**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held March 1, 2018

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

Norman J. Kennard, Statement

David W. Sweet

John F. Coleman, Jr.

Pennsylvania Public Utility Commission R-2017-2598203

Office of Consumer Advocate C-2017-2614985

Office of Small Business Advocate C-2017-2615248

Donna Hess C-2017-2614724

Vincent Collier III C-2017-2620842

Sandra Shaub C-2017-2622123

Joseph Kramer C-2017-2623109

 v.

Columbia Water Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the following matters: (1) the Joint Petition for Full Settlement of Rate Proceeding (Joint Petition or Settlement), filed on December 12, 2017, by the Columbia Water Company (Columbia Water), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Bureau of Investigation and Enforcement (I&E) (collectively, the Joint Petitioners); (2) the Recommended Decision (R.D.) of Deputy Chief Administrative Law Judge Joel H. Cheskis and Administrative Law Judge Andrew M. Calvelli (collectively, the ALJs), which was issued on January 12, 2018, related to the above-captioned general rate increase proceeding; and (3) the Exceptions of Columbia Water, filed on January 22, 2018, with respect to the Recommended Decision. I&E filed Replies to Exceptions on January 29, 2018.

For the reasons stated, *infra,* we shall grant the Exceptions of Columbia Water, adopt the Recommended Decision, as modified, consistent with this Opinion and Order, and approve the Joint Petition for Settlement, without modification.

**I. History of the Proceeding**

On June 27, 2017, Columbia Water filed Supplement No. 86 to Tariff‑‑Water Pa. P.U.C. No. 7 (Tariff Supplement No. 86) to become effective August 29, 2017, but subsequently suspended until March 29, 2018. Tariff Supplement No. 86 contained a proposed increase to Columbia Water’s total annual operating revenues of approximately $923,668, or 17.8%, above the level of *pro forma* revenues for the future test year ending December 31, 2017. Additionally, under Tariff Supplement No. 86, Columbia Water proposed the consolidation of Columbia Water’s two rate districts, the Columbia and Marietta Districts, into one rate district, and proposed other changes to existing rules and regulations.

On July 17, 2017, I&E filed a Notice of Intervention in this proceeding.

On July 19, 2017, the OCA filed a Formal Complaint against the filing at Docket No. C-2017-2614985 and the OSBA filed a Formal Complaint at Docket No. C‑2017‑2615248. Other Formal Complaints were also filed by Columbia customers (*pro se* Complainants) at Docket Nos. C-2017-2614724, C-2017-2620842, C-2017-2622123 and C-2017-2623109.

Pursuant to the Public Utility Code (Code), 66 Pa. C.S. § 1308(d), Tariff Supplement No. 86 was suspended by Commission Order dated August 3, 2017 (August 2017 Order), until March 29, 2018, unless permitted by Commission Order to become effective at an earlier date. In the August 2017 Order, we concluded that investigation and analysis of the proposed tariff filings and the supporting data indicated that the proposed changes in rates, rules, and regulations may be unlawful, unjust, unreasonable, and contrary to the public interest. Accordingly, we ordered that this matter be assigned to the Office of Administrative Law Judge (OALJ) 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 Columbia Water’s existing rates, rules, and regulations.

On August 25, 2017, an Initial Prehearing Conference was held, with Columbia Water, the OCA, the OSBA, and I&E appearing through their legal counsel. Columbia Water’s rate filing and the associated Formal Complaints were formally consolidated for purposes of hearing and decision and a procedural schedule was agreed upon as memorialized in a scheduling order served by the ALJs on August 28, 2017, with evidentiary hearings scheduled for November 3, 2017 and November 6, 2017.

Two public input hearings were held in Marietta, Pennsylvania on September 27, 2017 at 2:00 p.m. and 6:00 p.m. for the purpose of receiving input from Columbia Water’s customers. In the first hearing, five customers provided testimony on the record. In the second hearing, one customer provided testimony on the record.

Pursuant to the litigation schedule, Columbia Water provided direct testimony on September 8, 2017; I&E, the OCA and the OSBA provided direct testimony on October 6, 2017; Columbia Water and the OSBA provided rebuttal testimony on October 20, 2017; and I&E, the OCA and the OSBA provided surrebuttal testimony on October 30, 2017. In addition, Columbia Water provided an oral rejoinder outline on November 1, 2017.

In the week prior to the scheduled hearing dates, the Parties had various discussions concerning possible settlement of the case. Given that the parties were actively attempting to settle the case, on November 2, 2017, the ALJs conducted a telephone conference.

On November 3, 2017, the ALJs conducted a second telephone conference, during which the Parties advised the ALJs that a full settlement of all issues in the case had been reached. The Parties also advised that the evidentiary hearings would only be necessary to admit pre-served testimony into the record via stipulation.

Also on November 3, 2017, an evidentiary hearing was held. Columbia Water, the OCA, the OSBA, and I&E were each represented by counsel. Additionally, Columbia Water presented the oral rejoinder testimony of two witnesses, and the OCA, the OSBA, and I&E waived cross-examination. Following the witness presentations, pre‑served testimony was admitted into the record with accompanying verifications, without objection, as follows:[[1]](#footnote-1)

Columbia Water

• Direct Testimony of David T. Lewis (CWC Statement No. 1)

• Direct Testimony of Gary D. Shambaugh (CWC Statement No. 2)

• Direct Testimony of Dylan W. D’Ascendis (CWC Statement No. 3)

• Rebuttal Testimony of David T. Lewis (CWC Statement No. 1-R)

• Rebuttal Testimony of Gary D. Shambaugh (CWC Statement No. 2-R)

• Rebuttal Testimony of Dylan W. D’Ascendis (CWC Statement No. 3-R)

OCA

• Direct Testimony of Ashley E. Everette (OCA Statement No. 1)

• Direct Testimony of David Parcell (OCA Statement No. 2)

• Direct Testimony of Terry Fought (OCA Statement No. 3)

• Surrebuttal Testimony of Ashley E. Everette (OCA Statement No. 1-S)

• Surrebuttal Testimony of David Parcell (OCA Statement No. 2-S)

• Surrebuttal Testimony of Terry Fought (OCA Statement No. 3-S)

I&E

• Direct Testimony of Brenton Grab (I&E Statement No. 1)

• Direct Testimony of Rachel Maurer (I&E Statement No. 2)

• Direct Testimony of Jeremy Hubert (I&E Statement No. 3)

• Surrebuttal Testimony of Brenton Grab (I&E Statement No. 1-SR)

• Surrebuttal Testimony of Rachel Maurer (I&E Statement No. 2-SR)

• Surrebuttal Testimony of Jeremy Hubert (I&E Statement No. 3-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-S)

In addition to the witness presentations and the admission of pre-served testimony into the record, the Parties were reminded that the settlement materials were due by December 8, 2017, the date originally set for the submission of reply briefs. Pursuant to a request from the Parties via a telephone conference held on December 7, 2017, the deadline for submitting the settlement materials was extended until December 12, 2017.

On December 12, 2017, Columbia Water, the OCA, the OSBA, and I&E filed the Joint Petition along with Statements in Support and the record was closed. Additionally, the OCA filed a certificate of service indicating that it served a copy of the Settlement on each of the *pro se* Complainants. The *pro se* Complainants were given an opportunity to object to the Settlement by December 22, 2017 or be deemed to not oppose the Settlement. No objections were received.

In the Recommended Decision, issued on January 12, 2018, the ALJs recommended that the Commission approve the Joint Petition without modification, as being in the public interest.

As previously noted, Columbia Water filed Exceptions to the Recommended Decision on January 22, 2018. I&E filed Replies to Exceptions on January 29, 2018.

**II. Description of the Company**

Columbia Water furnishes water service to customers in two rate districts. The Marietta Rate District covers water service provided in the Marietta Borough and East Donegal Township in Lancaster County and in Hellam Township in York County. The Columbia Rate District covers water service provided in the Boroughs of Columbia and Mountville and in the Townships of West Hempfield, East Donegal, and Manor, all located in Lancaster County. Columbia Water’s customers’ average daily water demand is 2.3 million gallons per day (MGD) and peak flows reach 2.9 MGD. Additionally, Columbia Water’s recently-upgraded water treatment plant has a permitted capacity of 4.0 MGD, and its Chickies and Dugan wells have an additional permitted capacity of 1.2 MGD. As of June 30, 2018, Columbia Water served a total of 10,223 customers, including 9,537 residential customers. Columbia Water Statement in Support at 3; OCA Statement in Support at 2.

**III. Discussion**

As a preliminary matter, we note that any issue or exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. We are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see,* *generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

**A. Legal Standards**

The purpose of this investigation is to establish rates for Columbia Water’s customers that are “just and reasonable” pursuant to Section 1301 of the Public Utility Code (Code), 66 Pa. C.S. § 1301.

The Commission applies certain principles in deciding any general rate increase case brought under Section 1308(d) of the Code, 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. *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia,* 262 U.S. 679 (1923) (*Bluefield*). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield, supra,* 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,* 262 U.S. at 692-3.

The public utility seeking a Section 1308(d) general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request. Regarding the burden of proof in a proceeding involving a proposed increase in rates by a public utility, Section 315(a) of the Code provides:

1. **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 proceedings 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. The commission

shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

66 Pa. C.S. § 315(a).

In the instant proceeding, the Joint Petitioners have reached an unopposed accord on all the issues and claims that arose in this proceeding and submitted the Settlement for the Commission’s review and approval. The Commission has expressed a policy of encouraging settlements. *See* 52 Pa. Code §§ 5.231, 69.401. The Commission has stated that settlement results are often preferable to those achieved after a fully litigated proceeding. 52 Pa. Code § 69.401. A settlement in a proceeding may reduce or eliminate the substantial time, effort, and expense that otherwise may be used or incurred in litigating a proceeding.[[2]](#footnote-2) Rate cases, in general, are expensive to litigate and the reasonable costs of such litigation is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid or minimize the substantial costs of litigation, may yield potential savings for the company’s customers. Thus, a settlement, whether full or partial, may directly benefit the named parties as well as indirectly benefit the customers of the public utility involved in the case. For this and other sound reasons, settlements are encouraged by long‑standing Commission policy.

In order to accept a settlement, the Commission must determine that the proposed terms and conditions of the settlement are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *see generally* *Pa. PUC v. C. S. Water and Sewer Assoc.*, Docket Nos. R-881147, *et al*., 74 Pa. P.U.C. 767 (Order entered July 22, 1991) (*CS Water and Sewer*). The focus of the inquiry for determining whether a proposed settlement should be approved is whether the proposed terms and conditions foster, promote and serve the public interest. *See Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al*. (Order entered July 14, 2011), citing *Warner v. GTE North, Inc*., Docket No. C-00902815 (Order entered April 1, 1996) and *CS Water and Sewer.* Moreover, Section 332(a) of the Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. Consequently, in this proceeding, the Joint Petitioners have the burden of showing that the terms and conditions of the Settlement are in the public interest.

The withdrawal of pleadings in a contested proceeding is governed by our regulations at 52 Pa. Code Section 5.94, which provides as follows:

(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 20 days of service. After considering the petition, any objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

52 Pa. Code § 5.94(a).

Finally, a Commission decision must be supported by substantial evidence in the record. “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. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

**B. Joint Petition for Settlement**

**1. Terms and Conditions of the Settlement**

After extensive informal and formal discovery by the OCA, the OSBA, and I&E and the service of direct and rebuttal testimony by all active Parties, the Joint Petitioners engaged in numerous settlement discussions. As a result, the Joint Petitioners agreed to the Settlement covering all issues. Settlement ¶ 19 at 5. The Joint Petition consists of terms and conditions of the Settlement, which are embodied within the Joint Petition, and Appendices A through F, which are attached to the Joint Petition. Appendix A sets out the proposed Settlement tariff supplement to be filed and to become effective in accordance with the Settlement. Appendix B contains a Proof of Revenue, showing Columbia Water’s revenues at the existing rates and at the rates proposed under the Settlement. Appendix C represents the Statement in Support of the Joint Settlement filed by Columbia Water (Columbia Water Statement). Appendix D represents the Statement in Support of the Joint Settlement filed by I&E (I&E Statement). Appendix E represents the Statement in Support of the Joint Settlement filed by the OCA (OCA Statement). Appendix F represents the Statement in Support of the Joint Settlement filed by the OSBA (OSBA Statement). *See generally* Joint Petition ¶ 28 at 9.

The essential terms of the Settlement are set forth in Paragraph 20 of the Joint Petition, which is shown below in full as it appears in the Joint Petition:

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

(a) Upon entry of the final order by the Commission approving this Settlement, the Company will be permitted to charge the rates for water service set forth in the proposed tariff supplement, attached hereto as **Appendix A** (“Settlement Rates”), to become effective upon one day’s notice. Instead of the $923,668 (17.8%) increase requested in the filing, the Settlement Rates are designed to produce an increase of annual operating revenue of $635,000 (12.4%), as shown in greater detail on the Proof of Revenues attached hereto as **Appendix B.**

(b) Columbia agrees that it will file a cost of service study in the next general rate case if the Company proposes full consolidation of its Marietta and Columbia Rate Districts[[3]](#footnote-3) rates. The Company may seek consolidation of rates in any subsequent rate case; however, I&E, OCA and OSBA reserve the right to challenge any such proposed rates.

(c) Upon approval and implementation of the Settlement Rates, the Company will not file for another general rate increase for its Columbia or Marietta Rate Districts under Section 1308(d) of the Public Utility Code, 66 Pa. C.S. §101 *et seq*., prior to thirty-three (33) months from the entry date of the Commission’s final order approving this Settlement in full without revision. However, if a legislative body, a court, or an administrative agency, including the Commission, enacts or orders any fundamental changes in policy, regulations or statutes that directly and substantially affect the Company’s cost of service, the Settlement shall not prevent the Company from filing a tariff or tariff supplement to the extent necessitated due to such action. In addition, this provision shall not preclude the Company from seeking extraordinary rate relief under Section 1308(e) of the Public Utility Code, 66 Pa. C.S. § 1308(e).

(d) The Parties agree that the Settlement is not premised upon inclusion in rate base of any Marietta Rate District PennVest-funded plant.

(e) The Parties agree that the Company will not make a claim in any future rate case to recover costs, claimed in this case as Franchises & Consents, related to the acquisitions of the Marietta Gravity Water Company and Mountville Water Company.

(f) Columbia will do annual reporting regarding the Company’s present isolation valve exercising which includes critical valve exercising per the Commission’s 2014 Management Audit at Docket No. D-2014-2405415. This reporting requirement terminates when the Company’s next general rate case is decided by final Commission order.

Settlement at 5-7.

The Joint Petitioners noted that the monthly customer charge for a standard residential customer with a 5/8-inch meter for the Columbia Rate District will be $10.31, compared to Columbia Water’s originally filed rate request of $10.59, and that this same charge for a customer in the Marietta Rate District will be $8.20, compared to Columbia Water’s originally filed rate request of $10.59. The Joint Petitioners provided a comparison of an average monthly water bill of a residential customer under current rates, the rates initially proposed by Columbia Water, and under the Settlement rates, as follows:[[4]](#footnote-4)

|  |
| --- |
| **Columbia Rate District** |
| **Current Rates** | **Proposed Rates** | **Settlement Rates** |
| **$36.66**  | **$39.50**  | **$39.81**  |
|  |  |  |
| **Marietta Rate District** |
| **Current Rates** | **Proposed Rates** | **Settlement Rates** |
| **$23.33**  | **$39.50**  | **$28.14**  |

Settlement at 10.

In addition to the specific terms to which the Joint Petitioners have agreed, the Settlement contains other general terms and conditions typically found in settlements submitted to the Commission. Specifically, the Joint Petitioners agreed that the Settlement is conditioned upon the Commission’s approval of all the terms and conditions contained therein without modification. The Joint Petition establishes the procedure by which any of the Joint Petitioners may withdraw from the Settlement and proceed to litigate this case, if the Commission should act to modify or reject the Settlement. In addition, the Joint Petitioners asserted that although the Settlement is proffered to settle the instant case, it may not be cited as precedent in any future proceeding, except to the extent required to implement any term specifically agreed to by the Joint Petitioners. Further, the Joint Petitioners submitted that the Settlement is made without any admission against, or prejudice to, any position which any of the Joint Petitioners might adopt in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to in the Settlement before us. Settlement ¶¶ 21‑23 at 7-8. Moreover, the Joint Petitioners waived their right to file Exceptions in this case if the ALJs, in their Recommended Decision, recommended the Commission adopt the Settlement in full. However, the Joint Petitioners expressly submitted that they did not waive their rights to file Exceptions to any modifications by the ALJs to the terms and conditions of the Settlement or to any additional matters proposed by the ALJs in their Recommended Decision. Similarly, the Joint Petitioners reserved their rights to file Replies to Exceptions, as long as such Replies support the Settlement. *Id.* at ¶ 24 at 8.

**2. Statements of the Parties in Support of the Settlement**

**a. Columbia Water**

In its Statement, Columbia Water submitted that the Settlement establishes rates which are just and reasonable and will economically benefit its customers by setting lower rates than Columbia Water originally requested. According to Columbia Water, although the Settlement’s proposed annual revenue increase of $635,000, or 12.4%, is less than the increase Columbia Water originally requested of $923,668, or 17.8%, Columbia Water will, nonetheless, be able to cover its expenses and continue to invest in facilities that will allow it to continually provide a high quality of service and water to its customers and to respond to the ever-increasing regulatory demands of the Pennsylvania Department of Environmental Protection. Columbia Water Statement at 13-14, 15. Columbia Water also argued that the Settlement benefits ratepayers by reducing Columbia Water’s rate case expenses, which are permitted by the Commission and are ultimately borne by the ratepayers of the Company. *Id.* at 15, n.9.

Columbia Water opined that although the Settlement does not permit full consolidation of its Columbia and Marietta Rate Districts, as Columbia Water originally requested, the Settlement takes a reasonable step towards such unitization of rates between the districts. Columbia further pointed out that it is not precluded under the Settlement from pursuing further or complete consolidation of its rate districts in a future rate proceeding or proceedings, nor are I&E and the OCA precluded from challenging any such rate changes. Columbia Water Statement at 10-11, 15-16.

Additionally, Columbia Water highlighted the stay-out provision contained in the Settlement. Columbia Water submitted that it agreed to this provision in return for avoiding the additional costs that it would have incurred by continuing to pursue litigation of the issues in this proceeding. Columbia Water Statement at 14, 16.

Moreover, Columbia Water submitted that the Settlement is in the public interest because it amicably and promptly resolves a number of important and potentially contentious issues, which would have been very expensive and time-consuming to litigate, and which would likely have resulted in expensive and time-consuming appeals. Among these issues, Columbia Water highlights that the Settlement resolves the positions taken by Columbia Water and the OCA regarding isolation valve exercising in a manner consistent with the most recent Commission management audit of Columbia Water. Columbia Water Statement at 16.

**b. I&E**

In its Statement, I&E opined that the Settlement balances the interests of Columbia Water, its customers, and the Joint Petitioners in a fair and equitable manner. I&E stated that it supports the negotiated revenue increase of $635,000 in lieu of Columbia Water’s originally proposed revenue increase of $923,668. I&E emphasized that the overall revenue levels are within the levels advanced in the evidentiary record and represent a black box compromise. I&E Statement at 7-8.

I&E pointed out that Columbia Water’s chief objective in its original filing was to consolidate its two rate districts, *i.e.* the Columbia Rate District and the Marietta Rate District. I&E noted the concerns I&E and the OCA raised during this proceeding regarding the adverse impact that full consolidation would have on customers in the Marietta Rate District. For example, I&E pointed out that the monthly customer charge of $10.50 that Columbia Water proposed for all customers in the original filing would have resulted in an increase of 54.4 percent for customers in the Marietta Rate District, as opposed to an increase of 12.3 percent for customers located in the Columbia District. Therefore, I&E submitted that the rates agreed upon in the Settlement, which permit a partial consolidation of rate districts, in lieu of the originally proposed full consolidation, mitigates the concerns raised by the parties to this proceeding, represents a fair compromise, and protects all customers from rate volatility. Additionally, I&E submitted that the Settlement provision that would require Columbia Water to file a cost of service study if it seeks full consolidation of rates in its next rate case is reasonable and in the public interest. I&E Statement at 8-13, 16-17.

I&E also noted that as part of its original proposal to fully consolidate its rate districts, Columbia Water proposed to begin proportionally applying a PENNVEST surcharge currently levied only on customers in the Columbia Rate District to customers located in both the Columbia Rate District and the Marietta Rate District. I&E explained that this surcharge is related to PENNVEST loan 80180 and was incurred to pay for plant that serves only customers located in the Columbia Rate District. Therefore, I&E supported the agreement reached by the Joint Petitioners that this PENNVEST surcharge will continue to be applied only to customers in the Columbia Rate District. I&E Statement at 13-16.

Additionally, I&E expressed its concurrence with paragraph 20(d) of the Settlement, which states that the Settlement is not premised upon the inclusion of the PENNVEST financed plant, purchased and installed by the former Marietta Gravity Water Company (MGWC) and recovered through the Marietta PENNVEST surcharge, in Columbia Water’s rate base. As background, I&E explained that prior to being purchased by Columbia Water, MGWC secured a Co-Bank loan and a PENNVEST loan to purchase and install various plant and equipment and assessed a surcharged on its customers for repayment of these loans. These loans were subsumed by Columbia Water when it purchased MGWC and the associated surcharge continued after the acquisition but remained isolated and applied only to customers in the Marietta Rate District until the loans were repaid in full in May 2015 and February 2016. I&E noted that in its original filing, Columbia Water proposed to include this plant in its rate base. On the other hand, the OCA opined that such inclusion was not proper because Columbia Water was already compensated for the debt and has satisfied its obligation to PENNVEST. I&E explained that in lieu of litigating this issue, the Joint Petitioners agreed to the above Settlement provision. I&E submitted that although it did not file testimony regarding this issue, the final negotiated treatment of the PENNVEST financed Marietta plant is within the positions advanced on the evidentiary record and reflects a full and fair compromise of all concerns and issues raised by the Parties. I&E Statement at 17-20.

Further, I&E noted that it did not submit testimony regarding (1) a stay-out provision, (2) the cost recovery related to Columbia Water’s acquisitions of MGWC and Mountville Water Company (MWC), or (3) Columbia Water’s isolation valve exercising. Nonetheless, I&E supported the Settlement terms that Columbia Water will: (1) agree to a thirty-three month stay-out prior to filing its next request for a base rate increase; (2) agree not to claim its acquisition costs of MGWC and MWC as “Franchises” in any future rate case; and (3) agree to the annual reporting regarding its present isolation valve exercising, including its critical valve exercising in accordance with the Commission’s most recent management audit. In I&E’s view, each of these terms are reasonable, maintain the proper balance of the interests of all parties, and are in the public interest. I&E Statement at 17, 20-23.

**c. OCA**

In its Statement, the OCA pointed out that the Settlement produces an overall annual revenue increase for Columbia Water of $635,000, which is $168,943 less than the amount Columbia Water originally requested. In the OCA’s view, the increase produced by the Settlement represents an amount that would be within the range of the likely incomes in the event that this case was fully litigated. Further, the OCA contended that the rates produced under the settlement represent a reasonable compromise, while recognizing the need for gradualism in rate increases. The OCA also emphasized the rate stability that would result from the thirty-three month stay-out provision contained in the Settlement. In this regard, the OCA pointed out that under this provision, new rates could not go into effect for at least three years. Thus, the OCA contended that the stay-out provision is in the public interest and in the interest of Columbia Water’s customers. OCA Statement at 4-5.

The OCA opined that Columbia Water’s agreement to file a cost of service study in its next rate case in the event it proposes to fully consolidate its Marietta Division rates with its Columbia Division rates is in the public interest because it will afford all parties the opportunity to review the proposed consolidation in order to determine the extent to which revenues derived from each service area and customer classification are aligned with the cost of serving that classification. The OCA further pointed out that in the present proceeding, the Settlement provides Columbia Water with an initial step toward consolidation. OCA Statement at 5.

The OCA also highlighted that under the Settlement, the PENNVEST surcharge levied upon Columbia Water’s Columbia Rate Division customers remains the same and that the PENNVEST surcharge for the Columbia Rate Division water treatment plant will not be charged to the Marietta Rate Division customers. The OCA noted that the Marietta Rate Division customers are served by wells and not by the Columbia Division’s water treatment plant. As such, the OCA argued that this provision is in the public interest. OCA Statement at 5-6.

Additionally, the OCA submitted that the Settlement provision in which Columbia Water will provide annual reports regarding its present isolation valve exercising, including its critical valve exercising, is in the public interest and should be adopted. In this regard, the OCA opined that an isolation valve that cannot be fully closed will increase the water loss during a water main break and will increase the number of customers affected. According to the OCA, it is always more expensive to repair or replace an isolation valve than it is to exercise it. In the OCA’s view, annually reporting the exercising of isolation valves will enable Columbia Water to develop a reasonable schedule for exercising such valves in the future. OCA Statement at 6-7.

Further, the OCA explained that in its original filing, Columbia Water sought to add a claim of $349,631 for “franchises” related to its acquisitions of the MGWC and MWC to its rate base. The OCA noted that in filing testimony in this proceeding, it took the position that such acquisition costs are untimely and inappropriate because Columbia Water never provided support that such costs are recoverable from ratepayers as franchises. Thus, the OCA submitted that the Joint Parties’ agreement that Columbia Water will not make a claim in any future rate case to recover such costs as franchises is in the public interest.

Finally, the OCA touted the provision that the Settlement is not premised upon the inclusion in rate base of any Marietta Division PENNVEST-financed plant. The OCA reasoned that the Joint Petitioners’ agreement aligns with its own view the Marietta plant, which was funded by a PENNVEST loan and collected via a twenty-year PENNVEST surcharge that ended in 2016, should not also be collected in base rates. OCA Statement at 8.

**d. OSBA**

In its Statement, the OSBA championed the compromise the Joint Petitioners reached in negotiating a rate design that moves the rates of the Marietta Division closer to the rates of the Columbia Division. The OSBA highlighted that although the rate design and revenue allocation does not completely consolidate the two divisions in one rate proceeding, as Columbia Water originally requested, it does make progress toward this goal while protecting customers in the Marietta Division from rate shock. OSBA Statement at 2-4.

**3. ALJs’ Recommendation**

In their Recommended Decision, the ALJs first summarized each of the provisions of the Settlement and the Parties’ Statements thereto. R.D. at 8-16. The ALJs found that the Settlement permits Columbia Water to raise additional revenue to meet operating expenses and to fund infrastructural improvement and also permits Columbia Water to earn a reasonable rate of return. At the same time, the ALJs noted that the Settlement produces an annual revenue increase of $635,000, or 12.4%, which is less than Columbia Water’s originally requested increase of $923,668, or 17.8%. The ALJs determined that this agreed upon revenue increase represents a reasonable compromise and is in the public interest. *Id*. at 16.

The ALJs next explained that in the instant case, the Parties have reached a black box settlement in which the Settlement provides for an increase in Columbia Water’s revenues but does not indicate the specifics of how this increase was calculated. Citing to *Pa. PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013), the ALJs noted that the Commission has observed that determining a utility’s revenue requirement is a calculation that involves many complex and interrelated adjustments which affect expenses, depreciation, rate base, taxes, and the utility’s cost of capital, and which makes it difficult for the parties to a proceeding to reach an agreement on each component. As such, the ALJs found that the submission of a black box settlement in this case is reasonable. R.D. at 16-17.

The ALJs also concluded that the Settlement is in the public interest because it ensures that Columbia Water’s customers will continue to receive safe and reliable service at reasonable rates, while minimizing the rate impact on customers in the Marietta Rate Division. The ALJs pointed out that the rate impact to these customers is significantly lower than it would have been under Columbia Water’s originally proposed rates. In a similar fashion, the ALJs noted that the Settlement provides rate stability to all of Columbia Water’s customers because Columbia Water has agreed to refrain from filing another base rate case for a period of thirty-three months following the entry of a final Commission order in the instant proceeding. Moreover, the ALJs noted that the Settlement ensures that discrete PENNVEST charges and costs relating only to customers in the Columbia Rate District will remain with those customers, while discrete PENNVEST charges and costs related only to customers in the Marietta Rate District will remain with those customers. In the ALJs’ view, this represents an allocation that is fair and reasonable to both classes of customers. R.D. at 17-18

Additionally, the ALJs found that Columbia Water’s agreement to make annual reports to the Commission regarding its isolation valves represents a reasonable balance of the interests of various parties and helps to ensure the continued provision of safe and reliable service to Columbia Water’s customers. However, the ALJs pointed out that none of the Joint Petitioners specified how such reports will be submitted, what time period the reports will cover, or who will be provided with a copy of the report. Although the ALJs concluded that this deficiency does not constitute a reason to reject or modify the Settlement, the ALJs directed the Parties to clarify these issues as part of the compliance phase of this proceeding. R.D. at 18.

Further, the ALJs noted that the Settlement resolves the Formal Complaints filed by the *pro se* Complainants. The ALJs pointed out that each *pro se* Complainant was provided with a copy of the Settlement but that no objections to the Settlement were received. As such, the ALJs found that the *pro se* Complaints should be marked closed. R.D. at 19

Finally, the ALJs concluded that resolution of this proceeding by negotiated settlement removes the uncertainties of litigation. In this regard, the ALJs pointed out that all Parties benefit by the reduction in rate case expense and the conservation of resources made possible by adoption of the proposed Settlement in lieu of litigation. Further, the ALJs highlighted that acceptance of the Settlement will negate the need for the filing of additional testimony by all Parties, participation at in-person hearings, the filing of main and reply briefs, exceptions and reply exceptions, and potential appeals. According to the ALJs, this will yield significant expense savings for Columbia Water’s customers. R.D. at 18-19.

Based on the above factors, the ALJs found the Settlement embodied in the Joint Petition to be just and reasonable and in the public interest. As a result, the ALJs recommended that the Commission approve the Settlement in its entirety without modification. R.D. at 19.

**4. Columbia Water’s Exceptions**

In its Exceptions, Columbia Water agrees with the ALJs’ finding that the Settlement is in the public interest and with their recommendation that the Settlement be approved in its entirety, without modification. However, Columbia Water submits that the ALJs also made characterizations, interpretations, or conclusions in the discussion section of their Recommended Decision that deviate from the specific language of the Settlement. More specifically, Columbia Water finds fault with the ALJs’ discussion of Paragraph 20(d) of the Settlement and the associated Statements of the Joint Petitioners. As background, Columbia Water explains that one of the contested issues in this proceeding was whether the undepreciated amount of used and useful plant funded by PENNVEST and CoBank loans (PENNVEST Funded Plant) should be included in Columbia Water’s rate base. Columbia Water notes that because the OCA opposed this inclusion, the Joint Petitioners agreed that this issue would not be resolved in this proceeding and would be deferred to a future proceeding. As a result, Columbia Water emphasizes that Paragraph 20(d) of the Settlement states that “the Settlement is not premised upon inclusion in rate base of any Marietta Rate District PENNVEST-funded plant.” Columbia Water Exc. at 2.

However, Columbia Water opines that although the ALJs accurately quoted this provision in summarizing the conditions of the Settlement, they erroneously characterized this provision in their discussion of the Joint Petitioners’ Statements. Columbia Water Exc. at 2-3. Namely, Columbia Water argues that in citing to pages 17 and 18 of I&E’s Statement, the ALJs incorrectly stated that as part of the Settlement, Columbia Water has agreed not to include PENNVEST Funded Plant in its rate base. *Id.* at 3, citing R.D. at 14. In contrast, Columbia Water points out that in its Statement, I&E correctly stated that the Joint Petitioners agreed only that the Settlement is not premised upon the inclusion of the PENNVEST Funded plant. Thus, Columbia Water argues that the Commission should correct the above error by deleting the ALJs’ characterization and should clarify that for the purposes of this Settlement only, the Parties have agreed that the Settlement is not premised upon inclusion in Columbia Water’s rate base of any Marietta Rate District PENNVEST-Funded Plant. Further, Columbia Water requests that the Commission clarify that Columbia has not agreed that the inclusion of this plant is improper or would be improper in any subsequent rate case. Columbia Water Exc. at 3.

According to Columbia Water, the ALJs’ discussion of the PENNVEST rate base issue breaches the Commission’s policy of promoting black box settlements. Columbia Water Exc. at 3. In this regard, Columbia Water Company cites to our recent decision in *Pa. PUC v. Manwalamink Water Company* *et al.*, Docket No. R‑2017‑2603026 (Order entered November 8, 2017) (*Manwalamink*), wherein we stated that making a finding regarding the reasonableness of a specific element of a black box settlement is both improper and unnecessary to evaluate such a settlement. *Id.* at 3, citing *Manwalamink* at 17. Columbia Water argues that in the instant case, as in *Manwalamink,* the Settlement speaks for itself and the ALJs’ characterization of what this black box settlement term does or does not do is both improper and unnecessary. Accordingly, Columbia Water submits that we should approve the Settlement, without modification, based only on the express terms of the Settlement. Columbia Water Exc. at 3-4.

**5. I&E’s Replies Exceptions**

In its Replies to Exceptions, I&E states that because the ALJs cited to portions of I&E’s Statement, it feels obligated to help clarify this Statement. I&E explains that in its Statement, it first provided background information regarding the MGWC PENNVEST loans in order to add some context to the discussion of this issue. I&E points out that it summarized its understanding of the competing arguments advanced by Columbia Water and the OCA during the litigation phase of this proceeding. I&E further explains that it then recognized that in lieu of litigating this issue, the Parties agreed that the Settlement was not premised upon the inclusion in Columbia Water’s rate base of any Marietta Rate District PENNVEST-funded plant. Therefore, I&E submits that it concurs with the argument set forth by Columbia Water in its Exceptions that the Commission should approve the Settlement without modification and should also modify the ALJs’ discussion on page 14 of the Recommended Decision to reflect the language set forth in Paragraph 20(d) of the Settlement. I&E R. Exc. at 3.

**6. Disposition**

We are of the opinion that the proposed Settlement balances the concerns of all Parties involved, is in the public interest, and should be approved without modification. We echo the Joint Petitioners and the ALJs that there are a number of settled issues within the Settlement that are beneficial to customers. Among those provisions are: (1) the reduced rate increases of about sixty-nine percent of the originally proposed increase in rates; (2) the provision for the continued maintenance of safe and adequate service; (3) the rate stability that will result from the thirty-three month stay-out provision; (4) the agreement that Columbia Water will take only an initial step toward the rate consolidation of its Columbia and Marietta Rate Districts, while recognizing the need for gradualism in rate increases; (5) the agreement that if Columbia Water seeks full consolidation of its Columbia and Marietta Rate Districts in its next general rate case, it will file a cost of service study which all parties will have the opportunity to review; (6) the agreement that the PENNVEST Surcharge applied to Columbia Rate Division customers for Columbia Rate Division plant will remain unchanged and will be not be proportionally applied to customers in the Marietta Rate Division; (7) the agreement that the acquisition costs of MGWC and MWC will not be added to Columbia Water’s rate base as “franchises” in future rate cases; (8) the resolution of the Formal Complaints filed by the *pro se* Complainants; and (9) the agreement that Columbia Water will provide annual reports regarding its present isolation valve exercising, including its critical valve exercising.

Additionally, we find that the Settlement will result in significant savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, thereby conserving precious administrative resources. Further, the Settlement provides regulatory certainty with respect to the disposition of issues which benefits all Parties. For the reasons stated herein and in the Joint Petitioners’ Statements in Support, we concur with the ALJs’ conclusion that the Settlement is in the public interest. Moreover, we concur with the observation of the ALJs that although Columbia Water has committed to file annual reports with the Commission regarding its isolation valves, none of the Joint Petitioners have specified any detail regarding these reports. Therefore, we shall adopt the ALJs’ recommendation that when it makes its compliance filing in this proceeding, Columbia Water shall specify to whom and when these annual reports are to be submitted and what time periods the reports will cover.

Notwithstanding the above, we also find that the arguments Columbia Water sets forth in its Exceptions have merit. In this regard, our review of the language contained in the Settlement and in the Joint Petitioners’ Statements corroborates Columbia Water’s assertion that the ALJs mischaracterized the Settlement’s term outlined in Paragraph 20(d) of the Settlement. Namely, as Columbia Water points out, in discussing Paragraph 20(d) of the Settlement, the ALJs state as follows: “[a]s part of the Settlement, Columbia has agreed not to include a PENNVEST financed plant, purchased and installed by Marietta Gravity Water Company and recovered through the Marietta PENNVEST surcharge, in the base rate.” R.D. at 14, citing I&E Statement at 17-18. We agree with Columbia Water that, as written, this description of this term of the Settlement could be construed to mean that Columbia Water has agreed never to include Marietta Rate District PENNVEST-funded plant in its rate base.

We further agree with both Columbia Water and I&E that the ALJs erroneously cited to I&E’s Statement as support in describing this portion of the Settlement. Our review of I&E’s Statement indicates that the language in the ALJs’ Recommended Decision describing this portion of the Settlement is contrary to I&E’s actual language, which is stated below:

the Joint Petitioners agree that the Settlement is not premised upon inclusion of the PENNVEST financed plant, purchased and installed by the former Marietta Gravity Water Company (‘MGWC’) and recovered through the Marietta PENNVEST surcharge, in rate base.

I&E Statement at 17-18. Thus, it is clear from both the Settlement and the Parties’ Statements thereto that the Joint Petitioners have agreed, for the purposes of **this Settlement only**, that the Settlement is not premised upon the inclusion in Columbia Water’s rate base of any Marietta Rate District PENNVEST-funded plant, nor has Columbia Water conceded that such inclusion would be improper. The Settlement before us today does not preclude Columbia Water from seeking to include such plant in its rate base in future rate proceedings. Accordingly, we shall grant Columbia’s Exceptions and modify the first sentence on page 14 of the Recommended Decision to read as follows:

As part of the Settlement, the Parties have agreed that the Settlement shall not be premised upon the inclusion of a PENNVEST financed plant, purchased and installed by Marietta Gravity Water company and recovered through the Marietta PENNVEST surcharge in Columbia Water’s rate base.

Before concluding this section, we also note that as the ALJs observed in their Recommended Decision, the Settlement before us is a black box settlement in which the Settlement provides for an increase in Columbia Water’s revenues but does not indicate the details of how the parties calculated this increase. Thus, in considering the Settlement, we are evaluating only whether the revenue increase arrived at in the Settlement is in the public interest. However, as noted, *supra,* the ALJs concluded, *inter alia,* that the Settlement will permit Columbia Water to earn a reasonable rate of return. We will not adopt this portion of the Recommended Decision. As Columbia Water points out in its Exceptions, we recently determined in *Manwalamink* that it would be improper in a proceeding involving a settlement to make a finding concerning the reasonableness of a specific rate of return, absent information concerning the specific components of the revenue requirement. *Manwalamink* at 17; *see also Pa. PUC v. Aqua Pennsylvania, Inc.*,Docket No. R‑2009‑2132019, *slip op.* at 27 (Order entered June 16, 2010). We apply this same finding to the matter before us today. Accordingly, we shall amend the second sentence under the Disposition section on page 16 of the Recommended Decision to read as follows: “The Settlement allows Columbia to raise additional revenue for operating expenses and infrastructural improvements ~~while allowing the Company to earn a reasonable rate of return~~.”

Based on the forgoing, we shall adopt the ALJs’ recommendation to grant the Joint Petition and adopt the Settlement, without modification. However, we shall also modify the ALJs’ Recommended Decision as suggested by Columbia Water in its Exceptions and as further discussed, *supra.*

**IV. Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. In our view, the Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Joint Petition for Settlement. Based on our review of the record evidence in this case, including the Joint Petition for Settlement and the Statements in Support thereof, we find that the proposed Joint Petition for Settlement between Columbia Water, the OCA, the OSBA, and I&E is in the public interest.

Accordingly, we shall grant the Exceptions of Columbia Water, adopt the Recommended Decision, as modified, consistent with this Opinion and Order, and grant the Joint Petition for Settlement. **THEREFORE;**

 **IT IS ORDERED:**

1. That the Exceptions of the Columbia Water Company filed on January 22, 2018, to the Recommended Decision of Administrative Law Judges Joel H. Cheskis and Andrew M. Calvelli are granted.

2. That the Recommended Decision of Administrative Law Judges Joel H. Cheskis and Andrew M. Calvelli, issued on January 12, 2018, is adopted, as modified by this Opinion and Order.

3. That the Joint Petition for Settlement, filed by the Columbia Water Company, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Bureau of Investigation and Enforcement on December 12, 2017, at Docket No. R‑2017-2598203, is approved in its entirety without modification.

4. That the Columbia Water Company shall not place into effect the rates contained in Supplement No. 86 to Tariff Water – PA. P.U.C. No. 7, which was submitted on June 27, 2017, at Docket Number R-2017-2598203.

5. That Columbia Water Company shall file a tariff supplement with the Commission, reflecting the rates set forth in its proposed compliance tariff attached to the Joint Petition for Settlement as Supplement No. 91 to Tariff Water – PA. P.U.C. No. 7, to become effective on one (1) days’ notice after the date of entry of this Opinion and Order, for service rendered on and after the effective date of the tariff supplement, so as to produce an annual increase in base rate operating revenues not to exceed $635,000, consistent with this Opinion and Order.

6. That the Columbia Water Company in its compliance filing shall specify to whom and when the valve exercising reports referenced in the Joint Petition for Settlement are to be submitted and what time periods the reports will cover.

7. That the Columbia Water Company, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Bureau of Investigation and Enforcement shall comply with the terms of the Settlement of the Section 1308(d) Rate Investigation submitted in this proceeding, as though each term and condition stated therein had been the subject of an individual ordering paragraph.

8. That after the Columbia Water Company files the required tariff supplement set forth in Ordering Paragraph No. 5 of this Opinion and Order, the Formal Complaints filed by the Office of Consumer Advocate at Docket Number C-2017-2614985 and by the Office of Small Business Advocate at C-2017-2615248 shall be deemed satisfied, and the Commission’s investigation at Docket No. R-2017-2598203 shall be terminated, and all three dockets shall be marked closed.

9. That the Formal Complaint filed by Donna Hess against the Columbia Water Company at Docket Number C-2017-2614724, is dismissed and marked closed.

10. That the Formal Complaint filed by Vincent Collier III against the Columbia Water Company at Docket Number C-2017-2620842, is dismissed and marked closed.

11. That the Formal Complaint filed by Sandra Shaub against the Columbia Water Company at Docket Number C-2017-2622123, is dismissed and marked closed.

12. That the Formal Complaint filed by Joseph Kramer against the Columbia Water Company at Docket Number C-2017-2623109, is dismissed and marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 1, 2018

ORDER ENTERED: March 1, 2018

1. On November 2, 2017, Columbia Water filed a motion to strike portions of the surrebuttal testimony of OCA witness Terry Fought. However, this motion was subsequently withdrawn during the evidentiary hearing held on November 3, 2017. [↑](#footnote-ref-1)
2. For example, full or partial settlements may allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision. [↑](#footnote-ref-2)
3. The Columbia Rate District and the Marietta Rate District were formerly known as the Columbia Division and the Marietta Division, respectively. [↑](#footnote-ref-3)
4. For the Columbia Rate District, these monthly bill amounts include the PENNVEST surcharge for a customer with a 5/8 inch meter. Initially, the below amounts are based on 3,000 gallons per month [↑](#footnote-ref-4)