

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2016-2531550
Office of Consumer Advocate	:	C-2016-2566526
Office of Small Business Advocate	:	C-2016-2567115
	:	
v.	:	
	:	
Citizens' Electric Company	:	
of Lewisburg PA	:	
	:	
	:	
Pennsylvania Public Utility Commission	:	R-2016-2531551
Office of Consumer Advocate	:	C-2016-2566522
Office of Small Business Advocate	:	C-2016-2567132
	:	
	:	
v.	:	
	:	
	:	
Wellsboro Electric Company	:	

**RECOMMENDED DECISION**

Before  
Joel H. Cheskis  
and  
Andrew M. Calvelli  
Administrative Law Judges

**INTRODUCTION**

This Decision recommends that the Joint Petitions for Settlement (Petitions or Settlements) be approved in their entirety without modification because they are in the public interest and are supported by substantial evidence. In general, in lieu of the overall revenue increase of \$592,000, or 12.8% over present revenues, sought by Citizens Electric Company of Lewisburg, PA, the company will receive an increase of \$355,000, or 7.5% over present revenues. For Wellsboro Electric Company, in lieu of the overall revenue increase of

\$1,000,000, or 21.3% over present revenues, sought by Wellsboro, the company will receive an increase of \$775,000, or 16.95% over present revenues. This Decision finds that the Settlements comply with the relevant Sections of the Public Utility Code regarding rate filings and rate increases and are consistent with Commission regulations promoting settlements.

### HISTORY OF THE PROCEEDING

On August 31, 2016, Citizens' Electric Company of Lewisburg, PA (Citizens'), Utility Code 110050, filed Supplement No. 110 to Tariff Electric – Pa. P.U.C. No. 14, and Wellsboro Electric Company (Wellsboro), Utility Code 111200, filed Supplement No. 102 to Tariff Electric – Pa. P.U.C. No. 8, both tariffs to become effective October 30, 2016, and containing proposed increases in distribution rates and other tariff changes. Citizens' was seeking an overall revenue increase of \$592,000 per year, or 12.8% over present revenues, producing a 7.54% rate of return. Wellsboro was seeking an overall revenue increase of \$1,000,000 per year, or 21.3% over present revenues, producing a 7.38% rate of return.

Citizens' requested an increase in distribution base rates due to replacing its aging distribution infrastructure, a \$6 million increase for utility plant in service, Electronic Data Interchange (EDI) implementation, an increase in vegetation management efforts, and workforce training.

Wellsboro requested an increase in distribution base rates due to replacing its aging distribution infrastructure, an \$8 million increase for utility plant in service, ongoing vegetation management, EDI implementation, and large customer facility closures.

The Commission assigned Docket Number R-2016-2531550 to the Citizens' rate case and Docket Number R-2016-2531551 to the Wellsboro rate case. Formal Complaints were filed at both Docket Numbers by the Office of Consumer Advocate (OCA) on September 14, 2016, and by the Office of Small Business Advocate (OSBA) on September 19, 2016. The Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance in these proceedings on September 16, 2016.

Pursuant to 66 Pa. C.S. §1308(d), these filings were suspended by Order dated October 6, 2016, until May 30, 2017, unless permitted by Commission Order to become effective at an earlier date. In that Order, the Commission concluded that investigation and analysis of these proposed tariff filings and the supporting data indicate that the proposed changes in rates, rules, and regulations may be unlawful, unjust, unreasonable, and contrary to the public interest. The Commission also ordered that this matter be assigned to the Office of Administrative Law Judge for the prompt scheduling of such hearings as may be necessary in order to issue a Recommended Decision to the Commission, giving consideration to the reasonableness of the Respondents' existing rates, rules, and regulations.

By Notice dated October 13, 2016, the Office of Administrative Law Judge scheduled an Initial Prehearing Conference for Monday, October 31, 2016 at 10:00 a.m. in Hearing Room 4 of the Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120 before Administrative Law Judges Joel H. Cheskis and Andrew M. Calvelli. The Initial Prehearing Conference was held as scheduled and various procedural matters were discussed, including a request to consolidate the Citizens' and Wellsboro rate cases, which request was granted at the Conference. Following the Conference, a Scheduling Order was served upon the parties by the Office of Administrative Law Judge on November 3, 2016, with evidentiary hearings scheduled for January 17, 2017 and January 18, 2017.

In the week prior to the scheduled hearing dates, the parties had various discussions concerning possible settlement of the case. In various email exchanges between the parties and the Office of Administrative Law Judge, the parties advised that settlement of all issues, except for the issue of revenue allocation, had been achieved. The parties further advised that they agreed to waive cross-examination of all witnesses other than a few witnesses identified in a cross-examination matrix submitted by counsel for Citizens' and Wellsboro. Given those representations, the parties were advised that the hearing would be held on January 18, 2017 and that there would be no hearing on January 17, 2017.

The hearing was held on January 18, 2017. The following counsel appeared at the hearing: Adeolu Bakare, Esquire, Matthew Garber, Esquire and Pamela Polacek, Esquire on

behalf of Citizens' and Wellsboro; Aron Beatty, Esquire on behalf of OCA; Scott Granger, Esquire and Erika McLain, Esquire on behalf of I&E; and Sharon Webb, Esquire on behalf of OSBA. Citizens' and Wellsboro presented two witnesses. The parties were provided the opportunity to cross-examine those witnesses. Following the witness presentations, pre-served testimony was admitted into the record with accompanying verifications without objection, as follows:

#### CITIZENS'

- Direct Testimony of Howard S. Gorman (Citizens' Statement No. 1)
- Direct Testimony of John A. Neri (Citizens' Statement No. 2)
- Direct Testimony of Charles Barnes (Citizens' Statement No. 3)
- Direct Testimony of Eric Winslow (Citizens' Statement No. 4)
- Direct Testimony of Gene Cree (Citizens' Statement No. 5)
- Direct Testimony of John Kelchner (Citizens' Statement No. 6)
- Rebuttal Testimony of Howard S. Gorman (Citizens' Statement No. 1-R)
- Rebuttal Testimony of John A. Neri (Citizens' Statement No. 2-R)
- Rebuttal Testimony of Eric Winslow (Citizens' Statement No. 4-R)
- Rebuttal Testimony of John Kelchner (Citizens' Statement No. 6-R)

#### WELLSBORO

- Direct Testimony of Howard S. Gorman (Wellsboro Statement No. 1)
- Direct Testimony of John A. Neri (Wellsboro Statement No. 2)
- Direct Testimony of Charles Barnes (Wellsboro Statement No. 3)
- Direct Testimony of Craig Eccher (Wellsboro Statement No. 4)
- Direct Testimony of Scot F. Boyce Sr. (Wellsboro Statement No. 5)
- Rebuttal Testimony of Howard S. Gorman (Wellsboro Statement No. 1-R)
- Rebuttal Testimony of John A. Neri (Wellsboro Statement No. 2-R)
- Rebuttal Testimony of Craig Eccher (Wellsboro Statement No. 4-R)

#### OCA

- Direct Testimony of Ashley E. Everette (OCA Statement No. 1)
- Direct Testimony of Aaron L. Rothschild (OCA Statement No. 2)
- Direct Testimony of Jerome D. Mierzwa (OCA Statement No. 3)
- Surrebuttal Testimony of Ashley E. Everette (OCA Statement No. 1-S)
- Surrebuttal Testimony of Aaron L. Rothschild (OCA Statement No. 2-S)
- Surrebuttal Testimony of Jerome D. Mierzwa (OCA Statement No. 3-S)

## I&E

- Direct Testimony of Anthony Spadaccio (I&E Statement No. 1)
- Direct Testimony of Christopher Keller (I&E Statement No. 2)
- Direct Testimony of Lisa A. Gumby (I&E Statement No. 3)
- Direct Testimony of Jeremy Hubert (I&E Statement No. 4)
- Surrebuttal Testimony of Anthony Spadaccio (I&E Statement No. 1-SR)
- Surrebuttal Testimony of Christopher Keller (I&E Statement No. 2-SR)
- Surrebuttal Testimony of Lisa A. Gumby (I&E Statement No. 3-SR)
- Surrebuttal Testimony of Jeremy Hubert (I&E Statement No. 4-SR)

## OSBA

- Direct Testimony of Brian Kalcic (OSBA Statement No. 1)
- Rebuttal Testimony of Brian Kalcic (OSBA Statement No. 1-R)
- Surrebuttal Testimony of Brian Kalcic (OSBA Statement No. 1-SR)

In addition to the witness presentations and the admission of pre-served testimony into the record, the parties were reminded that the briefing schedule set forth in the Scheduling Order required Main Briefs to be submitted by February 2, 2017 and Reply Briefs to be submitted by February 10, 2017. The parties agreed to limit their briefs to a discussion of the issue of revenue allocation, as all other issues had previously been settled between the parties. The parties also agreed to continue their efforts to settle the issue of revenue allocation.

Via email dated January 27, 2017, the parties advised that a full settlement had been reached, and requested that they be allowed to file the settlement documents no later than February 10, 2017, the due date for Reply Briefs. That request was granted, the parties filed the settlement documents on February 10, 2017, and the record in this proceeding was closed on that date.<sup>1</sup> The settlement documents included the Joint Petitions for Settlement, as well as accompanying attachments in support of the Settlements, proposed revised tariffs and Statements in Support of the Settlements from each party. For the reasons set forth below, the Settlements will be recommended for approval in their entirety without modification.

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<sup>1</sup> We note that the parties filed two separate Joint Petitions for Settlement, one for the Citizens' rate case and one for the Wellsboro rate case, despite the fact that those matters had been consolidated. Accordingly, when discussing the settlement terms in this Recommended Decision, it will be necessary to refer to the Settlements individually at times, i.e. the Citizens' Settlement and the Wellsboro Settlement. Both Settlements, however, will be addressed in this Decision.

## FINDINGS OF FACT

1. Citizens' Electric Company of Lewisburg PA (Citizens') is small investor-owned jurisdictional Electric Distribution Company subject to regulation by the Pennsylvania Public Utility Commission. Citizens' St. No. 4 at 2.

2. Citizens' operates in Lewisburg Borough, Buffalo, East Buffalo and Kelly Townships in Union County and West Chillisquaque Township in Northumberland County, Pennsylvania. Citizens' St. No. 4 at 2.

3. In 2015, Citizens' served an average of approximately 5,752 residential customers and 1,127 commercial and industrial customers. Citizens' St. No. 4 at 2.

4. Citizens' was acquired on February 8, 1999 by C&T Enterprises, Inc. through a purchase of 99.9% of Citizens' stock. Citizens' St. No. 4 at 2.

5. Wellsboro Electric Company (Wellsboro) is a small jurisdictional Electric Distribution Company subject to regulation by the Pennsylvania Public Utility Commission. Wellsboro St. No. 4 at 2.

6. Wellsboro's service territory is predominantly rural with over 550 miles of distribution facilities and provides service to approximately 6,280 customers as of December 31, 2015, of whom 5,089 were residential and 1,191 were commercial, industrial, lighting or sales for resale customers. Wellsboro St. No. 4 at 2.

7. On January 1, 2005, Wellsboro transferred 100% of its common stock in Wellsboro to C&T Enterprises, Inc., a holding company and management services firm that is also the parent corporation of Citizens' and Valley Energy, Inc. Wellsboro St. No. 4 at 3.

8. The Commission's Bureau of Investigation and Enforcement (I&E) serves as the prosecutor bureau for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge and for enforcing compliance with the state

and federal motor carrier safety and gas safety laws and regulations. Implementation of Act 129 of 2008 Organization of Bureau and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011).

9. The Office of Consumer Advocate (OCA) is authorized to represent the interests of consumers before the Commission. Act 161 of 1976, 71 P.S. § 309-2.

10. The Office of Small Business Advocate (OSBA) is authorized and directed to represent the interest of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act. Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50.

11. Citizens' submitted a request to the Commission to increase its base rates by \$592,000 per year. Statement of Reasons at 3.

12. Since Citizens' last base rate filing in 2010, the company has not only incurred increased costs for materials, health care and labor, the company has also continued to upgrade and modernize its distribution system in an effort to maintain service and reliability. Citizens' St. No. 6 at 2-3.

13. Since Citizens' 2010 rate case, Citizens' has invested an average of \$1,071,370 per year in capital improvements and expansions, including new substation equipment and distribution facilities, conductor upgrades, pole replacements and rebuilds and service extensions for new customers. Citizens' St. No. 6 at 2.

14. Citizens' has recently installed electronic data interchange (EDI) software, resulting in current unrecovered costs of approximately \$320,000. Citizens' St. No. 4-R at 12.

15. Citizens' experiences enhanced business and financial risks due to its size, operational characteristics and credit obligations. Citizens' St. No. 2 at 8-14.

16. Wellsboro submitted a request to increase its base rates by \$1,000,000 per year. Statement of Reasons at 3.

17. Since Wellsboro's last base rate filing in 2010, the company has not only incurred increased costs for materials, health care and labor, the company has also continued to upgrade and modernize its distribution system in an effort to maintain service and reliability. Wellsboro St. No. 4 at 4.

18. Since 1995, Wellsboro has invested over \$17 million in system improvements and repairs, including circuit upgrades, capacitor bank installation, distribution transformer upgrades and conductor replacements. Wellsboro St. 4 at 8.

19. Wellsboro recently installed electronic data interchange software, resulting in current unrecovered costs of approximately \$285,000. Wellsboro St. 4 at 6.

20. Wellsboro experiences business and financial risks due to its size, operational characteristics and credit obligations. Wellsboro St. No. 2 at 8-14.

21. Under Citizens' proposed revenue allocation, the residential class was allocated \$557,120 of a total increase of \$542,940, which rate class GLP-1 was allocated a rate decrease of \$41,030. OCA St. No. 3 at 17.

22. Citizens' proposed revenue allocation produced excessive rate shock. OCA St. 3 at 16-20.

23. The OCA proposed revenue allocation to Citizens' residential class limited class movement toward the cost of service. OSBA St. 1-R at 11-12.

24. Citizens' revenue allocation better balanced the goals of aligning with the cost of service and gradualism. Citizens' St. 1R at 16.

25. In their filings, Citizens' and Wellsboro identified two specific objectives that guided the development of the company's proposed revenue allocation: 1) each rate class should be moved closer to full cost of service, as determined by the company's class cost-of-service study, and 2) no individual rate class should receive an extreme rate impact. Citizens' St. 1 at 31; Wellsboro St. No. 1 at 32.



26. Wellsboro proposed to implement a customer charge of \$15.00 per month for its NRS and NRH classes. OSBA St. 1 at 3.

27. Wellsboro proposed to implement a rate CS customer charge of \$35.00 per month. OSBA St. 1 at 3-4.

28. Wellsboro proposed to implement a rate CSH customer charge of \$50.00 per month. OSBA St. 1 at 5.

## DISCUSSION

### 1) Legal Standard

The Commission applies certain principles in deciding any general rate increase case brought pursuant to 66 Pa. C.S. § 1308(d). A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. Pennsylvania Gas and Water Co. v. Pennsylvania Pub. Util. Comm'n, 341 A.2d 239 (Pa. Cmwlth. 1975). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia, 262 U.S. 679 (1923) and Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944). In Bluefield the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be too high or too low by

changes affecting opportunities for investment, the money market and business conditions generally.

Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia, 262 U.S. 679, 692-3 (1923).

The public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request pursuant to 66 Pa. C.S. § 1308(d). The statute at 66 Pa. C.S. § 315(a) sets forth the standard to be met by the public utility:

**Reasonableness of rates.**-In 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.

In a general rate increase proceeding, the burden of proof does not shift to parties challenging a requested rate increase. The utility has the burden of establishing the justness and reasonableness of every component of its rate request throughout the rate proceeding. Other parties to the proceeding do not have the burden of proof to justify an adjustment to the public utility's filing. In this regard, the Pennsylvania Supreme Court in Berner v. Pennsylvania Pub. Util. Comm'n, 116 A.2d 738, 744 (Pa. 1955) stated:

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

However, a public utility, in proving that its proposed rates are just and reasonable, does not have the burden to affirmatively defend claims it has made in its filing that no other party has questioned. In Allegheny Center Assocs. v. Pennsylvania Pub. Util. Comm'n, 570 A.2d 149, (Pa. Cmwlt. 1990), the Pennsylvania Commonwealth Court stated: "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.”

In analyzing a proposed general rate increase, the Commission determines a rate of return to be applied to a rate base measured by the aggregate value of all the utility's property used and useful in the public service. In determining a proper rate of return, the Commission calculates the utility's capital structure and the cost of the different types of capital during the period in issue. The Commission has wide discretion, because of its administrative expertise, in determining the cost of capital. Equitable Gas Co. v. Pennsylvania Pub. Util. Comm'n, 405 A.2d 1055 (Pa. Cmwlth. 1979).

In this case, the parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n., et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.*, (Opinion and Order entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Id.; citing, Warner v. GTE North, Inc., Docket No. C-00902815, (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n. v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

Any decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment

Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

2) Terms of the Settlements

In the Settlements submitted on February 10, 2017, the Parties agreed to resolve all outstanding issues and to seek Commission approval for the matters settled. The terms of the Settlements are as follows - paragraph numbers are listed as they appear in the original Settlements which were filed with the Commission:

a) Citizens' Settlement Terms

15. The Parties agree to a stipulated increase in Citizens' annual distribution base rate revenues of \$355,000, without specific identification of adjustments to the Company's original base rate increase request for \$592,000.

16. The Parties agree that Citizens' revenue requirement increase will be allocated among the Company's rate classes in accordance with the allocation methodology set forth in Attachment A to this Settlement. The distribution rates for each class are set forth in Attachment B.

17. The Parties agree the following customer charges will apply to each of the Company's rate classes:

<b>Citizens'</b>	Rate RS	\$11.50
	Rate GLP-1	\$14.50
	Rate GLP-3	\$52.00
	Rate SH	\$19.00

18. Attached to this Settlement as Attachment C are the proposed tariff sheets implementing the Settlement.

19. The Parties agree that Citizens' proposed modifications to its tariff rules and revised rate designs for Rates RS, GLP-1, GLP-3, and SH are accepted and shall be implemented by the Company.

20. The Parties respectfully request that the Commission approve the Settlement to enable the new rates set forth in Attachment B to take effect upon one day's notice.

21. The Company agrees to a two-year "stay out." The Company will not file a distribution base rate case within two years from the effective date of new rates established in this proceeding.

22. As of the effective date of rates in this proceeding, the Company will be eligible to include plant additions in a Distribution System Improvement Charge ("DSIC"), if approved and implemented, once eligible account balances exceed the levels projected by Citizens' at December 31, 2017. This provision is included solely for purposes of calculating a DSIC, and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in a Fully Projected Future Test Year filing.

23. Notwithstanding the language in Paragraph 22, *supra*, the Company will not file for approval of a DSIC within two years from the effective date of new rates established in this proceeding.

b) Wellsboro Settlement Terms

16. The Parties agree to a stipulated increase in Wellsboro's annual distribution base rate revenues of \$775,000, without specific identification of adjustments to the Company's original base rate increase request for \$1,000,000.

17. The Parties agree that Wellsboro revenue requirement increase will be allocated among the Company's rate classes in accordance with the allocation methodology set forth in Attachment A to this Settlement. The distribution rates for each class are set forth in Attachment B.

18. The Parties agree the following customer charges will apply to each of the Company's rate classes:

<b>Wellsboro</b>	Rate RS	\$10.95
	Rate RSAE	\$10.95
	Rate NRS	\$12.40
	Rate NRH	\$12.40
	Rate CS	\$32.50
	Rate CSH	\$46.50
	Rate IS	\$69.00
	Rate EU	-0-

19. Attached to this Settlement as Attachment C are the proposed tariff sheets implementing the Settlement.

20. The Parties agree that Wellsboro proposed modifications to its tariff rules and revised rate designs for Rates RS, RSAE, NRS, NRH, CS, CSH, IS, and EU are accepted and shall be implemented by the Company.

21. The Parties respectfully request that the Commission approve the Settlement to enable the new rates set forth in Attachment B to take effect upon one day's notice.

22. The Company agrees to a two-year "stay out." The Company will not file a distribution base rate case within two years from the effective date of new rates established in this proceeding.

23. As of the effective date of rates in this proceeding, the Company will be eligible to include plant additions in a Distribution System Improvement Charge ("DSIC"), if approved and implemented, once eligible account balances exceed the levels projected by Wellsboro at December 31, 2017. This provision is included solely for purposes of calculating a DSIC, and is not determinative for future ratemaking purposes of the projected

additions to be included in rate base in a Fully Projected Future Test Year filing.

24. Notwithstanding the language in Paragraph 22, *supra*, the Company will not file for approval of a DSIC within two years from the effective date of new rates established in this proceeding.

Both Settlements are conditioned on the general terms found in most settlements submitted to the Commission. That is, the Settlements are conditioned upon approval of the terms and conditions without modification and parties may withdraw from the Settlements and proceed with litigation if the terms are modified. The Settlements are also made without any admission against, or prejudice to, any position that any party may adopt during any subsequent litigation of this or any other proceeding. The parties also, among other things, waived their right to file exceptions if the Settlements are adopted without modification.

In general, in lieu of the overall revenue increase of \$592,000, or 12.8% over present revenues, sought by Citizens', the company will receive an increase of \$355,000, or 7.5% over present revenues. For Wellsboro, in lieu of the overall revenue increase of \$1,000,000, or 21.3% over present revenues, sought by Wellsboro, the company will receive an increase of \$775,000, or 16.95% over present revenues.

### 3) Public Interest - Analysis of the Settlements

As noted above, it is the policy of the Commission to promote settlements. 52 Pa. Code §5.231(a). The benchmark for determining whether a settlement should be approved is whether the proposed terms and conditions are in the public interest. *See, Lancaster, Warner, supra*. In the Settlements, the parties noted that the Settlements are in the public interest because they were achieved after extensive investigation into the companies' base rate filing, including formal and informal discovery and service of various rounds of written testimony. The parties also noted in the Settlements that the Settlements are in the public interest because approving the Settlements would avoid the time, expense and uncertainty for the parties and the Commission that would occur if the cases were fully litigated. As discussed further below, the parties also

attached to the Settlements separate Statements in Support of the Settlements, articulating their individual arguments and reasons why approving the Settlements without modification is appropriate and in the public interest.

a) Revenue Requirements

As noted in the Citizens' Statement in Support of Settlement - based on all of the testimony and exhibits submitted by Citizens' and the other Parties, the Company respectfully submits that approval of the Joint Petition without modification is appropriate and in the public interest. Citizens' submits that the Joint Petition results in a base rate increase that will allow the Company to continue to provide safe and reliable electric service to its customers. In addition, Citizens' noted that the Joint Petition represents a compromise solution that adequately addresses the needs of all parties to this proceeding. Citizens' further notes that the Joint Petition results in base rates that are just, reasonable, and non-discriminatory, while also implementing provisions that result in fair and appropriate treatment of the Company and its customers. Citizens' also notes that the Joint Petition avoids the expense and uncertainty of fully litigating all of the matters in this proceeding and otherwise advances the policy of this Commission to encourage parties to resolve contested proceedings through settlement processes.

As noted in its Statement in Support of Settlement, Citizens' asserts that the Joint Petition reflects a reasonable balance and appropriate compromise of the Parties' positions regarding the Company's clearly documented need for additional revenue. Citizens' asserts that the annual revenue requirement increase of \$355,000 in the Joint Petition will be sufficient for Citizens' to continue furnishing safe and reliable service. Citizens' also notes that since its last base rate filing in 2010, Citizens' has not only incurred increased costs for materials, health care and labor, the Company has also continued to upgrade and modernize its distribution system in an effort to maintain service and reliability. See Citizens' Statement No. 6, pp. 2-3. For example, since Citizens' 2010 rate case, Citizens' has invested an average of \$1,071,370 per year in capital improvements and expansions, including new substation equipment and distribution facilities, conductor upgrades, pole replacements and rebuilds, service extensions for new customers. See id. at 2.



Also as noted in Citizens' Statement in Support of Settlement, Citizens' recently installed Electronic Data Interchange ("EDI") software, resulting in current unrecovered costs of approximately \$320,000. See Citizens' Statement No. 4-R at 12. EDI is enabling increased shopping activity in Citizens' territory by facilitating real time data connections many EGSs require. Citizens' anticipates that the revenue increase under the Settlement will facilitate recovery of investments necessary to maintain safe and reliable delivery service and encourage customer choice.

The Citizens' Statement in Support of Settlement further notes that the Settlement is in the public interest because the agreed upon revenue increase will permit the Company, in the short term, to cope with the enhanced business and financial risks discussed by Mr. Neri that exist due to the Company's size, operational characteristics, and credit obligations. See Citizens' Statement No. 2, pp. 8-14. Although Citizens' believes that, if this proceeding were fully litigated, the Commission would find that the Company is entitled to all or a substantial portion of the \$506,338 rate increase calculated by Mr. Gorman in his Rebuttal Testimony, in the interest of avoiding the expense and uncertainty of continued litigation in this matter, Citizens' has agreed to accept an increase in the amount of \$355,000. The compromise also will result in a less significant impact upon the rates charged to Citizens' customers.

As noted in the Wellsboro Statement in Support of Settlement - based on all of the testimony and exhibits submitted by Wellsboro and the other Parties, the Company respectfully submits that approval of the Joint Petition without modification is appropriate and in the public interest. Wellsboro submits that the Joint Petition is in the public interest because it results in a base rate increase that will allow the Company to continue to provide safe and reliable electric service to its customers. In addition, Wellsboro noted that the Joint Petition represents a compromise solution that adequately addresses the needs of all parties to this proceeding. Wellsboro further notes that the Joint Petition results in base rates that are just, reasonable, and non-discriminatory, while also implementing provisions that result in fair and appropriate treatment of the Company and its customers. Wellsboro also notes that the Joint Petition is in the public interest because it avoids the expense and uncertainty of fully litigating all of the matters

in this proceeding and otherwise advances the policy of this Commission to encourage parties to resolve contested proceedings through settlement processes.

Also as noted in the Wellsboro Statement in Support of Settlement, Wellsboro states that the Joint Petition is in the public interest because it reflects a reasonable balance and appropriate compromise of the Parties' positions regarding the Company's clearly documented need for additional revenue. Wellsboro asserts that the annual revenue requirement increase of \$775,000 in the Joint Petition will be sufficient for Wellsboro to continue furnishing safe and reliable service. Wellsboro also notes that since its last base rate filing in 2010, Wellsboro has not only incurred increased costs for materials, health care and labor, the Company has also continued to upgrade and modernize its distribution system in an effort to maintain service and reliability. See Wellsboro Statement No. 4, p. 4. Since 1995, Wellsboro has invested over \$17 million in system improvements and repairs, including circuit upgrades, capacitor bank installation, distribution transformer upgrades, and conductor replacements. See id. at 8.

Also as noted in the Wellsboro Statement in Support of Settlement, Wellsboro recently installed EDI software, resulting in current unrecovered costs of approximately \$285,000. See Wellsboro Statement No. 4, p. 6. EDI is enabling increased shopping activity in Wellsboro territory by facilitating real time data connections many EGSs require. Wellsboro anticipates that the revenue increase under the Settlement will facilitate recovery of investments necessary to maintain safe and reliable delivery service and encourage customer choice.

The Wellsboro Statement in Support of Settlement further notes that the agreed upon revenue increase is in the public interest because it will permit the Company, in the short term, to cope with the enhanced business and financial risks discussed by Mr. Neri that exist due to the Company's size, operational characteristics, and credit obligations. See Wellsboro Statement No. 2, pp. 8-14. Although Wellsboro believes that, if this proceeding were fully litigated, the Commission would find that the Company is entitled to all or a substantial portion of the \$978,780 rate increase calculated by Mr. Gorman in his Rebuttal Testimony, in the interest of avoiding the expense and uncertainty of continued litigation in this matter, Wellsboro has

agreed to accept an increase in the amount of \$775,000. The compromise also will result in a less significant impact upon the rates charged to Wellsboro's customers.

As noted in its Statement in Support of Settlement, the OCA asserts that the proposed Settlements are in the public interest because they provide for an overall distribution base rate increase of \$355,000 for Citizens' and \$775,000 for Wellsboro. Citizens' Settlement at ¶15; Wellsboro Settlement at ¶16. The OCA notes that the revenue increases contained in the Settlements are approximately \$237,000 less than the \$592,000 rate increase amount originally requested by Citizens' and approximately \$225,000 less than the \$1,000,000 rate increase amount originally requested by Wellsboro. The OCA notes that, regarding Citizens', this rate increase reflects a distribution increase of approximately 7.57% as compared to the original request of a distribution increase of approximately 12.8%. On a total revenue basis, the Settlement increase is 2.5% as opposed to the original total revenue increase of 4.1%. The OCA notes that, regarding Wellsboro, this rate increase reflects a distribution increase of approximately 16.95% as compared to the original request of a distribution increase of approximately 21.3%. On a total revenue basis, the Settlement increase is 5.7% as opposed to the original total revenue increase of 7.4%.

OCA also notes in its Statement in Support of Settlement that the Settlements are in the public interest because the Companies agreed to two "stay-out" provisions. First, the Companies agreed that they will not seek approval for the implementation of Distribution System Improvement Charges (DSIC), if at all, for two years from the effective date of new rates in this proceeding. Citizens' Settlement at ¶23; Wellsboro Settlement at ¶22. Further, the Companies agreed that they will not file distribution base rate cases for two years from the effective date of new rates in this proceeding. Citizens' Settlement at ¶21; Wellsboro Settlement at ¶24.

OCA concludes that, based on the OCA's analysis of the Companies' filings and the discovery responses received by OCA, the rate increases under the proposed Settlements are in the public interest because they represent a result that would be within the range of likely outcomes in the event of full litigation of the case. In addition, the OCA concludes that the

Settlements help ensure rate stability through the distribution base rate case and DSIC stay-out provisions, that the increases are appropriate and when accompanied by other important provisions contained in the Settlements, yield a result that is just and reasonable.

In its Statement in Support of Settlement, the OSBA concludes that the Settlements are in the best interest of Citizens' small business customers because at a time when all types of utility service are becoming more expensive, the significant (40.0%) reduction in Citizens' requested distribution revenue increase provided by the settlement will benefit Citizens' small business customers.

In its Statement in Support of Settlement, I&E states its belief that the Settlements are in the public interest and should be approved without modification because they maintain the proper balance of the interests of all parties. I&E further states that ratepayers will continue to receive safe and reliable service at reasonable rates while allowing Citizens and Wellsboro sufficient additional revenues to meet their operating expenses and address their infrastructure needs while providing the Companies the opportunity to earn a reasonable rate of return.

b) Distribution Rate Design

As noted in its Statement in Support of Settlement, Citizens' noted that the Settlement is in the public interest because the Settlement permits Citizens' to enhance its distribution rate design to more appropriately reflect the costs to provide electric distribution service. Specifically, the Company states that the Settlement will set the customer charges for Rate Schedules RS, SH, GLP-1, and GLP-3 at \$11.50, \$19.00, \$14.50, and \$52.00 per month, respectively. This will have the dual impact of providing the Company with a more steady revenue stream while also appropriately reflecting the fixed nature of the costs to provide electric distribution service.

Also as noted in its Statement in Support of Settlement, Wellsboro stated that the Settlement is in the public interest because the Settlement permits Wellsboro to enhance its distribution rate design to more appropriately reflect the costs to provide electric distribution

service. Specifically, the Company states that the Settlement will set the customer charges for Rate Schedules RS and RSAE at \$10.95 per month, NRS and NRH at \$12.40 per month, CS at \$32.50 per month, CSH at \$46.50 per month, IS at \$69.00 per month, and EU at \$0.00 per month. This will have the dual impact of providing the Company with a more steady revenue stream while also appropriately reflecting the fixed nature of the costs to provide electric distribution service.

As noted in its Statement in Support of Settlement, the OCA stated that the Settlement is in the public interest because, under the Settlement, Citizens' monthly residential customer charge would increase from \$8.00 to \$11.50, rather than to \$13.00, as was originally proposed by the Company. Citizens' Settlement at ¶17. The OCA also noted that Wellsboro's monthly residential customer charges will increase from \$9.75 to \$10.92, rather than to \$15.00, as was originally proposed by the Company. Wellsboro Settlement at ¶18. The OCA submits that eliminating most of the customer charge increases, which increases were not solely cost-based, and recovering the remaining revenue through volumetric charges will significantly benefit residential customers and send the appropriate signals to customers regarding energy conservation, a benefit that is not realized through fixed customer charges. OCA St. 3 at 26.

The OCA Statement in Support of Settlement further notes that the Settlement is in the public interest because the residential rate designs established through the Settlement are reasonable and consistent with sound ratemaking principles. The OCA added that these rate design changes result in customer charges that are below the customer charges originally proposed, and the charges are within the range of the likely outcomes in the event of full litigation of the case.

As noted in its Statement in Support of Settlement, I&E states that the Settlements are in the public interest because they establish revenue allocation levels and customer charges that are well within the levels advanced on the evidentiary record by the parties and reflect a full compromise of all revenue allocation issues raised by the parties. I&E also states its belief that the Settlements maintain the proper balance of the interests of all parties. I&E further states that ratepayers will continue to receive safe and reliable service at reasonable rates while allowing

Citizens and Wellsboro sufficient additional revenues to meet their operating expenses and address their infrastructure needs while providing the Companies the opportunity to earn a reasonable rate of return.

The OSBA did not address this issue in its Statement in Support of the Settlements.

c) Class Revenue Allocation

In its Statement in Support of Settlement, OCA notes that the Settlements are in the public interest and should be approved without modification because under the Settlements, Citizens' residential customers will be allocated \$341,430, or 96% of the total increase, and no class will receive a rate decrease. This is a 14% increase in distribution rates for residential customers. Also under the Settlements, Wellsboro's residential customers will be allocated \$490,831, or 63% of the total increase. This is a 22% increase in distribution rates for residential customers. The OCA notes that the allocation of the revenue requirement in the Settlements reduces the burden of the increase on residential customers as compared to the originally filed allocation, consistent with the concerns identified by OCA witness Mierzwa.

Also in its Statement in Support of Settlement, OCA notes that the revenue allocations contained in the Settlement for the Companies represent compromises among the positions of the parties in this proceeding and is designed to move all classes towards the system average returns. As such, the OCA submits that the allocations are appropriate and when accompanied by other important provisions contained in the Settlement, yield a result that is just and reasonable.

As noted in its Statement in Support of Settlement, the OSBA states that the Settlements are in the public interest and should be approved without modification because the increases for the small business classes represented a compromise among the parties' positions. As a result, the OSBA concludes that the Settlement revenue allocation provides a meaningful benefit to Citizens' and Wellsboro's small business customers.

As noted in its Statement in Support of Settlement, I&E states that the Settlements are in the public interest because it establishes revenue allocation levels and customer charges that are well within the levels advanced on the evidentiary record by the parties and reflect a full compromise of all revenue allocation issues raised by the parties. I&E also states its belief that the Settlements maintain the proper balance of the interests of all parties. I&E further states that ratepayers will continue to receive safe and reliable service at reasonable rates while allowing Citizens and Wellsboro sufficient additional revenues to meet their operating expenses and address their infrastructure needs while providing the Companies the opportunity to earn a reasonable rate of return.

The Companies did not address this issue in their Statements in Support of Settlement.

d) Disposition

In this case, the parties have reached what is referred to as a “black box” settlement where the settlement provides for an increase in the utility’s revenues but does not indicate the specifics of how the parties calculated the increase. The Commission has permitted “black box” settlements as a means of promoting settlements in contentious base rate proceedings. Pa. Pub. Util. Comm’n v. Wellsboro Electric Co., Docket No. R-2010-2172662 (Order entered January 13, 2011); Pa. Pub. Util. Comm’n v. Citizens’ Electric Co. of Lewisburg, Docket No. R-2010-2172665 (Order entered January 13, 2011). The Commission has observed that determining a utility’s revenue requirement is a calculation that involves many complex and interrelated adjustments affecting expenses, depreciation, rate base, taxes and the utility’s cost of capital. Reaching an agreement among the parties on each component can be difficult and impractical. As a result of this complexity, the Commission supports the use of “black box” settlements. Pa. Pub. Util. Comm’n v. Peoples TWP LLC, Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013). As a result, we find that the submission of a black box settlement in this case is reasonable.

Having reviewed the various filings, including the Joint Petitions for Settlement and Statements in Support of Settlement, we conclude that the Settlements are in the public interest and should be adopted in their entirety without modification. The Settlements allow Citizens' and Wellsboro to raise additional revenue for operating expenses and infrastructural improvements while allowing the Companies to earn a reasonable rate of return. Instead of the requested increases of \$592,000 and \$1,000,000, Citizens' and Wellsboro will be allowed to increase their present revenues by \$355,000 and \$775,000 per year respectively. These amounts constitute reasonable compromises and likely fall within the range granted by the Commission had these cases been fully litigated.

The Settlements also ensure that the Companies' ratepayers will continue to receive safe and reliable service at reasonable rates, while minimizing the rate impact against each class of ratepayer. For example, in the original filings, Citizens' and Wellsboro's residential customers were respectively allocated 103% and 64% of the proposed increases. Yet, in the settlement, these allocations were lowered to a point where the Citizens' residential class increase would be 96% and the Wellsboro class increase would be 63%, both less than originally proposed. Similarly reductions were made in the settlement for the companies' customer charges which will be less than originally proposed. We also note that the Settlements establish revenue allocation levels and customer charges that are well within the levels advanced on the evidentiary record by the parties and reflect a full compromise of all revenue allocation and customer charge issues raised by the parties. The Settlements also provide rate stability since the Companies have agreed to refrain from filing further base rate cases or DSIC cases for a period of 24 months following the approval of the Settlements. Each of these adjustments constitutes a reasonable compromise amongst the parties and is in the public interest.

We also note that the Settlements should be approved as being in the public interest because the Settlements will save the parties from expending substantial time and expense involved with further litigation. Although the parties exchanged substantial discovery and submitted three rounds of pre-served testimony, including oral rejoinder, additional costs would have included extensive hearings, briefs, exceptions and possible appeals. Avoiding such expenditures minimizes the costs that the Companies might ultimately pass on to the ratepayers,



and also conserves the resources of all other parties involved in these proceedings, and preserves Commission resources as well.

Finally, we note that the Settlements should be approved as being in the public interest because they are supported by substantial evidence. In this proceeding, the parties have exchanged voluminous pre-served testimony, and have engaged in extensive discovery and other litigation-related efforts in order to properly investigate and resolve the issues presented, much of which was admitted into the record via stipulation. These efforts demonstrate that the initial filings of the Companies and the responses to the filings have been thoroughly vetted and considered by all concerned parties. These efforts also demonstrate that the parties are satisfied that there are no unresolved evidentiary issues at this point of the proceeding. As a result, we conclude that the Settlements are supported by substantial evidence in the record of this proceeding and that the Settlements are therefore in the public interest and should be approved without modification.

### CONCLUSION

For the reasons noted above, the Joint Petitions for Settlement should be approved in their entirety without modification. The Joint Petitions are in the public interest and comply with the relevant provisions of the Public Utility Code as well as applicable precedent on the issues addressed in the Joint Petitions. The Joint Petitions are also supported by substantial record evidence in this proceeding. Therefore, they are recommended for approval in their entirety without modification, consistent with established Commission policy promoting settlements.

### CONCLUSIONS OF LAW

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

2. Decisions of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

3. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. Pennsylvania Gas and Water Co. v. Pennsylvania Pub. Util. Comm'n, 341 A.2d 239 (Pa. Cmwlth. 1975).

4. The public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request pursuant to 66 Pa. C.S. § 1308(d).

5. However, a public utility, in proving that its proposed rates are just and reasonable, does not have the burden to affirmatively defend claims it has made in its filing that no other party has questioned. In Allegheny Center Assocs. v. Pennsylvania Pub. Util. Comm'n, 570 A.2d 149, (Pa. Cmwlth. 1990)

6. The Commission has expressed a policy of encouraging settlements and has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401.

7. The Commission permits "black box" settlements as a means of promoting settlements in contentious base rate proceedings. Pa. Pub. Util. Comm'n v. Wellsboro Electric Co., Docket No. R-2010-2172662 (Order entered January 13, 2011); Pa. Pub. Util. Comm'n v. Citizens' Electric Co. of Lewisburg, Docket No. R-2010-2172665 (Order entered January 13, 2011).

8. The Joint Petitioners, as the parties seeking a rule or order from the Commission in this proceeding, have the burden of proving that the terms and conditions of the settlement are just, reasonable, and in the public interest. 66 Pa.C.S. §332(a).

9. 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).

10. The Joint Petitioners have met their burden of proof to demonstrate that the Joint Petitions for Settlement are just, reasonable, and in the public interest. 66 Pa.C.S. §332(a).

11. The Joint Petitions for Settlement filed at Docket Numbers R-2016-2531550 and R-2016-2531550 and dated February 10, 2017 are in the public interest and should be approved in their entirety without modification.

### ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That Citizens' Electric Company of Lewisburg, PA shall not place into effect the rates contained in Supplement No. 110 to Tariff Electric – Pa. P.U.C. No. 14 which was submitted on August 31, 2016 at Docket Number R-2016-2531550.

2. That Wellsboro Electric Company shall not place into effect the rates contained in Supplement No. 102 to Tariff Electric – Pa. P.U.C. No. 8 which was submitted on August 31, 2016 at Docket Number R-2016-2531551.

3. That the Joint Petitions for Settlement filed at Docket Numbers R-2016-2531550 and R-2016-2531550 and dated February 10, 2017 are approved in their entirety without modification because they are in the public interest and are supported by substantial evidence.

4. That Citizens' Electric Company of Lewisburg PA shall file a tariff supplement with the Commission, reflecting the rates set forth in its proposed compliance tariff attached to the Citizens' Electric Company of Lewisburg PA Joint Petition for Settlement as Attachment C, to become effective on one day's notice.

5. That Wellsboro Electric Company shall file a tariff supplement with the Commission, reflecting the rates set forth in its proposed compliance tariff attached to the Wellsboro Electric Company Joint Petition for Settlement as Attachment C, to become effective on one day's notice.

6. That after Citizens' Electric Company of Lewisburg PA files the required tariff supplement set forth in Paragraph 4 of this Order, the investigation concerning Citizens' Electric Company of Lewisburg PA at Docket Number R-2016-2531550 shall be terminated and marked closed.

7. That after Citizens' Electric Company of Lewisburg PA files the required tariff supplement set forth in Paragraph 4 of this Order, the Complaint filed by the Office of Consumer Advocate against Citizens' Electric Company of Lewisburg PA on September 14, 2016, at Docket Number C-2016-2566526, shall be terminated and marked closed.

8. That after Citizens' Electric Company of Lewisburg PA files the required tariff supplement set forth in Paragraph 4 of this Order, the Complaint filed by the Office of Small Business Advocate against Citizens' Electric Company of Lewisburg PA on September 19, 2016, at Docket Number C-2016-2567115, shall be terminated and marked closed.

9. That after Wellsboro Electric Company files the required tariff supplement set forth in Paragraph 5 of this Order, the investigation concerning Wellsboro Electric Company at Docket Number R-2016-2531551 shall be terminated and marked closed.

10. That after Wellsboro Electric Company files the required tariff supplement set forth in Paragraph 5 of this Order, the Complaint filed by the Office of Consumer Advocate against Wellsboro Electric Company on September 14, 2016, at Docket Number C-2016-2566522, shall be terminated and marked closed.

11. That after Wellsboro Electric Company files the required tariff supplement set forth in Paragraph 5 of this Order, the Complaint filed by the Small Business Advocate against Wellsboro Electric Company on September 19, 2016, at Docket Number C-2016-2567132, shall be terminated and marked closed.

Date: February 21, 2017

\_\_\_\_\_/s/\_\_\_\_\_  
Joel H. Cheskis  
Administrative Law Judge

\_\_\_\_\_/s/\_\_\_\_\_  
Andrew M. Calvelli  
Administrative Law Judge