**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held April 19, 2018 |
| Commissioners Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  Norman J. Kennard  David W. Sweet  John F. Coleman, Jr. |  |
| Pennsylvania Public Utility Commission  Office of Consumer Advocate  v.  Pine-Roe Natural Gas Company, Inc. | R-2017-2618332  C-2017-2629498 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Conrad A. Johnson, issued on March 26, 2018, in the above-captioned proceeding, in which the ALJ recommended approval of the Joint Petition for Settlement of Rate Investigation (Settlement). The Settlement was filed by Pine-Roe Natural Gas Company, Inc. (Pine-Roe or the Company), the Office of Consumer Advocate (OCA), and the Commission’s Bureau of Investigation and Enforcement (I&E) (collectively, Joint Petitioners) on January 31, 2018. No Exceptions were filed. For the reasons stated below, we shall adopt the ALJ’s Recommended Decision as modified.

**History of the Proceeding**

On August 7, 2017, Pine-Roe Natural Gas Company, Inc. (Pine-Roe or the Company) 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 by 382 percent, from $6.61 per month to $31.86 per month, to become effective November 1, 2017. On October 12, 2017, the Company filed Supplement No. 42 to voluntarily postpone the effective date until December 8, 2017.

On October 17, 2017, the OCA filed a Formal Complaint against Pine-Roe at Docket No. C-2017-2629498 (Complaint Proceeding) challenging the rate increase. On October 19, 2017, 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 to determine the lawfulness, justness and reasonableness of Pine-Roe’s existing and proposed rates and regulations. The Order also directed assignment of the case to the Office of Administrative Law Judge (OALJ) for the scheduling of hearings and the issuance of a Recommended Decision. On November 9, 2017, the OALJ issued a Notice to the Parties informing them the matter could be processed through mediation between or among them upon consent of all Parties.

By First Interim Order dated November 16, 2017, ALJ Johnson granted the Parties’ joint motion to hold the scheduled prehearing conference in abeyance pending mediation. Additionally, pursuant to 52 Pa. Code § 69.392(d)(2), Pine-Roe was directed to file and serve a tariff supplement extending the proposed tariff suspension date to September 8, 2018. On November 21, 2017, Pine-Roe filed Supplement No. 43, thereby suspending the application of rates proposed in Supplement No. 40 until September 8, 2018. Thereafter, the Joint Petitioners engaged in mediation sessions which culminated in the filing of the Settlement on January 31, 2018. The Joint Petitioners also filed respective Statements in Support of the Settlement. By Second Interim Order dated February 2, 2018, the Settlement was entered into the record, the Complaint proceeding was consolidated with the Rate proceeding, and the record was closed.

In his Recommended Decision issued on March 26, 2018, ALJ Johnson found that the Settlement was just and reasonable and should be approved. As previously noted, no Exceptions were filed.

**Settlement Terms**

The principle terms of the Settlement, Paragraph 16, provide:

1. 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.

1. 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.

1. 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.

1. 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.

1. 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.

1. 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.

1. 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).

1. 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.

1. 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.

1. “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).

1. 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.

Settlement at ¶ 16.

The Settlement further provides: “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 [Settlement], the customer charge would increase by approximately $3.39, or 51%, from $6.61 to $10.00.” Settlement at ¶ 17.

The Joint Petitioners contend that the Settlement is in the public interest because it minimizes cost-prohibitive litigation and administrative burden, recognizes ratepayers’ concerns, and provides Pine-Roe with additional and necessary cash flow. *Id.* at ¶ 18. For relief, the Joint Petitioners request the following: (a) approval of the Settlement without modification; (b) effective on or before July 8, 2018, Pine-Roe will be permitted to produce an additional annual operating distribution revenue of $35,000; (c) the Commission’s investigation at Docket No. R-2017-24618332 be terminated and marked closed; and (d) the OCA’s Complaint proceeding be marked closed consistent with this Settlement. *Id.* at ¶ 22.

**Discussion**

**Legal Standard**

The purpose of this investigation is to establish rates for Pine-Roe customers which are “just and reasonable” pursuant to Section 1301 of the Public Utility Code (Code), 66 Pa. C.S. § 1301. This Commission possesses a great deal of flexibility in the ratemaking function.

In determining just and reasonable rates, the [Commission] has discretion to determine the proper balance between interests of ratepayers and utilities. [*Pennsylvania Public Utility Commission v. Philadelphia Electric Co.*, 522 Pa. 338, 342-43, 561 A.2d 1224, 1226 (1989)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1989108734&pubNum=162&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)). As this Court stated in [*Pennsylvania Public Utility Commission v. Pennsylvania Gas and Water Co.*, 492 Pa. 326, 337, 424 A.2d 1213, 1219 (1980)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980194813&pubNum=162&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)#co_pp_sp_162_1219), cert. denied, [454 U.S. 824, 102 S. Ct. 112, 70 L. Ed. 2d 97 (1981)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&pubNum=708&cite=102SCT112&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)),

There is ample authority for the proposition that the power to fix “just and reasonable” rates imports a flexibility in the exercise of a complicated regulatory function by a specialized decision-making body and that the term “just and reasonable” was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital to utility investors consonant with constitutional protections applicable to both.

[*Popowsky v. Pa. PUC*, 542 Pa. 99, 108, 665 A.2d 808, 812 (1995)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1995190393&pubNum=162&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)).

Commission policy promotes settlements, 52 Pa. Code §§ 5.231 and 69.401. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. Rate cases are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows 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 reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yields significant savings for the company’s customers. That is one reason why settlements are encouraged by long-standing Commission policy.

In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

Section 315(a) of the Code reads as follows:

§ 315. Burden of proof

(a) 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). Consequently in this proceeding, Pine-Roe has the burden to prove that the rate increase it has proposed through the Settlement is just and reasonable. The Joint Petitioners have reached an accord on the issues and claims that arose in this proceeding and submitted a Settlement for Commission review. In reviewing the Settlement, the question which must be answered is whether it is in the public interest. The Joint Petitioners have the burden to prove that the Settlement is in the public interest. *Pa. PUC, et al. v. Pike County Light & Power (Electric)*, Docket Nos. R-2013-2397237, C‑2014-2405317, *et al.* (Order entered September 11, 2014) at 9.

**Disposition**

Based on our review of the record, we find that the Settlement is in the public interest. Consequently, we shall adopt the ALJ’s recommendations to the extent that they are consistent with this Opinion and Order.

Although we find that the Settlement should be approved without modification, we note that there is one aspect of the Recommended Decision, pertaining to attorney representation in adversarial proceedings, that requires clarification.

The Commission’s Regulations require that a corporation be represented by an attorney in a formal proceeding. Specifically, 52 Pa. Code §1.21(b) states that, for purposes of this section, any request for a general rate increase under Sections 1307(f) or 1308(d) of the Code shall be considered an adversarial proceeding. And in an adversarial proceeding, a corporation must be represented by an attorney.

Here, Pine-Roe, as a small utility, conducts as much business as possible without the aid of an attorney. It filed the base rate case without an attorney, it negotiated the terms of the Settlement without an attorney, and it signed the Settlement with a corporate officer instead of an attorney.

The ALJ, to his credit, recognized that this was not consistent with the Commission’s normal practice and sought to create an exception by explaining that the Commission had allowed an Initial Decision approving a settlement in two formal complaints filed by I&E against Pine-Roe where the Company had not engaged an attorney.[[1]](#footnote-1) In addition, a number of formal complaints filed by I&E against transportation companies resulted in settlement agreements that were approved by the Commission even though the companies had not been represented by an attorney in the formal proceedings.[[2]](#footnote-2) The reasoning in the Recommended Decision was two-fold: 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; and the settlement was submitted by an attorney for a statutory party. R.D. at 12.

However, there is a difference between a formal complaint brought against a utility that is settled prior to a formal hearing, and a base rate case that is actually brought by the utility, especially when it falls squarely under 52 Pa. Code § 1.21(b), which states unequivocally that a base rate case is an adversarial proceeding. Thus, there was an important step skipped here that cannot be overlooked.

The Commission’s Regulations regarding the practice of law are, in large part, a reflection of the existing law that has developed under Pennsylvania case law and the rules developed by the Pennsylvania Supreme Court, which has jurisdiction over the practice of law in Pennsylvania. In deference to the Court, the Commission continues to find that in an adversarial proceeding, a corporation must be represented by counsel.[[3]](#footnote-3)

Section 1.21(b) of our Regulations provides that the filing of a base rate case creates an adversarial proceeding, which requires the utility to proceed with the benefit of counsel. But that particular finding is not based upon black letter law; it is only in a Regulation of the Commission. As such, under limited circumstances, such as those presented here, where the utility is small and where the settlement has been managed under the vigilant eyes of both the OCA and I&E, which has already taken the utility to task in a prior complaint case and the utility is still bound by the agreement to improve its performance there as well, the Commission can consider waiving that portion of the Regulation that states that a base rate filing is always adversarial, thereby permitting a non-lawyer to be a signatory on behalf of its corporation. Moreover, Section 1.91 our Regulations, 52 Pa. Code § 1.91, expressly provides for waivers of such requirements under circumstances like these.

The situation must be addressed, the facts must support a waiver, and the waiver must be granted, before a settlement signed by a non-lawyer can be approved by this Commission. Accordingly, we shall, pursuant to 52 Pa. Code § 1.91 and under the limited circumstances of this proceeding, waive that portion of the regulation found at 52 Pa. Code § 1.21(b) stating that the filing of a base rate is an adversarial proceeding.

**Conclusion**

Based upon the foregoing discussion, we shall adopt the ALJ’s Recommended Decision, as modified, to the extent consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Recommended Decision of Administrative Law Judge of Conrad A. Johnson, issued on March 26, 2018, in the above-captioned proceeding, is adopted, as modified, consistent with this Opinion and Order.
2. That the portion of the Regulation found at 52 Pa. Code § 1.21(b) stating that the filing of a base rate is an adversarial proceeding is waived for this proceeding.

3. That the rates, rules and regulations contained in Supplement No. 40 to Tariff Gas – Pa. P.U.C. No. 1, are not permitted to be placed into effect.

4. That the 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 Office of Consumer Advocate, and the Commission’s Bureau of Investigation and Enforcement, be approved and adopted without modification.

5. 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 Joint Petition for Settlement of Rate Investigation, to become effective on at least one day’s notice after entry of this Opinion and 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.

6. That the Formal Complaint filed by the Office of Consumer Advocate at Docket No. C-2017-2629498, is closed as satisfied.

7. That upon acceptance and approval by the Commission of the tariff supplement filed by Pine-Roe Natural Gas Company, Inc., and consistent with this Opinion and Order, the docket in this proceeding shall be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 19, 2018

ORDER ENTERED: May 23, 2018

1. *Pa. Pub. Util. Comm’n v Pine-Roe Natural Gas Co., Inc.*, Docket Nos. C‑2014-2400485 and C-2017-2582760 (Final Order entered December 21, 2017). [↑](#footnote-ref-1)
2. R.D. at 12 (citing *Pa. PUC v. 903 Rentals, Inc.*, Docket No. C-2013-2371641 (Order entered March 6, 2014); *Pa. PUC v. Handy Delivery, Inc.*, Docket Nos. C-2011-2223657 and A-00107326 (Order entered July 2, 2012); *Pa. PUC v. Luxury Limousine Services, Inc.*, Docket No. C-2010-2203671 (Order entered September 30, 2011); and *Pa. PUC v. McClymonds Supply & Transit Co., Inc.,* Docket No. C-2010-2091781 (Order entered July 14, 2011)). [↑](#footnote-ref-2)
3. Generally, a finding that a particular action is the practice of law is the determinant of whether the action can be carried out by a non-lawyer, not the sophistication of the non-lawyer. [↑](#footnote-ref-3)