

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2017-2618332
Office of Consumer Advocate	:	C-2017-2629498
	:	
v.	:	
	:	
Pine-Roe Natural Gas Company, Inc.	:	

**RECOMMENDED DECISION**

Before  
Conrad A. Johnson  
Administrative Law Judge

I. HISTORY OF THE PROCEEDINGS

A. Introduction

A small gas company filed a general rate increase request seeking \$50,000 in additional annual revenues through an increase to its customer charge with an effective date of November 1, 2017. The Parties to this proceeding submitted for Commission approval a Joint Petition for Settlement pursuant to which the gas company would be permitted to produce additional annual operating distribution revenue of \$35,000, effective on or before July 8, 2018. Commission approval of the Settlement would permit the gas company to implement a residential customer charge of \$10.00 per month to be applied to a customer's bill regardless of gas usage. Under the terms and conditions of the Settlement, a typical residential customer using 7.56 Mcf of natural gas per month would experience a 91.2% total bill increase from \$25.78 to \$49.30. This decision recommends approval of the Joint Petition for Settlement of Rate Investigation submitted in this proceeding by the Parties.

B. The Filings

On August 4, 2017, Pine-Roe Natural Gas Company, Inc. (Pine-Roe) filed Supplement No. 40 to Tariff Gas Pa. P.U.C. No. 1 proposing an annual increase in overall revenue of \$50,000 by increasing the customer charge from \$6.61/month to \$31.86/month (382%) to become effective November 1, 2017. On October 12, 2017, Supplement No. 40 was voluntarily postponed until December 8, 2017 via Supplement No. 42.

On October 17, 2017, at Docket No. C-2017-2629498, the Pennsylvania Office of Consumer Advocate (OCA) filed a formal complaint against Pine-Roe challenging the rate increase. On October 19, 2017, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance in this proceeding.

Pursuant to 66 Pa.C.S. §1308(d), Pine-Roe's proposed tariff filing was suspended by operation of law on November 8, 2017, until July 8, 2018 unless permitted by Commission Order to become effective at an earlier date.

By Order entered, November 8, 2017, the Commission instituted an investigation and analysis to determine the lawfulness, justness and reasonableness of Pine-Roe's existing and proposed rates and regulations. The Order directed the Commission's Secretary's Bureau (Secretary) to serve a copy of the Order upon Pine-Roe, OCA, I&E, hereinafter the Parties, and the Office of Small Business Advocate (OSBA).<sup>3</sup> The Order directed assignment of the case to the Office of Administrative Law Judge for prompt scheduling of such hearings as may be necessary culminating in the issuance of a Recommended Decision. The proceeding was assigned to me as the presiding Administrative Law Judge (ALJ).

On November 9, 2017, a Prehearing Conference Order (PHCO) was issued to the Parties informing them that a prehearing conference would be conducted telephonically on Monday, November 20, 2017 at 1:00 P.M, by the ALJ presiding in Pittsburgh. The Parties were directed to call in to the conference by dialing the toll-free bridge number and PIN provided in

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<sup>3</sup> To date, OSBA has not entered an appearance in this proceeding.

the PHCO. The PHCO also directed the Parties to file prehearing memoranda in accordance with the Commission's regulations, 52 Pa.Code §§ 5.221 to 5.224, by Friday, November 17, 2017.

On November 9, 2017, Mediator Tiffany A. Hunt from the Office of Administrative Law Judge issued a Notice to the Parties informing them the matter could be processed through mediation between or among them upon consent of all Parties.

On November 13, 2017, a Prehearing Conference Notice was issued to the Parties reminding them of the date, time and manner of the telephonic prehearing conference.

On November 15, 2017, via electronic mail, counsel for OCA, Darryl A. Lawrence, Esquire, sent the ALJ a letter requesting that the prehearing conference be held in abeyance pending mediation. Notably, Attorney Lawrence's letter was filed with the Commission's Secretary's Bureau on the same date together with a Certificate of Service. In his letter, Attorney Lawrence represented that the Parties were working with Mediator Hunt to schedule an initial mediation session in late November 2017. OCA submitted that resolution of this matter through mediation was likely. Attorney Lawrence further represented that Pine-Roe and I&E supported OCA's request. I treated Attorney Lawrence's request as a joint motion of the Parties.

By First Interim Order entered on November 16, 2017, I granted the Parties' joint motion and held the prehearing conference in abeyance pending mediation. Under the First Interim Order, Pine-Roe was directed to file and serve a tariff supplement extending the proposed tariff suspension date to September 8, 2018.<sup>4</sup> OCA was also directed to provide me a status report of the mediation process by January 19, 2018.

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<sup>4</sup> The Commission's regulations provide that when a party with the burden of proof consents to mediation in proceedings subject to a statutory deadline for adjudication, that party must also agree, in writing, to extend the statutory deadline by, at least, 60 days. 52 Pa.Code § 69.392(2). In this instance, Pine-Roe has the burden of proof.

On November 21, 2017, Pine-Roe filed with the Commission Supplement No. 43, thereby suspending the application of rates proposed in Supplement No. 40 until September 8, 2018.

C. Mediation and Settlement

The Parties engaged in an initial mediation session on November 29, 2018, with Mediator Hunt, and thereafter, the Parties made a site visit on December 7, 2017. A second mediation session was conducted on December 21, 2017, during which the Parties achieved a settlement in principle. On January 10, 2018, OCA provided me a mediation status report and advised that the Parties had reached a settlement.

On January 31, 2018, Pine-Roe, I&E and OCA (Joint Petitioners) filed a Joint Petition for Settlement of Rate Investigation (Settlement Petition), together with their respective Statements in Support, for recommendation by the ALJ and the Commission's approval. By Second Interim Order entered on February 2, 2018, the Settlement Petition was admitted into the record, and OCA's Complaint at Docket No. C-2017-2629498 was consolidated with Pine-Roe's rate filing at Docket No. R-2017-2629498, and the record was closed.

D. The Record

The record in this proceeding consists of the filings of the Parties, orders issued herein, the Settlement Petition together with Appendix A – Pine-Roe's Statement in Support of Settlement Petition, Appendix B – I&E's Statement in Support of Settlement Petition and Appendix C – OCA's Statement in Support of Settlement Petition.

II. TERMS OF SETTLEMENT

The unnumbered, nine-page Settlement Petition includes twenty-one numbered paragraphs, a request for relief and three attached appendices. The principle terms of the Settlement Petition, Paragraphs 16 through 17, state in relevant part as follows:

16. Joint Petitioners agree that this rate proceeding can be settled without the need for further formal litigation. . . .

(a) Revenue Requirement

The parties agree that, upon entry of the Commission's Order approving this Settlement without modification, effective on or before July 8, 2018, Pine Roe shall be permitted to produce an additional annual operating distribution revenue of \$35,000. This \$35,000 increase in annual distribution revenue is in lieu of the \$50,000 increase requested by Pine Roe in its August 7, 2017 Supplement No. 40 to Tariff - Gas Pa. P.U.C. No. 1.

(b) Customer Charge

The parties agree that, upon entry of the Commission's Order approving this Settlement without modification, effective on or before July 8, 2018, Pine Roe shall be permitted to implement a residential customer charge of \$10.00 per month. This \$10.00 customer charge will be applied regardless of usage (e.g. where a customer uses 0 Mcf of natural gas). The customer charge will not include 2 Mcf of natural gas and the Company will bill for each Mcf of natural gas.

(c) Bill Format

The parties agree that Pine Roe shall modify its current bill format to clearly and accurately identify, at minimum: (1) the billing cycle dates, (2) the customer account number, (3) a strict due date, (4) the method by which interest is calculated on late payments, and (5) any established business hours. Pine Roe will provide to the Office of Consumer Advocate (OCA) and Bureau of Investigation and Enforcement (I&E) a proposed modified bill format before Settlement rates go into effect. Upon approval by all parties, beginning in the next billing cycle, the Company shall issue customer bills in the modified format. Pine Roe will then provide to the OCA and I&E a copy of an actual customer bill with personal information redacted.

(d) Deposits

The parties agree that within 90 days of the Commission's Final Order in this case, Pine Roe shall modify its current deposit policy in a manner that is consistent with the Public Utility Code and with the Commission's regulations at 52 Pa. Code Chapter 56.

Pine Roe agrees to contact the Commission's Bureau of Consumer Services if it needs assistance to comply with this term.

(e) Budget Billing

The parties agree that Pine Roe shall continue its budget billing program and, upon request, work with customers to allocate future bills in accordance with this program. The program shall not preclude the Company from collecting all charges due from customers. Pine Roe will continue to disseminate information to customers regarding the budget billing program.

(f) Company Contact

The parties agree that Pine Roe shall continue to maintain a working telephone line. A Pine Roe employee will make reasonable efforts to be available to take customer calls during any established business hours and return customer calls in a timely manner. The Company will also maintain an answering machine and/ or answering service. Further, Pine Roe shall continue to make readily available to customers an emergency contact line.

(g) Pipeline Replacement Plan

The parties agree that Pine Roe shall work toward developing a pipeline replacement plan to be presented to I&E's Pipeline Safety Division during their quarterly meetings pursuant to a separate settlement with I&E at Docket Nos. C-2014-2400485 and C-2017-2582760. See Pa. PUC v. Pine Roe Natural Gas Co., Inc., Docket Nos. C-2014-2400485, C-2017-2582760 (Order entered December 21, 2017).

(h) Financial Recordkeeping

The parties agree that Pine Roe shall maintain comprehensive financial records. These financial records will include, at minimum, all costs allocated to the Company, including, but not limited to, costs incurred by other individuals or entities for the benefit or purpose of the operations of Pine Roe. Pine Roe shall also maintain, within 90 days after the final Order, records of cellular device and service costs for business use separate from those for personal use.

(i) Capital Expenditure Report

The parties agree that, on an annual basis, for three (3) years following the Commission's Order approving this Settlement, Pine Roe will provide to the OCA and I&E a report containing, at minimum: (a) the overall number of customers gained or lost and an explanation as to why the Company lost any customers, (b) an overview of customer service issues, (c) the current gas cost, and (d) a list of capital investments and upgrades to the system and a projection of capital investments and upgrades to the system for the following calendar year.

(j) "C" Docket Settlement

The parties acknowledge that Pine Roe previously agreed to take multiple corrective actions at its sole cost and expense, pay a \$20,000 civil penalty not to be included in present or future rates, and abide by certain other terms in a separate settlement with I&E, which was adopted by Administrative Law Judge (ALJ) Joel H. Cheskis and, thereafter, by the Commission. See Pa. PUC v. Pine Roe Natural Gas Co., Inc., Docket Nos. C-2014-2400485, C-2017-2582760 (Order entered December 21, 2017).

(k) Acknowledgement of Parties

Pine Roe has elected not to be represented by legal counsel in this proceeding despite I&E's recommendation that Pine-Roe should consider retaining counsel to represent its interests. Accordingly, Pine Roe acknowledges that, in negotiating and in executing this agreement, it has had the opportunity to seek the advice of independent legal counsel, and it has read, understood, and consented to all the terms and provisions of this agreement.

17. Under the presently suspended Supplement No. 40, the customer charge would have increased by approximately \$25.25 or 382%, from \$6.61 to \$31.86. Under the Joint Petition, the customer charge would increase by approximately \$3.39, or 51%, from \$6.61 to \$10.00.

Settlement Petition ¶¶ 16-17.

The Parties maintain the Settlement is in the public interest because it

(a) minimizes cost-prohibitive litigation and administrative burden; (b) recognizes ratepayers' concerns; and (c) provides Pine-Roe with additional and necessary cash flow. *Id.* ¶18.

Additionally, the Settlement contains the standard provisions that the Settlement is made without

prejudice to each Party's litigation position; that it is conditioned upon the Commission's approval of the Settlement without modification; that the Parties agree to waive the filing of exceptions, if it is recommended that the Commission adopt the Settlement without modification; and that if the Commission fails to grant approval of the Settlement or modifies any material term or condition of the Settlement, in such event, any Party may elect to withdraw from the Settlement upon written notice to the Commission and the other Parties within three business days, and the Settlement will be of no force and effect. *Id.* ¶¶ 19-20.

As relief, the Parties request the following: (a) approval of the Settlement Petition without modification; (b) effective on or before July 8, 2018, Pine-Roe be permitted to produce an additional annual operating distribution revenue of \$35,000; (c) the Commission's investigation at R-2017-24618332 be terminated and marked closed; and (d) the Complaint of the Office of Consumer Advocate at C-2017-2629498 be marked closed consistent with the Settlement Petition. *Id.* ¶22.

### III. DISCUSSION

#### A. Legal Standards

While the courts recognize a public utility is entitled to an opportunity to earn a fair rate of return on its property dedicated to public service, *Pa. Pub. Util. Comm'n v. Pa. Gas & Water Co.*, 492 Pa. 326, 333, 424 A.2d 1213, 1217 (1980), the utility company has the concomitant burden of proving it is entitled to the rate increase it seeks. *Equitable Gas Co. v. Pa. Pub. Util. Comm'n*, 45 Pa.Cmwlt. 610, 405 A.2d 1055 (1979); and *Barasch v. Pa. Pub. Util. Comm'n*, 516 Pa. 142, 532 A.2d 325 (1987).

In assessing what constitutes a fair rate of return for the utility company, the Commission is guided by the criteria set forth in *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923); and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield*, 262 U.S. 692-93, 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.

In examining a proposed rate increase, the Commission is bound by Section 1301 of the Public Utility Code (Code), 66 Pa.C.S. § 1301, which requires that any rate increase be just and reasonable. Thus, the Commission must establish a reasonable rate that balances the public interest and the utility's entitlement to a fair return on the value of its property used and useful in the public service. *Bluefield, supra*.

To set a fair rate of return, the Commission assesses the utility's rate base. Section 102 of the Code, 66 Pa.C.S.A § 102, defines rate base as “[t]he value of the whole or any part of the property of a public utility which is used and useful in the public service.”

And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. *Smyth v. Ames*, 169 U.S. 466, 546-547 (1898).

Calculating the value of a public utility's property which is used and useful in public service "... is basically a matter of judgment which should be left to the regulatory agency and which should not be disturbed except for a manifest abuse of discretion." *Lower Paxton Township v. Pa. Pub. Util. Comm'n*, 13 Pa.Cmwlth Ct. 135, 317 A.2d 917 (Pa.Cmwlth. 1974); *Equitable Gas Co. v. Pa. Pub. Util. Comm'n*, 45 Pa.Cmwlth. 61, 405 A.2d 1055 (Pa.Cmwlth. 1979).

While the Commission has wide discretion in establishing a fair rate of return for a utility, the Commission also encourages parties in contested on-the-record proceedings to settle cases. See, 52 Pa.Code § 5.231(a). Settlements eliminate or significantly reduce the time, effort, and expense of litigating a proceeding to its final conclusion, which might include review of the Commission's decision by the Pennsylvania appellate courts. Such savings directly benefit the individual parties to the proceeding; however, these savings also benefit the Commission and all ratepayers of the utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

The Commission's policy to encourage settlements mirrors the Pennsylvania courts' policy:

Not only does the settlement spare the parties the expense and risks of continuing litigation, it accords with the strong judicial policy in Pennsylvania favoring voluntary settlements. See *e.g.*, *Muhammad v. Strassburger*, 526 Pa. 541, 548, 587 A.2d 1346, 1349 (1991), *cert. denied*, 502 U.S. 867 (1991) ("A long-standing principle of our courts has been to encourage settlements."). But cf. *McMahon v. Shea*, 547 Pa. 124, 688 A.2d 1179 (1997) (limiting *Muhammad* to its facts). See also, *Rothman v. Fillett*, 503 Pa. 259, 266, 469 A.2d 543, 546 (1983) ("There is a strong judicial policy in favor of parties voluntarily settling lawsuits."). .... In addition, settlements help reduce overcrowded courts, thereby shortening a litigant's wait for a trial date. They also reduce the burdens and expenses in maintaining court systems. *Muhammad, supra* 526 Pa. at 548-49, 587 A. 2d at 1350. See also, *Rothman v. Fillett, supra*, 503 Pa. at 267, 469 A.2d at 546. Not surprisingly, the Pennsylvania Supreme Court observed, the astute lawyer Abraham Lincoln advised: "Persuade your neighbors to compromise whenever you can. Point

out to them how the nominal winner is often a real loser -- in fees, expenses and waste of time.”

*Commonwealth v. Philip Morris, Inc.*, 40 Pa. D. & C.4th 225 (1999).

Once the Parties have submitted their joint settlement petition for approval, the principal issue for Commission consideration is whether the agreement serves the public interest. *Pa. Pub. Util. Comm’n v. Philadelphia Electric Company*, 60 Pa. PUC 1, 21 (1985); *Pa. Pub. Util. Comm’n v. C S Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

B. The Parties’ Respective Positions

1. Pine-Roe

Pine-Roe’s brief Statement in Support of the Settlement, submitted by its Secretary/Treasurer, Pauline Griebel, states in full as follows:

To avoid further actions the parties have engaged in settlement discussion to reach an amicable resolution of the investigation. As set forth in the Settlement Agreement Pine-Roe Natural Gas Company, Inc. intends to fully comply with the agreement. Pine-Roe’s main concern is the public interest. We recognize the ratepayer’s concerns.

For the reasons set forth in the Settlement Agreement between Pine-Roe Natural Gas Company, Office of Consumer Advocate and Bureau of Investigation and Enforcement, I request that the Commission accept and approve the Settlement Agreement and adopt an order approving the terms and conditions in their entirety as being in the public interest.

I thank the Commission for its consideration of this filing. If you should have any questions, please contact me.

Pine-Roe’s Statement in Support of Settlement, at 1.

Notably, there is nothing in the record to indicate that Pine-Roe’s Secretary/Treasurer is an attorney, nor has an attorney entered an appearance in this proceeding on behalf of Pine-Roe. Therefore, I am compelled to address Pine-Roe’s lack of attorney representation. The Commission’s regulations require a corporation to be represented by an

attorney in an adversarial proceeding. Under Section 1.21, 52 Pa.Code § 1.21, individuals may represent themselves before the Commission, but all persons including a corporation must be represented by an attorney. A request for a general rate increase is designated as an adversarial proceeding. *Id.* § 1.21(b). In this proceeding, Pine-Roe is requesting a general rate increase under Section 1308(d) of Code. 66 Pa.C.S. § 1308(d). Pine-Roe, a corporation, is seeking Commission approval of the Settlement, which is executed by its Secretary/Treasurer.

The Commission has held in certain circumstances that corporate, legal representation is not required before the Commission, when the parties are seeking approval of a settlement. *See Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. 903 Rentals, Inc.*, Docket No. C-2013-2371641 (Opinion and Order entered March 6, 2014); *Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Handy Delivery, Inc.*, Docket Nos. C-2011-2223657 and A-00107326 (Opinion and Order entered July 2, 2012); *Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Luxury Limousine Services, Inc.*, Docket No. C-2010-2203671 (Opinion and Order entered September 30, 2011); and *Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. McClymonds Supply & Transit Co., Inc.*, Docket No. C-2010-2091781 (Order entered July 14, 2011). In these cases, the corporation was not represented by an attorney, and the settlement was executed by a corporate officer. The Commission approved the settlements in each case. The Commission reasoned that the settlement terms and conditions were not overly complex and did not require specialized knowledge of the law but could be easily understood by a layperson familiar with the utility's business. Also, the settlement petition was submitted by an attorney for a statutory party. Under these circumstances the Commission concluded there was no violation of its regulations.

In the present proceeding, Pine-Poe's request for a rate increase underwent mediation, which resulted in a settlement and avoided the convening of a prehearing conference or evidentiary hearing. The Settlement Petition is not overly complex and is easily understandable by the corporate officer, having familiarity with the gas utility's business and signing the Settlement. As in the cases cited above, the Settlement Petition was submitted by an attorney for a statutory party, *i.e.*, I&E.

Furthermore, I note that in a separate proceeding the Commission recently approved a settlement involving Pine-Roe, which again was not represented by an attorney. *See Pa. Pub. Util. Comm'n v. Pine-Roe Natural Gas Co.*, Docket Nos. C-2014-2400485 and C-2017-2582760 (Opinion and Order entered December 21, 2017) and Settlement Petition ¶16j.

Considering the Commission's rationale in the above cases, I see no reason to conclude that Pine-Roe's lack of legal representation violates the Commission's regulations requiring attorney representation in an adversarial Commission proceeding. *See McClymonds Supply & Transit Co., Inc.*, cited above at 6. Under the circumstances mentioned above, the execution of the Settlement Petition by Pine-Roe's Secretary/Treasurer, rather than an attorney duly licensed in Pennsylvania, is consistent with the Commission's practice and application of its rule at 52 Pa.Code § 1.2(a). Section 1.2(a) provides for the liberal construction of the Commission's rules to secure the just, speedy and inexpensive determination of an action or proceeding. *See McClymonds Supply & Transit Co., Inc.*, at 2.

2. I&E

In support of its agreement to the proposed rate increase, I&E delineates its position as follows:

**A. Revenue Requirement (Joint Petition, ¶16(a))**

The Parties agreed to a \$35,000 increase in annual distribution revenue to become effective upon the Commission Order's approving the Settlement in this proceeding. This Settlement balances the interests of ratepayers and the Company. Pine Roe will receive sufficient operating funds in order to provide safe and adequate service while ratepayers are protected as the resulting increase minimizes the impact of the Company's initial request of \$50,000, all of which was to be collected from a customer charge. Mitigation of the level of the rate increase benefits ratepayers and results in "just and reasonable" rates in accordance with the Public Utility Code, regulatory standards, and governing case law. [Fn. Omitted]

**B. Customer Charge (Joint Petition, ¶16(b))**

The Settlement Agreement provides that a residential Customer Charge of \$10.00 per month will also become effective upon initial Commission Order in this proceeding. It is important to allow the utility to recover the fixed portion of providing service through the implementation of the proper Customer Charge. This provides the Company the opportunity to address its fixed recurring cost necessary to operate its system through a steady, predictable level of income. This will allow for the proper maintenance and upkeep of Pine Roe's system. Establishing the proper levels protects ratepayers by ensuring that the Company is not being overcompensated. The establishment of a mitigated level of Customer Charge demonstrates a compromise of the interests of the parties. As such, this provision is in the public interest.

**C. Bill Format (Joint Petition, ¶16(c))**

As part of the Settlement, Pine Roe has agreed to modify its current billing format to include, at minimum, the billing cycle dates, the customer account number, a strict due date, the method by which interest is calculated on late payments and outlining established business hours. These additions to Pine Roe's bill will not only help customers to clearly identify charges and to know when the Company will be available for questions, but they will also help the Company with bill tracking; therefore, this term is in the public interest.

**D. Deposits (Joint Petition, ¶16(d))**

Pine Roe has also agreed to modify its deposit policy in a manner that is consistent with the Public Utility Code and with Commission's regulations at 52 Pa. Code Chapter 56. If the Company needs assistance complying with this term it agreed to contact the Commission's Bureau of Consumer Services. These changes to the Company's deposit policy are in the public interest because it ensures that all Pine Roe ratepayers will be treated in conformity with the Commission's Rules and Regulations. Public utility ratepayers should be afforded the same protections set in place by the Public Utility Code.

**E. Budget Billing (Joint Petition, ¶16(e))**

Pine Roe has agreed to continue its budget billing program and to work with customers to allocate future bills in accordance with this program. The Company will also continue to disseminate information to customers regarding the budget billing program. The public interest is served when customers are informed of this billing option. I&E supports this term because access to budget billing may ease the financial burden on Pine Roe's customers by allowing them to spread the cost of gas bills over a longer period of time, thereby making their utility bills more affordable, which is in the public interest.

**F. Company Contact (Joint Petition, ¶16(f))**

The Company agreed it will continue to maintain a working telephone line, make reasonable efforts to be available to customers during established business hours, and return customer calls in a timely manner. Pine Roe also agreed to maintain an answering machine or answering service and to make readily available to customers an emergency line. These terms are in the public interest because they will provide ratepayers access to their utility for any questions or concerns they may have with their service. The emergency line is especially important when dealing with natural gas, as customers will now have a means to rectify critical problems.

**G. Pipeline Replacement Plan (Joint Petition, ¶16(g))**

Pine Roe agreed to work toward developing a pipeline replacement plan to be presented to I&E's Pipeline Safety Division during quarterly meetings. Currently, Pine Roe's system consists of all plastic pipeline that was placed in service approximately 30 years ago. A public utility shall provide safe and reliable service by furnishing and maintaining adequate facilities and reasonable services and by making the necessary improvements thereto. [Fn. omitted] Making a plan to replace the existing pipeline now will benefit the Company in the future. In agreeing to develop a pipeline replacement plan, Pine Roe is taking steps toward a safer system which is in the public interest.

**H. Financial Recordkeeping (Joint Petition, ¶16(h))**

The Settlement Agreement provides that Pine Roe will maintain comprehensive financial records which include, at minimum, all costs allocated to the Company, including, but not limited to, costs incurred by other individuals or entities for the benefit or purpose of the operations of Pine Roe. Also, within 90 days after the Final Order,

Pine Roe will separate records of cellular device and service costs for business use from those for personal use. It is important to I&E to have clear and complete records when evaluating what a company needs in order to operate the business. By the Company maintaining these records and separating the cellular device and service costs, I&E is in a better position to analyze and assess Pine Roe's filing in the next base rate case.

**I. Capital Expenditure Report (Joint Petition, ¶16(i))**

Pine Roe agrees that on an annual basis, for three years following the Commission's Order approving this Settlement, it will provide to the OCA and I&E a report containing, at minimum, the overall number of customers gained or lost and an explanation as to why the Company lost any customers, an overview of customer service issues, the current gas cost, and a list of capital investments and upgrades to the system and a projection of capital investments and upgrades to the system for the following calendar year. I&E supports this term because the customer count will assist the Company with tracking customers, evaluating its operations, improving customer relations, and reporting necessary data to the Commission and interested stakeholders. Similarly, the capital expenditure report will not only benefit the Company with expense tracking but will also benefit I&E by making it easier to evaluate Pine Roe's filing in the next base rate case.

**J. "C" Docket Settlement (Joint Petition, ¶16(j))**

In the Settlement Agreement, the Parties acknowledge a separate settlement Pine Roe entered into with I&E's Enforcement Division. By recognizing the separate settlement in this matter, it allows for future parties to also become apprised of the terms agreed upon within that action to better address any issues that may arise in the next base rate case.

**K. Acknowledgement of Parties (Joint Petition, ¶16(k))**

The Settlement Agreement includes an Acknowledgement of Parties, in which it makes clear that Pine Roe elected not to be represented in this matter despite I&E's recommendation that the Company consider retaining counsel. Pine Roe also acknowledges that, in negotiating and executing the Settlement Agreement, it has had the opportunity to seek the advice of counsel, and it has read, understood, and consented to all of the terms and provisions of this agreement. I&E believes it is important for a *pro se* Company to understand that the opportunity to retain counsel to represent its



interests is always available. I&E made this very clear on multiple occasions throughout the mediation and settlement process.

I&E's Statement in Support of Settlement, at ¶19.

I&E argues that for the following reasons the settlement is in the public interest.

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

Based upon I&E's analysis of the filing, acceptance of this proposed Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense.

I&E further submits that the acceptance of this Settlement will negate the need for evidentiary hearings, which would compel the extensive devotion of time and expense for the preparation, presentation, and cross-examination of multiple witnesses, the preparation of Main and Reply Briefs, the preparation of Exceptions and Replies, and the potential of filed appeals, all yielding substantial savings for all Parties, and ultimately all customers, as well as certainty on the regulatory disposition of issues. This Settlement thereby conserves time and expenses for all involved.

*Id.* ¶¶20-22.

3. OCA

OCA's reasons for supporting the rate increase are as follows:

**A. Revenue Requirement**

As noted above, in its rate filing, Pine Roe requested to receive additional revenues of \$50,000 through an increase in its customer charge. Under the Company's proposal, a typical residential customer of Pine Roe using 7.56 Mcf of natural gas per month would experience a 98% total bill increase from \$25.78 to \$51.03.<sup>5</sup> The Settlement provides that Pine Roe will produce an additional annual operating distribution revenue of \$35,000. Settlement ¶ 16(a). The \$35,000 increase is in lieu of the proposed \$50,000 increase. Under the Settlement, a typical residential customer of Pine Roe using 7.56 Mcf of natural gas per month will experience a 91.2% total bill increase from \$25.78 to \$49.30.<sup>6</sup> Based on the OCA's analysis of Pine Roe's rate filing, the \$35,000 distribution revenue increase under the Settlement represents an amount comparable to the range of outcomes likely in the event of full litigation of this matter. The distribution revenue increase is \$15,000 less than the Company's \$50,000 request and, thus, will mitigate the impact on ratepayers.

**B. Customer Charge**

Pine Roe's current customer charge includes the first 2 Mcf of natural gas. In its rate filing, Pine Roe proposed to continue this practice, while increasing its customer charge by 381.997% from \$6.61 to \$31.86. Under the Settlement, Pine Roe will implement a residential customer charge of \$10.00 per month and discontinue its

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<sup>5</sup> In its Complaint, the OCA provided that, under the Company's proposal, "[a] typical residential customer using 8.5 Mcf of natural gas per month would see a total bill increase from \$29.01 to \$54.26 per month, or 87%." OCA Complaint at 1. The figures in Section II. A above are based on the usage of a typical residential customer of Pine Roe, rather than a typical residential customer of any natural gas company as in the OCA's Complaint.

<sup>6</sup> As mentioned in Footnote 1, the figures in the OCA's Complaint are based on customer usage of 8.5 Mcf per month, rather than customer usage of 7.56 Mcf per month. In that regard, under the Settlement, a Pine Roe customer using 8.5 Mcf of natural gas per month will experience an 86.8% total bill increase from \$29.01 to \$54.19.

practice of including the first 2 Mcf of natural gas.<sup>3</sup> Settlement ¶ 16(b). In addition, Pine Roe will apply the customer charge regardless of usage and bill for each Mcf of natural gas. Settlement ¶ 16(b). The \$10.00 customer charge under the Settlement represents an appropriately designed rate structure in which the majority of costs are recovered through variable distribution charges rather than the customer charge. In addition, the customer charge increase is \$21.86 less than the Company's request and, importantly, avoids a 381.997% increase in the customer charge.

### **C. Bill Format**

The Settlement provides that Pine Roe will modify its bill format to include: (1) the billing cycle dates, (2) the customer account number, (3) a strict due date, (4) the method by which interest is calculated on late payments, and (5) any established business hours. Settlement ¶ 16(c). The Company will clearly and accurately identify this information. Settlement ¶ 16(c). Changes in Pine Roe's bill format will benefit customers in that the Company will provide information necessary to understand the bill, submit timely payments, and contact the Company.

### **D. Deposits**

The Settlement provides that, within 90 days of the Commission's final Order in this matter, Pine Roe will modify its deposit policy to be consistent with the Public Utility Code and the Commission's regulations. Settlement ¶ 16(d). If necessary, Pine Roe will work with the Commission's Bureau of Consumer Services (BCS) to modify its deposit policy. Settlement ¶ 16(d). Changes in Pine Roe's deposit policy will benefit customers in that customers will be subject only to deposits that are in accordance with the Public Utility Code and the Commission's regulations, which offer certain consumer protections.

### **E. Budget Billing**

Under the Settlement, Pine Roe will continue its budget billing program. Settlement ¶ 16(e). Pine Roe will work with customers upon request to allocate future bills pursuant to its budget

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<sup>3</sup> A customer charge is a "monthly charge to cover NGDC costs such as maintaining the gas lines, meter reading and billing." See Pa. PUC, Consumer's Dictionary for Natural Gas Competition at 2 (2001). Distribution charges are charges "for the delivery of natural gas from the point of receipt into the NGDC's system." Id. at 3. A customer charge is a flat rate charge, whereas distribution charges reflect usage. Accordingly, including the commodity in the flat rate charge is not in accordance with current rate design practices.

billing program. Settlement ¶ 16(e). In addition, Pine Roe will distribute information to customers regarding the program. Settlement ¶ 16(e). A continuation of the Company's budget billing program will benefit customers as budget billing can be a useful option and customers will be provided with an opportunity to assess whether the program is an appropriate option for them.

#### **F. Company Contact**

Under the Settlement, Pine Roe will maintain a working telephone line, make reasonable efforts to timely answer customer calls during business hours, return customer calls in a timely manner, and maintain an answering machine and/or answering service. Settlement ¶ 16(f). The Company will also continue to make available an emergency contact line. Settlement ¶ 16(f). This aspect of the Settlement will benefit customers by helping to ensure that the Company addresses all customer complaints and responds to emergencies in a timely manner.

#### **G. Pipeline Replacement Plan**

The Settlement provides that Pine Roe will take steps toward establishing a pipeline replacement plan to present to I&E's Pipeline Safety Division at quarterly meetings, which occur pursuant to a separate settlement with I&E. Settlement ¶ 16(g); *See Pa. PUC v. Pine Roe Natural Gas Co., Inc.*, Docket Nos. C-2014-2400485, C-2017-2582760 (Order entered December 21, 2017). Pine Roe's development of a pipeline replacement plan will benefit customers by helping to ensure that the Company maintains its pipelines in a safe manner in order to continue providing service to customers.

#### **H. Financial Recordkeeping**

The Settlement provides that Pine Roe will maintain comprehensive financial records including, within 90 days of the Commission's final Order in this matter, records of cellular device and service costs for business use separate from those for personal use. Settlement ¶ 16(h). This aspect of the Settlement will benefit the parties in that it will allow Pine Roe to readily provide financial information in the Company's future rate proceedings.

#### **I. Capital Expenditure Report**

Under the Settlement, Pine Roe will provide to the OCA and I&E, on an annual basis, for three years following the Commission's final Order in this matter, a capital expenditure report. Settlement ¶

16(i). The Company's capital expenditure report will include: (a) the number of customers gained and lost with an explanation of why any customers were lost, (b) an overview of customer service issues, (c) the current gas cost, and (d) a list of capital investments and upgrades to the system and a projection of the same for the following calendar year. Settlement ¶ 16(i). This aspect of the Settlement will benefit the parties in that it will allow Pine Roe to readily provide information regarding capital expenditures in the Company's future rate proceedings.

OCA's Statement in Support of Settlement, pp. 3-6.

OCA concludes that the Settlement is fair and reasonable because Pine-Roe will be permitted to receive additional annual distribution revenues in amount of \$35,000, which is less than the \$50,000 increase initially proposed by Pine-Roe. Also, under the Settlement Pine-Roe will be permitted to implement a \$10.00 customer charge, which OCA submits will inure to the customers' benefit concerning bill format, budget billing and company contact issues, thereby assisting Pine-Roe in maintain financial and other records. *Id.* at 6. Finally, OCA submits that the Settlement avoids litigations costs and minimize administrative burdens, resulting in a benefit the litigants and the Commission. *Id.*

### C. Analysis

The Parties have engaged in mediation. They have analyzed Pine-Roe's filing and determined that the stipulated overall annual revenue increase of \$35,000, rather than the initially requested \$50,000 increase, is in the public interest and represents a result that would be within the range of likely outcomes in the event of full litigation of the case. The undersigned agrees.

Ratepayers benefit from the Settlement in several ways: (1) the requested revenue increase has been reduced by \$15,000; (2) Pine-Roe will propose modifications to its billing format to more accurately and clearly identify (a) billing cycling dates, (b) the customer account number, (c) a strict payment due date, (d) the method used to calculate interest on late payments and (e) any established business hours; (3) Pine-Roe's proposed modified billing format will be

provided to OCA and I&E before Settlement rates go into effect, and upon approval by all Parties, the modified format will begin in the next billing cycle; (4) Pine-Roe has agreed to improving customer service by maintain a working telephone line and to make reasonable efforts to have an employee available to take customer calls during any established business hours and to return customer calls in a timely manner; and (5) Pine-Roe has agreed to maintain comprehensive financial records and separate business use expenses from personal use expenses.

Based upon representations by Pine-Roe, I&E and OCA, I find that the agreed-upon increase balances the interests of Pine-Roe's customers along with Pine-Roe's need to remain financially healthy and provides customers with levels of stability that might not otherwise have been obtainable had this proceeding been fully litigated.

Accordingly, the amount of the proposed rate increase is in the public interest because ratepayers will continue to receive safe and reliable service at reasonable rates while allowing sufficient additional revenues to meet Pine-Roe's operating expenses. Thus, the proposed Settlement is reasonable and in the public interest and therefore should be approved without modification by the Commission. It represents a just and fair compromise of the issues contested in this proceeding.

Furthermore, resolution of this proceeding through negotiation removes the uncertainties of litigation. In addition, all Parties obviously 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. Specifically, acceptance of the Settlement will negate the necessity of Pine-Roe employing legal counsel to litigate this matter, the need for the filing of testimony by the Parties, participation at in-person hearings, the filing of main and reply briefs, exceptions and reply exceptions, and potential appeals. This savings in rate case expense serves the interests of Pine-Roe, its ratepayers, and the statutory Parties.

In view of the above reasoning, a conclusion is required that the proposed Settlement is just and reasonable. Approval of same is in the public interest. Therefore, the

undersigned recommends that the Commission approve the Joint Petition for Settlement of Rate Investigation, as submitted by the Parties, as expeditiously as possible.

It is also recommended that the Complaint of OCA at Docket No. C-2017-29498 be deemed satisfied.

#### IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the Parties to this proceeding. 66 Pa.C.S.A. § 501, *et seq.*

2. In deciding whether the Parties' settlement should be approved, the Commission must determine whether the settlement promotes the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Electric Company*, 60 Pa. PUC 1, 22 (August 29, 1985); *Pa. Pub. Util. Comm'n v. C S Water and Sewer Associates*, 74 Pa. PUC 767, 771 (July 21, 1991).

3. The settlement rates, terms and conditions contained in the Joint Petition for Settlement of Rate Investigation at Docket No. R-2017-2618332 submitted by Pine-Roe Natural Gas Company, Inc., the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission and the Office of Consumer Advocate are just, reasonable and in the public interest.

4. The Joint Petition for Settlement of Rate Investigation at Docket No. R-2017-2618332 submitted by Pine-Roe Natural Gas Company, Inc., the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission and the Office of Consumer Advocate should be approved as submitted, without modification.

5. The Complaint of the Office of Consumer Advocate at Docket No. C- 2017-2629498 should be deemed satisfied.

V. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement of Rate Investigation filed by Pine-Roe Natural Gas Company, Inc., the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission and the Office of Consumer Advocate be approved in its entirety and without modification.
2. That Pine-Roe Natural Gas Company, Inc. be permitted to file a tariff supplement incorporating the terms of the settlement and changes to its rates, rules and regulations as set forth in the Amended Joint Petition for Settlement of Rate Investigation, to become effective on at least one day's notice after entry of the Commission's Order approving the settlement, with tariff supplement increases to Pine-Roe Natural Gas Company, Inc's rates so as to produce an increase in annual operating revenues of not more than \$35,000.
3. That the Complaint of the Office of Consumer Advocate at Docket No. C-2017-2629498 be deemed satisfied.
4. That upon acceptance and approval by the Commission of the tariff supplement filed by Pine-Roe Natural Gas Company, Inc. and consistent with this Order, the docket in this proceeding shall be marked closed.

Date: March 2, 2017

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/s/  
Conrad A. Johnson  
Administrative Law Judge