

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PA 17120**

Pennsylvania Public Utility Commission

v.

**Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
West Penn Power Company**

Public Meeting held January 19, 2017

2537349 – OSA

Docket No. R-2016-2537349 et al.

Docket No. R-2016-2537352 et al.

Docket No. R-2016-2537355 et al.

Docket No. R-2016-2537359 et al.

STATEMENT OF COMMISSIONER DAVID W. SWEET

Before the Commission are the Exceptions to the Recommended Decision of Administrative Law Judge Mary D. Long which recommends approval of the Joint Petition for Partial Settlement filed by the litigating parties to the base rate cases of the four FirstEnergy companies, which settles all but one of the issues in the case. The outstanding issue is whether accumulated deferred income taxes (ADIT) should be included in the rate calculations for the Companies' Distribution System Improvement Charges (DSIC) in light of the passage and enactment of Act 40 of 2016, codified as 66 Pa.C.S.A. § 1301.1.

First, I commend the parties for reaching settlement in these consolidated cases, as I am cognizant that it represents the compromises of many parties and positions. A settlement in a matter this complex is not easy to achieve, but the parties have done so in a manner which makes it acceptable for the Commission to approve. To complete a case of this size within the strict time limits provided by statute is not easy, and Commission Staff has managed this admirably and right on schedule, and they are to be commended.

I support the Partial Settlement, and I want my vote to reflect that I support it. It is the single outstanding issue that gives me pause.

The remaining issue is both procedural and substantive: (1) whether this matter should be adjudicated in the present base rate cases or in the DSIC complaint proceeding that is pending before an administrative law judge, and (2) whether an ADIT offset should be included in any DSIC rate charged to consumers, especially in light of the passage of Act 40 of 2016. These two issues are intertwined.

The OSA report directs the matter to the pending DSIC complaint case, which is currently limited to the determination of specific issues remaining in the docket where the FirstEnergy Companies' DSICs have already been approved. The reason for this referral appears to be primarily a desire for simplicity. In addition, the Order points out that the OCA argument is one that OCA has made in the past in numerous DSIC cases, where the Commission has consistently held that utilities are not required to include ADIT in their DSIC rate calculations. However, the Commission has not considered whether the passage of Act 40 of 2016 will require a different result. The parties involved, the OCA and the Companies, have

provided testimony and briefs regarding this issue in the present case, and the issue is ripe for decision right now.

Act 40 states, in part, "If an expense or investment is allowed to be included in a public utility's rates for ratemaking purposes, the related income tax deductions and credits shall also be included in the computation of current or deferred income tax expense to reduce rates."

I agree with the OCA that the DSIC is a "rate," as referred to in Act 40. A base rate case opens all rate-related issues for scrutiny. Act 40 refers to "rates" without distinguishing a DSIC charge as something other than a rate. It is, therefore, appropriate to decide this issue in the context of the present base rate cases. I see no advantage to deferring a ripe issue to another docket when it would be judicially expedient to make the determination right here and now.

Because I believe that justice is better served by deciding the single outstanding issue now, I ask that my vote be recorded as in favor of the Partial Settlement but dissenting from the determination to send the issue of the proper treatment of ADIT in light of the passage of Act 40 of 2016 to another docket.

January 19, 2016
Date



David W. Sweet
Commissioner