For Approval of the Smart Meter Deployment Plan and contained within the Joint Petition for Partial Settlement submitted by West Penn Power Company, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Pennsylvania State University, West Penn Power Industrial Intervenors, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Environmental Defense Fund, Wal-Mart Stores East, LP, and AK Steel Corporation, at Docket No. R-2014-2428742, is hereby approved.

10. That the Formal Complaints of Ernest G. Bradmon at C-2014-2443459; James A. Schoenecker at C-2014-2444152; Mary Ellen McConnell at C-2014-2445595; and Gino Joseph Manetta at C-2014-2445592, are dismissed.

11. That after acceptance and approval by the Commission of the tariff revisions filed by West Penn Power Company, the investigation at Docket No. R‑2014-2428742 shall be terminated and the record shall be marked closed.

/s/

Dennis J. Buckley

Administrative Law Judge

Date: March 9, 2015 /s/

Katrina L. Dunderdale

Administrative Law Judge

1. If the Commission makes the Settlement Rates effective prior to May 19, 2015, this surcharge will recoup lost revenues from May 3, 2015 through the Commission-ordered Settlement Rates effective date. [↑](#footnote-ref-1)
2. The Company is not precluded by this provision from seeking Commission revision of its established Standard and Benchmark metrics through normal Commission procedures. [↑](#footnote-ref-2)
3. In assessing reliability issues, we acknowledge the motion of Commissioner James H. Cawley at the Public Meeting of February 26, 2015, at Docket No. D-2013-2365991. We stress that each Recommended Decision, which is based on a proposed Settlement submitted on February 4, 2015, should in no way be misconstrued as an answer to—or as satisfaction of—the Commissioner’s concerns. [↑](#footnote-ref-3)
4. Additionally, in response to a request by the Administrative Law Judges, on October 10, 2014, West Penn submitted a letter of counsel setting forth the authority to request the roll-in of smart meter costs to base rates and reduce its SMT-C to zero and provided, as an attachment, the August 3, 2010 Order. [↑](#footnote-ref-4)
5. The most recent TUS Quarterly Earnings Report was issued on January 29, 2015 at Docket No. M-2015-2460381 for the period ended September June 30, 2014.

   6 The Presiding Officer notes that TUS does not calculate the ROE. While the TUS quarterly earnings report provides calculations and data, it is actually the Commission that decides on an appropriate ROE. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
7. Bluefield*, supra.* [↑](#footnote-ref-7)
8. Executone of Philadelphia, Inc. v. Pa. Pub. Util. Comm’n, 415 A.2d 445, 448 (Pa.Cmwlth. 1980). [↑](#footnote-ref-8)
9. Peoples Natural Gas Co. v. Pa. Pub. Util. Comm’n, 409 A.2d 446, 456 (Pa.Cmwlth. 1979). [↑](#footnote-ref-9)
10. *See* Pa. Pub. Util. Comm’n v. PPL Electric Utilities Corp., Docket No. R-2012-2290597 (Final Order entered December 5, 2012), p. 51 (“Recent Commission practice is to address all aspects of USPs through the triennial filing process and to collect all revenues through a rider to base rates.”). *See also* 66 Pa. C.S. § 2802(17) providing that EDCs are entitled to “full recovery” of Universal Service costs “through a nonbypassable rate mechanism.” [↑](#footnote-ref-10)
11. The Company’s efforts to contain expenses and its significant investment in reliability-related infrastructure were explained in detail in Section II.A, *supra*. [↑](#footnote-ref-11)
12. As previously explained, when the Settlement is approved and the Settlement Rates become effective, the SMT-C will be reduced to zero, in light of the roll-in to base rates of Smart Meter revenue requirement, subject to a possible future implementation of an SMT-C rate, pursuant to the terms of the Settlement (Joint Petition Paragraph 11.A.2). *See* West Penn St. 7-R, pp. 3-4. [↑](#footnote-ref-12)
13. *See* Duquesne Light*, supra*. [↑](#footnote-ref-13)
14. Settlement Exh. 2, Proof of Revenues (column 11). On a total revenue basis (distribution, generation, and transmission), this represents a 13.6% increase. [↑](#footnote-ref-14)
15. These three measurements are defined by the Commission in its regulations, 52 Pa. Code Section 57.191-197, and are used to measure all Pennsylvania electric distribution companies’ performance for non-major storm outages or interruptions. Therefore, these measurements exclude the outages associated with “major events” and are designed to reflect the “normal” operation of the distribution system under routine weather conditions and events. [↑](#footnote-ref-15)
16. Order, p. 7 (December 5, 2014). [↑](#footnote-ref-16)
17. Order, p. 7 (December 5, 2014). [↑](#footnote-ref-17)
18. BIE’s overall rate of return recommendation was 7.03% for Met-Ed, 7.28% for Penelec, 7.48% for Penn Power and 7.11% for West Penn. [↑](#footnote-ref-18)
19. West Penn Statement No. 1 p. 6. [↑](#footnote-ref-19)
20. BIE St. No. 3, pp. 14-15 at Docket No. R-2014-2428742. *See also*, BIE St. No. 1, p. 2 at Docket No. M‑2013-2341991. [↑](#footnote-ref-20)
21. BIE St. No. 3, pp. 15-16 at Docket No. R-2014-2428742. *See also*, BIE St. No. 1, p. 3 at Docket No. M‑2013-2341991. [↑](#footnote-ref-21)
22. West Penn Statement No. 1 p. 6. [↑](#footnote-ref-22)
23. West Penn Statement No. 1 pp. 6-7. [↑](#footnote-ref-23)
24. BIE St. No. 3, p. 17 at Docket No. R-2014-2428742. *See also*, BIE St. No. 1, p. 5 at Docket No. M-2013-2341991. [↑](#footnote-ref-24)
25. BIE St. No. 3, p. 17 at Docket No. R-2014-2428742. *See also*, BIE St. No. 1, p. 5 at Docket No. M-2013-2341991. [↑](#footnote-ref-25)
26. Joint Petition, p. 7. [↑](#footnote-ref-26)
27. Joint Petition, p. 7. [↑](#footnote-ref-27)
28. Joint Petition, p. 7. [↑](#footnote-ref-28)
29. BIE St. No. 3, pp. 15-16 at Docket No. R-2014-2428742. *See also*, BIE St. No. 1, p. 3 at Docket No. M-2013-2341991. [↑](#footnote-ref-29)
30. Joint Petition, p. 7. [↑](#footnote-ref-30)
31. *See*, Docket No. M-2013-2341991. [↑](#footnote-ref-31)
32. BIE St. No. 3, p. 18 at Docket No. R-2014-2428742. [↑](#footnote-ref-32)
33. BIE St. No. 3, p. 21 at Docket No. R-2014-2428742. [↑](#footnote-ref-33)
34. BIE St. No. 3, p. 20-21 at Docket No. R-2014-2428742.

    [↑](#footnote-ref-34)
35. BIE St. No. 5, p. 22. [↑](#footnote-ref-35)
36. The five year average of $12,144,730 contained in BIE’s testimony included extraordinary storm expenses, while the $9,000,000 agreed upon in Settlement excludes those extraordinary expenses. [↑](#footnote-ref-36)
37. The Presiding Officer notes that TUS does not calculate the ROE. While the TUS quarterly earnings report provides calculations and data, it is actually the Commission that decides on an appropriate ROE [↑](#footnote-ref-37)
38. Pa. Pub. Util. Comm’n v. Columbia Gas of Pennsylvania, Inc., R-2014-2406274, p. 15 (Order entered December 10, 2014). [↑](#footnote-ref-38)
39. Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123950, p. 30 (Order entered June 9, 2010). [↑](#footnote-ref-39)
40. BIE St. No. 4, p. 33 at Docket No. R-2014-2428742. [↑](#footnote-ref-40)
41. BIE St. No. 4, p. 33 at Docket No. R-2014-2428742. [↑](#footnote-ref-41)
42. BIE St. No. 4, p. 33 at Docket No. R-2014-2428742. [↑](#footnote-ref-42)
43. BIE St. No. 4, p. 33 at Docket No. R-2014-2428742. [↑](#footnote-ref-43)
44. BIE St. No. 4, p. 35 at Docket No. R-2014-2428742. [↑](#footnote-ref-44)
45. Joint Petition Exhibits 2, 3 and 4. [↑](#footnote-ref-45)
46. Joint Petition Exhibits 2, 3 and 4. [↑](#footnote-ref-46)
47. See Motion of Commissioner James H. Cawley in Re: FirstEnergy Pennsylvania Implementation Plan, Docket No. D-2013-2365991, et seq. (February 26, 2015). [↑](#footnote-ref-47)
48. Lower Frederick Twp. v. Pa. Pub. Util. Comm’n, 48 Pa.Cmwlth. 222, 226-227, 409 A.2d 505, 507 (1980). See also, Brockway Glass v. Pa. Pub. Util. Comm’n, 63 Pa.Cmwlth. 238, 437 A.2d 1067 (1981). [↑](#footnote-ref-48)
49. See Pa. Pub. Util. Comm’n v. National Fuel Gas Distribution Corp., 1994 Pa. PUC LEXIS 134 \*5 (1994); Pa. Pub. Util. Comm’n v. Breezewood Telephone Company, 74 Pa. PUC 431 (1991); and Pa. Pub. Util. Comm’n v. Equitable Gas Co., 57 Pa. PUC 423, 471 (1983). [↑](#footnote-ref-49)
50. See also, 66 Pa. C.S. §1501, requiring a utility to have reasonable rules governing service. There is no similar burden placed on parties which challenge a proposed rate component. See, Berner v. Pa. Pub. Util. Comm’n, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955). [↑](#footnote-ref-50)
51. Allegheny Center Assocs. v. Pa. Pub. Util. Comm’n, 570 A.2d 149, 153 (Pa.Cmwlth. 1990). [↑](#footnote-ref-51)
52. See, e.g., Pa. Pub. Util. Comm’n v. PECO, Docket No. R-891364, et al.., 1990 Pa. PUC LEXIS 155 (May 16, 1990); Pa. Pub. Util. Comm’n v. Breezewood Telephone Company, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (January 31, 1991). [↑](#footnote-ref-52)
53. Pa. Pub. Util. Comm’n v. Metropolitan Edison Company, et al.., Docket Nos. R-00061366, et al., 2007 Pa. PUC LEXIS 5 (January 11, 2007). [↑](#footnote-ref-53)
54. Under Street Lighting Service – Schedule 51; Street and Area Lighting – Schedule 53; Street Lighting Service – Schedule 54; Street Lighting Service – Customer-Owned Equipment – Schedule 56; Outdoor Lighting Equipment and Maintenance Service – Schedule 57; or Mercury Vapor Street Highway Lighting Service – Schedule 71. [↑](#footnote-ref-54)
55. *See* Bell Tel. Co. of Penna. v. Driscoll, 343 Pa. 109, 118 A.2d 912, 916 (1941) (PUC is not a super board of directors for public utilities). [↑](#footnote-ref-55)
56. *See* Joint Application of Verizon Commc’ns, Inc. and MCI, Inc. For Approval of Agreement and Plan of Merger, Docket No. A-310580F0009 (Final Order entered January 11, 2006), 2006 Pa. PUC LEXIS 22 at 218, *aff’d*, Popowsky v. Pa. Pub. Util.Comm’n, 594 Pa. 583; 937 A.2d 1040 (2007):

    Joint Applicants are correct that the Commission is restrained from acting as a super board of directors. Metropolitan Edison Co. v. Pa. Pub. Util.Comm’n., 437 A.2d 76, 62 Pa.Cmwlth. 460 (1981). Absent a showing of abuse of discretion or arbitrary action by the public utility, the Commission lacks authority to interfere with the general management decisions of the public utility. *Id*.; Pa. Pub. Util.Comm’n.v. Philadelphia Electric Company, 460 A.2d 734, 501 Pa. 153 (1983). The Commission was created to ensure that public utilities furnish and maintain adequate, efficient, safe, and reasonable service and facilities at just and reasonable rates. 66 Pa. C.S.A. §§ 1301, 1501. The management decisions required to achieve reasonable rates and service are generally left to the public utility. [↑](#footnote-ref-56)
57. Pa. Pub. Util. Comm’n.v. PPL Elec. Utils. Corp., Docket No. R-2012-2290597 (Final Order entered December 28, 2012), p. 106 (“According to PPL, the filed COSS in this proceeding is virtually identical to the methodology adopted by the Commission in its 2010 base rate proceeding using the class maximum non-coincident peak (NCP) demand method, which is based on the highest demand imposed by each class on its distribution system, to allocate its demand-related distribution costs. PPL St. 8 at 19.”) *See Id*. at 112 approving and adopting PPL’s proposed cost of service study. [↑](#footnote-ref-57)