PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Harrisburg, PA 17105-3265

Public Meeting held August 2, 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, *et al*. R-2017-2631441

James Vessella C-2017-2634797

Bea DeCianco C-2017-2635838

Office of Consumer Advocate C-2017-2636654

John D’Urso C-2017-2636679

Margaret Foust C-2018-2644372

Plem Patterson C-2018-2647045

Matthew Nestor C-2018-2647060

Ryan Foust C-2018-2647069

Brain Hills C-2018-2647070

Laurel Litwiler C-2018-2647272

Thomas Hanzes C-2018-2647305

Clark Eberhart C-2018-2647318

Mildred J. Heile C-2018-3000054

Helene Canady C-2018-3000065

Lucas Schilling C-2018-3000087

Diana Cole C-2018-3000207

Gilbert V. and Marilyn A. Brant C-2018-3000208

David R. Roeder, Sr. C-2018-3000250

Natalie M. McCloskey C-2018-3000419

Marie T. Potts C-2018-3000505

Sean Belback C-2018-3000566

 v.

Reynolds Water Company

**BY THE COMMISSION:**

# I. Matter Before the Commission

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of the following individual Complainants:[[1]](#footnote-2) Mildred Heile, Gilbert V. and Marilyn A. Brant and Matthew Nestor filed on June 6, 2018, Thomas Hanzes and Clark Eberhart, filed on June 7, 2018, David Roeder, Sr., Ryan Foust, Margaret Foust, and Plem Patterson filed on June 8, 2018, Laurel Litwiler, Lucas Shilling, James Vessella, Brian Hills, John D’Urso, Helen Canady, Diana Cole and Sean Belback filed on June 11, 2018, and Marie T. Potts filed on June 14, 2018, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale, issued on May 29, 2018, relative to the above-captioned proceedings.[[2]](#footnote-3) Replies to Exceptions were filed on June 26, 2018, by the Commission’s Bureau of Investigation and Enforcement (I&E) and by Reynolds Water Company (Reynolds or Company) on June 28, 2018. In her Recommended Decision, ALJ Dunderdale recommended that the Commission grant the Joint Petition for Settlement of Rate Investigation (Joint Petition) filed by the Office of Consumer Advocate (OCA) and I&E (collectively, Joint Petitioners) on April 6, 2016, and that the Joint Settlement (Settlement) contained therein be approved.[[3]](#footnote-4)

# II. History of the Proceeding

 On October 30, 2017, Reynolds filed Supplement No. 5 To Tariff – Water Pa. P.U.C. No. 4 to become effective January 1, 2018 (Supplement No. 5).[[4]](#footnote-5) Supplement No. 5 proposed to increase Reynolds’ total annual operating revenues by approximately $236,829 or 45.4% above the level of pro forma revenues for the future test year ending June 30, 2018, to become effective on or about January 1, 2018. According to Supplement No. 5, the average bill of a typical residential customer using 9,000 gallons per quarter would increase from $92.76 per quarter to $134.87 per quarter or by 45.4%.[[5]](#footnote-6)

On December 1, 2017, the OCA filed a Formal Complaint against Reynolds at Docket No. C-2017-2636654. On December 5, 2017, I&E filed its Notice of Appearance. Subsequently, twenty customers of the Company filed Formal Complainants.

 By Order entered December 21, 2017, the Commission suspended Supplement No. 5 for investigation, pursuant to Section 1308(d) of the Public Utility Code (Code), 66 Pa. C.S. § 1308(d), to determine the lawfulness, justness and reasonableness of the rates, until August 1, 2018, unless permitted by Commission Order to become effective at an earlier date (*December 2017 Order*). Thereafter, the matter was assigned to the Office of Administrative Law Judge (OALJ) to schedule such hearings as necessary to develop a record in this proceeding.

On December 28, 2017, the Company filed Supplement No. 6 to Reynolds’ Tariff Water – Pa. P.U.C. No. 4, which suspended the effective date of Supplement No. 5 from January 1, 2018, until August 1, 2018 (Supplement No. 6).

On December 29, 2017, the ALJ convened a Prehearing Conference. Reynolds, the OCA, I&E, and Complainant James Vessella participated.

On January 2, 2018, the ALJ issued a Prehearing Order which memorialized the discussions at the Prehearing Conference and consolidated the Formal Complaints. The Parties asserted a willingness to engage in the Commission’s mediation process, and the ALJ agreed not to establish a litigation schedule.

 On January 11, 2018, the ALJ issued a Protective Order in response to a Petition for Protective Order filed by Reynolds on January 2, 2018.

On February 2, 2018, the ALJ issued an Interim Order which consolidated the Formal Complaint of Margaret Foust, one of the Complainants, at Docket No. C‑2018-2644372. On the same date, Reynolds filed Supplement No. 7 to suspend the proposed rates in Supplement No. 6 until October 1, 2018, to allow time for the mediation process (Supplement No. 7).

On February 14, 2018, the ALJ issued another Interim Order which added an additional seven Formal Complaints to the rate proceeding. The seven Formal Complaints were filed after the First Interim Order was issued. With the additional seven Complaints, the total number of Complaints filed in this case stands at twenty-one including the OCA’s Formal Complaint.

On April 6, 2018, Reynolds filed the Settlement on behalf of the Joint Petitioners. On the same day, the OCA provided a copy of the Settlement to the other twenty Complainants in the instant proceeding and explained to them that the ALJ would provide instructions on how to consent or object to the Settlement.

On April 9, 2018, the ALJ sent a letter to all Parties advising the Complainants that they have a right to join in or object to the Settlement. The letter explained how to file written comments and advised the Complainants that comments must be filed with the Commission on or before April 20, 2018. The letter also indicated that the other Parties would be allowed to respond to any written comments on or before April 27, 2018, after which the ALJ would close the hearing record and issue a Recommended Decision.

On April 12, 2018, the ALJ issued a third Interim Order which consolidated nine Formal Complaints with the rate proceeding. The nine Formal complaints were filed after the Second Interim Order was issued.

By April 20, 2018, the ALJ received comments regarding the Settlement from the following Complainants: James Vessella, Bea DeCiancio, John D’Urso, Margaret Foust, Plem Patterson, Matthew Nestor, Ryan Foust, Brian Hills, Laurel Litwiler, Thomas Hanzes, Clark Eberhart (on behalf of the Reynolds Veterans of Foreign Wars - VFW), Mildred J. Heile, Helen Canady, Lucas Shilling, Diana Cole, Gilbert and Marilyn Brant, David Roeder, Sr., Natalie McCloskey, Marie Potts and Sean Belback. Many of the comments were similar in nature and format. The Complainants expressed their objections to the rate increase filing and opposed Reynolds’ claims in its filing and the Settlement (Settlement Objections).[[6]](#footnote-7)

On April 27, 2018, Reynolds filed a Reply to the Settlement Objections (Reply to Settlement Objections). Reynolds emphasized that the Settlement resulted out of mediation, which furthers the public interest, and is fully supported by the financial information in the original filing. Reynolds contends the Settlement Objections did not provide any factual or legal basis to reject the Settlement.

On May 2, 2018, the ALJ issued a Fourth Interim Order[[7]](#footnote-8) closing the record after having received the Settlement, the respective Statements of Support, the Settlement Objections, and the Reply to Settlement Objections. The ALJ’s Recommended Decision was issued on May 29, 2018, wherein she recommended approval of the Settlement with minor modifications.[[8]](#footnote-9)

As noted, Exceptions were filed by the Complainants on June 6, 7, 8, 11, 14 and 20, 2018, and Replies to Exceptions were filed by I&E on June 26, 2018, and by Reynolds on June 28, 2018.

# III. Discussion of the Settlement and Settlement Objections

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).

In her Recommended Decision, the ALJ reached three Conclusions of Law. R.D. at 26-27. The Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

## A. Legal Standard

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

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 policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

Rate cases are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements 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, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a rate case settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No.

R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

With regard to the burden of proof in this matter, Section 315(a) of the Code provides:

**§ 315. Burden of proof**

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). Consequently, in this proceeding, Reynolds has the burden to prove that the rate increase proposed by 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 the Settlement. The Joint Petitioners have the burden to prove that the Settlement is in the public interest.

 The ALJ found that the proposed Settlement is in the public interest. Although the ALJ acknowledged that the Settlement does not grant all of the Complainants’ concerns, the ALJ, nonetheless, noted that “those concerns were considered and, in the Settlement, have been balanced and met as reasonably as the circumstances will permit.” R.D. at 26. According to the ALJ, Reynolds will have the increased revenue needed to accomplish its improvement projects, and to earn a reasonable return on its investment. *Id.* In addition, although the Complainants oppose the Settlement, the ALJ recommended an approval of the Settlement stating that with the minor modifications specified in Attachment A to the Recommended Decision, the Settlement represents a fair, just, lawful and reasonable solution to the issues raised in the instant proceeding. *Id.*

## B. Terms and Conditions of the Settlement

The Joint Petitioners agreed to the Settlement addressing every issue, including Appendix A to the Settlement containing the proposed tariff pages to be filed upon approval of the Settlement, Appendix B containing the Revenue Verification at Phase I and Phase II Settlement Rates, and Appendices C, D, and E, containing the respective Statements in Support of the Settlement of the Joint Petitioners. R.D. at 5.

 The “Terms and Conditions” and “Other Provisions” of the Settlement are set forth in Paragraphs 10 and 11-17, respectively, of the Settlement. The terms and conditions address the Revenue Increase and Phase In, Federal Taxes, Monthly Billing, Rate Design, Billing Format, and Stay Out as highlighted in Paragraph 10. The other provisions contained in Paragraph 11-17 discuss more general matters including, but not limited to, such things as a three-day withdrawal rights by the parties if the Commission fails to grant approval of the Settlement or modifies the terms of the Settlement in any way, and that the Joint Petition is not binding on the *pro se* Complainant. Below are the issues addressed and agreed upon by the Joint Petitioners in Paragraphs 10 and 11-17 of the Settlement:

**Terms and Conditions of Settlement**

10. Joint Petitioners agree that this rate proceeding can be settled without the need for further formal litigation. The terms and conditions comprising this Joint Petition, to which Joint Petitioners agree, are as follows:

(a) Revenue Increase and Phase In

 Joint Petitioners respectfully request that the Commission act as soon as possible to approve this Joint Petition and grant [Reynolds] special permission to file a tariff supplement in the form attached hereto as Appendix A, to become effective for service on one day’s notice, following the entry of a Commission Order approving this Settlement. The [S]ettle4ement provides for a $160,000 increase in annual revenue along with an offsetting $1,400 Accumulated Deferred Income Tax normalization credit, as discussed in paragraph b, below. Thus, the tariff supplement is designed to produce a net increase in annual revenue of $158,600, or 30.4%, over two phases, in lieu of the proposed $236,829 increase contained in Supplement No. 5. The Phase I rates, which will produce an annual increase of $111,198, will become effective upon approval of this Joint Petition. The Phase II rates, which will produce an additional increase of $47,402, will become effective upon written confirmation from [Reynolds] to the Commission, the OCA and I&E of the completion of the following three projects:

i. Water proofing/sealing of the sedimentation walls. This project has an estimated cost of $152,250;

ii. Replacement of 500 feet of 8-inch water main under the Shenango River. This project has an estimated cost of $125,000; and

iii. Installation of a liner in the filtration plant clear well. This project has an estimated cost of $50,000.

 A proof of revenue for the Phase I and Phase II rate increases is attached [to the Settlement] as Appendix B.

(b) Federal Taxes

The Tax Cuts and Jobs Act of 2017 (TCJA) reduces the Federal Income Tax Rate (FIT). The [S]ettlement revenue requirement calculation reflects the reduced FIT rate of 21% in the TCJA starting with the effective date of new rates.

The TCJA also impacts reserves for deferred income tax liabilities. [Reynolds] calculated the impact of the TCJA on its deferred tax liability at December 31, 2017 to be $20,784 (ADIT Adjustment). Reynolds also calculated a 15-year normalization period for returning the ADIT Adjustment. The amount of ADIT Adjustment to be amortized on an annual basis (approximately $1,400) is incorporated into the [S]ettlement revenue requirement calculation starting with the effective date of new rates.[[[9]](#footnote-10)] Joint Petitioners agree that [Reynolds] will track the amortization of the ADIT Adjustment against the beginning balance of $20,784 so that the remaining ADIT Adjustment balance can be determined in [Reynolds]’s next case.

The Commission’s Temporary Rates Order entered March 15, 2018 at M-2018-2641242 directs the public utility and parties in pending rate proceedings to address the impact of the reduced FIT on the justness and reasonableness of consumer rates charged during the term of the suspension period. In this proceeding, there are two components to address. First, there is the calculation of any reduced expenses due to the reduction in the federal income tax rate. Reynolds Water’s filing reflects a net loss during the suspension period so there were no federal tax expenses during the suspension period and there are no federal tax expense savings reflected in the [S]ettlement.

Second, there is the calculation of the ADIT adjustment during the suspension period. Joint Petitioners agree that the amortization of the ADIT adjustment that will be accrued from January 1, 2018 through June 30, 2018 with the estimated effective date of July 1, 2018 of the [S]ettlement rates is $700. This amount will be returned as a one-time bill credit to be reflected on the first billing cycle after Commission approval of the Settlement. The one-time bill credit will be refunded as an equal amount of $1.00 per customer.

(c) Monthly Billing

[Reynolds] will prepare an analysis of the potential additional costs and benefits of moving to monthly billing. [Reynolds] will include the analysis in its next rate filing.

(d) Rate Design

[Reynolds] agrees to eliminate the minimum water allowance in its next rate case filing. [Reynolds] will provide a bill frequency analysis with that filing.

(e) Billing Format

 [Reynolds] will update its bill format no later than the effective date of the Phase I revenue increase to show the [Pennsylvania Infrastructure Investment Authority (PENNVEST)] surcharge is for Reynolds Disposal Company.

(f) Stay Out

[Reynolds] will not file a general rate increase, as that term is defined in Section 1308(d) of the Public Utility Code, 66 Pa. C.S. § 1308(d), until 2 years following the effective date of the Phase II increase; provided, however, that this provision shall not prevent [Reynolds] from filing a tariff or tariff supplement proposing a general increase in base rates in compliance with Commission orders or in response to fundamental changes in regulatory policies or federal or state tax policies affecting [Reynolds’] rates. [[10]](#footnote-11)

Settlement at 3-6.

Paragraph 11 of the Settlement contains other rate provisions as highlighted below:

**Other Provisions**

11. Under the presently suspended Supplement No. 5, the quarterly cost of water service to a typical residential customer using 9,000 gallons per quarter would have increased by approximately $42.11, or 45.4%, from $92.76 to $134.87. Under the Joint Petition, the quarterly cost of water service to such residential customer would increase by approximately $28.20, or 30.4%, from $92.76 to $120.96 over the two phases. Under Phase I, the quarterly cost of water service to such residential customer would increase by approximately $19.77, or 21.31%, from $92.76 to $112.53.

Under Phase II, the quarterly cost of water service to such residential customer would increase by an additional $8.43, or 7.49%, from $112.53 to $120.96.

Settlement at 6-7.

In addition to specific rate matters agreed to in Paragraph 11 of the Settlement, above, the Settlement addresses supplemental provisions in Paragraph Nos. 12‑17. More specifically, the Settlement states that although the Joint Petitioners do not agree to each claim and/or to each specific rate adjustment, they do agree as to the amount of increase in the annual water revenue, coupled with other provisions included in the Settlement. Furthermore, as noted, the Settlement is conditioned upon the Commission’s approval of all terms and conditions contained in the Settlement. In this regard, the Settlement 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 the Settlement. In addition, the Joint Petitioners agree that the Settlement does not constitute an admission against, or prejudice to any position which any of the Joint Petitioners might adopt during subsequent litigation of this case, or in any other proceeding, in the event the Settlement is rejected by the Commission. Settlement at 7-8, ¶¶ 12-14.

 The other provisions also include that the Joint Petitioners agree to waive the filing of Exceptions if the ALJ recommends approval of the Settlement without any modifications, but they do not agree to waive their right to file Exceptions regarding any modifications to the terms and conditions, or other matters, that the ALJ may propose in her recommendation. Settlement at 7, ¶ 15.

 Additionally, the Joint Petitioners recognized that the Settlement is not binding on the Complainants. The Joint Petitioners stated that nothing in the Settlement is intended to limit in any way any position in which any of the Joint Petitioners may have or take concerning any comment or objection to the Settlement that may be filed by the Complainants. Settlement at 8, ¶ 16. The Joint Petitioners requested that the ALJ and the Commission grant Reynolds special permission to file a tariff supplement attached as Appendix A to the Settlement to become effective for service on one day’s notice. Settlement at 9, ¶ 16.

Attached to the Settlement are Appendices A through E. Appendix A includes an example of the tariff supplement consistent with the terms and conditions of the Settlement that Reynolds has agreed to file upon approval of the Settlement by the Commission; Appendix B contains a proof of revenue for the Phase I and Phase II rate increases; Appendix C is a Statement by Reynolds in support of the Settlement; Appendix D is I&E’s Statement in support of the Settlement; and Appendix E included the OCA’s statement in support of the Settlement.[[11]](#footnote-12)

## C. ALJ’s Recommendation

As noted, the ALJ recommended an approval of the Settlement stating that with the minor modifications specified in Attachment A to the Recommended Decision, the Settlement represents a fair, just, lawful and reasonable solution to the issues raised in the instant proceeding.

The minor modifications to the Settlement were recommended by the ALJ for consistency within the Settlement document and the signatories’ contentions in their Statements in Support of the Settlement.[[12]](#footnote-13) According to the ALJ, this consistency is accomplished by modifications to Supplement No. 5, as filed on October 30, 2017.

More specifically, the ALJ posited that the Settlement and the tariff filing, when read together, are unclear whether the Phase II rates will be effective upon completion of the projects or will be effective when Reynolds provides written confirmation of completion of the projects. R.D. at 25. Accordingly, the ALJ recommended that the Settlement be modified to clarify that the tariff filing, which Reynolds will file after this Opinion and Order is entered, consistently specify that the Phase II rates will become effective upon Reynolds’ written confirmation of completion of the projects. The ALJ recommended that this be incorporated in the Phase-II section on Page No 2, the header sections on Page Nos. 5, 7A, and 8A, [[13]](#footnote-14) and the applicability section on Page No. 7A of the tariff. *Id.*

Finally, the ALJ recommended that the header “Residential and Commercial” should be removed from the Volumetric Rates section on Page Nos. 4 and 4A of the tariff filing because volumetric rates apply to all customer classes and are not limited to only residential and commercial customers. *Id.* at 26.

## D. Settlement Objections and Responses

The twenty Complainants in this proceeding were all opposed to the Settlement. Although five of the Complainants attended and/or participated in one or both of the mediation sessions in which the Settlement provisions were created, none of the Complainants were signatories to the Settlement. As earlier indicated, Settlement Objections were filed by the following Complainants: James Vessella, Bea DeCiancio, John D’Urso, Margaret Foust, Plem Patterson, Matthew Nestor, Ryan Foust, Brian Hills, Laurel Litwiler, Thomas Hanzes, Clark Eberhart (on behalf of the Reynolds VFW), Mildred J. Heile, Helen Canady, Lucas Shilling, Diana Cole, Gilbert and Marilyn Brant, David Roeder, Sr., Natalie McCloskey, Marie Potts and Sean Belback.[[14]](#footnote-15)

The Complainants alleged the originally-proposed 45.4% increase was unjust, outrageous, illogical, and unprecedented in any business. The Complainants also claimed that the 30.4% increase proposed in the Settlement was not acceptable and contended that Reynolds should be forced to stay out for eleven years, until 2029, regardless of whether an emergency expenditure might arise. The Complainants wanted to fully litigate this matter because they did not agree with the provisions of the Settlement. The Complainants argued they were forced to live with intimidation, bullying, manipulation and threats from Reynolds because of the averment of the signatories that the water rates will be increased even more if the base rate proceeding is fully litigated. They insisted the Commission should not close its investigation until Reynolds is precluded from increasing its base rates. Settlement Objections at 1.

Furthermore, the Complainants contended that all fire hydrants in the Reynolds system are locked down except for the hydrants used by the school district (which must pay $159.33 per hydrant per quarter), the Transfer Fire Department (which must pay $600 per year), and the Reynolds VFW (which must pay $159 per quarter). The Complainants indicated that Reynolds is poorly managed and refuses to live within a structured budget as evidenced by the Company’s admission in the Settlement that the rates must be increased in order to bring Reynolds’ operating income to a reasonable level. The Complainants averred Reynolds has some of the highest water and sewer rates in the state. Most of the Complainants made similar statements objecting to the Settlement and used a standardized form response. *Id.* at 2-4. In addition to the formatted statements referenced above, eight individuals included additional comments and/or written comments to the ALJ in support of rejecting the Settlement.[[15]](#footnote-16)

In response, Reynolds emphasized that the Settlement was a product of mediation that furthers the public interest and is fully supported by the financial information in the original filing. Reynolds noted that its customers have experienced stable rates over an eight-year period, but those lower rates cannot be sustained because its returns have deteriorated, and the Company is now experiencing a negative return and a net operating loss. According to Reynolds, this makes the instant rate increase request inevitable. Reynolds disagreed with the Complainant’s comments that it bullied its customers or that all of its fire hydrants are locked down. Reynolds insisted it works with the Transfer Fire Department to identify hydrants which will be available for fire-fighting emergencies. Reynolds averred it is careful about allowing unnecessary and/or inappropriate access to hydrants, so it can maintain its system integrity and reliability. Reynolds also indicated that the instant rate increase applies only to water base rates and that there is no increase to the sewer base rates or the PENNVEST charges. Reynolds pointed out that the Settlement saves money for the customers because it lessens the time and costs of fully litigating the base rate filing. Finally, Reynolds argued that the Settlement Objections did not provide a factual or legal basis to reject the Settlement. Reply to Settlement Objections at 3-5.

## E. ALJ’s Disposition of Settlement Objections

In her analysis of the Settlement Objections, ALJ Dunderdale noted that the five Complainants who participated in the mediation sessions were generally opposed to the Settlement. The ALJ acknowledged the Complainants’ averment that they would be satisfied only if Reynolds’ rates remain the same for at least another eleven years or not be increased at all. The ALJ noted that the Complainants were also opposed to the stay-out provision in the Settlement as being too short in duration. According to the ALJ, the Complainants describe the 30.4% Settlement increase as “sticker shock” as their rates have been stable for over eight years. R.D. at 24.

 The ALJ reasoned that Reynolds could have averted this rate shock if the Company had sought incremental rate increases over the years or not waited too long to request a rate increase. However, the ALJ also pointed out that it was hard to tell how soon Reynolds should have requested the incremental increases. *Id.* Nevertheless, the ALJ explained that the “phase-in” rates in the Settlement were meant to specifically address the rate shock highlighted by the Complainants. In addition, the ALJ noted that not only would the phase-in rates reduce the impact of the rate increase on Reynolds’ customers but that the stay-out provision would help provide a level of rate stability. *Id.*

Based on the above, the ALJ recommended approval of the Settlement because it addressed the concerns of the Complainants and gives Reynolds the ability to recover the cost of providing water service to its customers. *Id.*

**F. Exceptions and Replies**

 The Complainants’ Exceptions are filed in a similar form-letter format as the Settlement Objections.[[16]](#footnote-17) Also, like the Settlement Objections, the Complainants oppose the rate increase and almost all the terms of the Settlement because they claim the Settlement does not represent a fair and reasonable resolution to the issues in this case. Complainants’ Exc. at 1, 5. The Complainants submit that the 15.4% difference between the Company’s originally-proposed revenue increase of 45.4% and the proposed increase under the Settlement of 30.4% is unacceptable. *Id.* at 1. The Complainants reiterate their argument that they disagree with the two-year stay-out under the terms of the Settlement and that an eleven-year stay-out will give the customers time “to let the present Pennvest to expire and not add to it.” *Id.* at 3, 5. The Complainants assert PENNVEST is a finance company owned by Reynolds and request that Reynolds be audited spanning the past seven years. The Complainants also disagree with Reynolds’ negative rate of return claim and questions the Shenango River project agreed to in the Settlement. The Complainants contend the Shenango River project will be beneficial to the industrial park in the area rather than the community. *Id.* at 4. In conclusion, the Complainants submit that they disagree with the Settlement, and that this proceeding should not be settled without formal litigation. *Id.* at 2.

 In Reply, Reynolds reiterates its argument that the Settlement is the result of a Commission-approved mediation. Reynolds emphasizes that Ordering Paragraph No. 5 of the *December 2017 Order* specifically encouraged mediation and referred the instant filing for Alternative Dispute Resolution, if possible.[[17]](#footnote-18) Reynolds R. Exc. at 3. Reynolds contends that contrary to the Complainants’ argument, the rate increase is unavoidable because the Company has kept its current rates since 2010 and is now experiencing a net operating loss and a negative return. *Id.* at 3-4. Disputing all the allegations in the Complainants’ Exceptions, Reynolds submits that the Settlement increase is just and reasonable and is supported by the financial information submitted by the Company. *Id.* at 5-8.

In response to the Complainants’ Exceptions regarding the Shenango River project, Reynolds explains that the project, which involves a 500 foot 8-inch water main, is a necessary project. According to Reynolds, the OCA has conducted an on-site visit to review the Company’s current and proposed water system facilities and related operations. Reynolds argues that the project and its related costs are just and reasonable as outlined in the Settlement. *Id.* at 8-9. Reynolds concludes that the Settlement, which was reached through the diligent efforts of the Joint Petitioners, is in the public interest, and should be approved by the Commission. *Id.* at 3-4, 9-11.

 In its Replies to the Complainants’ Exceptions, I&E avers that the Settlement, as modified by the ALJ, is in the public interest and represents a fair, just and reasonable balance of the interests of Reynolds’ customers. I&E R. Exc. at 4. I&E submits that it agreed to the Settlement after several mediation sessions and after extensive discovery, including a review of responses to numerous data requests and interrogatories. From I&E’s perspective, the revenue requirement in the Settlement, which reduces Reynolds’ original request of $236,829 by $78,229 or 33.0%, allows the Company to provide safe, effective and reliable service without overly impacting customers through higher rates. *Id.* In addition, I&E references several other beneficial Settlement terms, including the phase-in of rates and the stay-out provision which were reached after a thorough consideration of the impacts on Reynolds’ customers. In particular, I&E contends the phased-in rate increase is reasonable and the stay-out provision offers Reynolds’ customers rate stability for at least two years following the effective date of the Phase II increase. *Id.* at 5-6. Finally, I&E requests that the Settlement be approved, as modified, because it eliminates the expense of a fully litigated rate proceeding and is in the best interest of Reynolds’ customers. *Id.* at 6.

## G. Disposition

 Based on our review, we conclude that the Complainant’s Exceptions are without merit. Therefore, we shall deny the Exceptions because they raise the exact same issues that were raised during the hearing and that were addressed by the ALJ in her Recommended Decision. We also do not see any advantage for Reynolds’ customers in fully litigating this case, especially, considering that a full litigation would result in additional expenses that would be reflected in the rates of the Company’s customers. Therefore, we shall adopt the ALJ’s Recommended Decision that grants the Joint Petition and adopts the Settlement consistent with our discussion below.

 We believe the Settlement is in the public interest because, as noted by the Joint Petitioners, it: (1) minimizes cost prohibitive litigation and administrative burden; (2) recognizes ratepayers’ concerns; (3) provides Reynolds with additional and necessary cash flows; (4) precludes Reynolds from filing another base rate increase within twenty-four months after this Opinion and Order approving the Settlement; and (5) avoids rate shock to the ratepayers by reducing the proposed 45.4% increase to only 30.4% increase over the two phases.

 The resolution of the issues in the Settlement in this proceeding was reached through Commission-approved mediation and after the Joint Petitioners had conducted extensive discovery including a review of responses to numerous data requests and interrogatories.[[18]](#footnote-19) It is the policy of the Commission to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

The Settlement in this proceeding reflects a carefully balanced compromise of the interests of the Parties on the issues, and amicably and expeditiously resolves several important and complex issues in the instant proceeding – particularly by providing Reynolds the opportunity to carry out three important capital projects that are necessary and proper: (1) water proofing/sealing of the sedimentation walls with an estimated cost of $152,250; (2) replacement of 500 feet of 8-inch water main under the Shenango River with an estimated cost of $125,000; and (3) installation of a liner in the filtration plant clear well with an estimated cost of $50,000.

With limited exceptions under the terms of the Settlement, Reynolds has agreed, among other things, to accept the Settlement rate increase in two phases. The Phase I increase will take effect upon Commission approval of the Settlement. The Company, however, will not receive the Phase II increase until it completes its water proofing/sealing, Shenango River main replacement and filtration plant liner projects. Reynolds anticipates completion of these projects during the Summer of 2018.

Under the Settlement, the original Company-proposed annual revenue increase of $236,829, which represents an increase in its annual operating revenue of 45.4%, will be reduced by $78,229, to $158,600, or an increase in the Company’s annual operating revenue of 30.4%. This decrease to the originally-proposed revenue increase will result in an overall increase to base rates that will be substantially lower than those originally requested by the Company, and, as stated above, will be recovered in two phases. Settlement at 3-4. Also, as earlier indicated, under the Joint Petition, the rate for a residential customer using 9,000 gallons of water per quarter would increase by approximately $28.20, or 30.4%, from $92.76 to $120.96 over the two phases. Under Phase I, the quarterly cost of water service for Reynolds’ residential customer would increase by approximately $19.77, or 21.31%, from $92.76 to $112.53 (monthly equivalent of $37.51). Under Phase II, the quarterly cost of water service would increase by an additional $8.43, or 7.49%, from $112.53 to $120.96 (monthly equivalent of $40.32). This is a significant reduction from Reynolds’ original request in which the quarterly cost of water service to a typical residential customer using 9,000 gallons per quarter would have increased from $92.76 to $134.87 (monthly equivalent of $44.96), which is a $42.11 or an approximately 45.4% rate increase. Settlement at 6-7.

Reynolds has also agreed to the stay-out provision established in the Settlement. The stay-out provision provides the ratepayers with a specified level of rate security that would not exist absent the provision. Settlement at 3‑6.

Our approval of the Settlement will ensure that Reynolds ratepayers will continue to receive safe and reliable service at just and reasonable rates, through increases that are less than those originally proposed by the Company but will provide additional revenues for the Company to meet its operating and capital expenses as well as an opportunity to earn a reasonable return on its investment. *Id.* at 9. Finally, the Settlement avoids the cost and uncertainty of litigation because the cost of litigation may ultimately be reflected in higher rates for water service. *Id.*

Our approval of the Settlement resolves all the relevant issues in this base rate proceeding and will result in significant savings of time and expense for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings. For the reasons stated herein and in the Joint Petitioners’ Statements in Support, we agree with the ALJ’s conclusion that adoption of the Settlement is in the public interest.

Before concluding, as noted, *supra*, the OCA submitted in its correspondence dated June 18, 2018, that Paragraph No. 4 in Attachment A of the ALJ’s Recommended Decision which refers to changes that should be made to “Page No. 5” of the proposed tariff, should be corrected to reflect that those changes should be made to “Page No. 4A” of the proposed tariff. We agree with this change. Accordingly, we shall adopt the ALJ’s recommendation to approve the Settlement with the minor modifications that are set forth in Attachment A to the Recommended Decision as well as the correction to Attachment A as submitted by the OCA.

 Consistent with the above discussion, we shall deny the Complainants’ Exceptions, adopt the ALJ’s recommendation that approves the Settlement with minor modifications, as corrected, as set forth in Attachment A to the Recommended Decision, and adopt the change proposed by the OCA.[[19]](#footnote-20)

# V. Conclusion

 Based on our review of the record and the positions of the Parties, we shall: (1) adopt the ALJ’s recommendation to grant the Joint Petition and approve the Settlement with the minor modifications, as set forth in Attachment A to the Recommended Decision, including the change proposed by the OCA; and (2) deny the Exceptions filed by the Complainants; **THEREFORE,**

 **IT IS ORDERED:**

1. That the Exceptions by Mildred Heile, Gilbert V. and Marilyn A. Brant, and Matthew Nestor filed on June 6, 2018, Thomas Hanzes and Clark Eberhart, filed on June 7, 2018, David Roeder, Sr., Ryan Foust, Margaret Foust, and Plem Patterson filed on June 8, 2018, Laurel Litwiler, Lucas Shilling, James Vessella, Brian Hills, John D’Urso, Helen Canady, Diana Cole and Sean Belback filed on June 11, 2018, Marie T. Potts filed on June 14, 2018, and Bea DeCiancio filed on June 20, 2018, are denied, consistent with this Opinion and Order.

2. That the changes proposed by the Office of Consumer Advocate in its letter filed on June 18, 2018, recommending that paragraph 4 of Attachment A to the Recommended Decision, which refers to page No. 5 of the proposed tariff be revised to page No. 4A of the proposed tariff, is adopted, consistent with this Opinion and Order.

3. That the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale, issued on May 29, 2018, is adopted as modified, consistent with this Opinion and Order.

4. That the Joint Petition for Settlement of Docket No. R-2017-2631441, filed April 6, 2017, by Reynolds Water Company, the Commission’s Bureau of Investigation and Enforcement and the Office of Consumer Advocate, is approved, as modified to reflect the changes noted in Attachment A to the Recommended Decision, and the subsequent change proposed by the Office of Consumer Advocate as set forth in Ordering Paragraph No. 2, above.

5. That Reynolds Water Company, shall not place into effect the rates, rules, and regulations contained in Supplement No. 5 to Water-Pa. P.U.C. No. 4, as filed on October 30, 2017, the same having been found to be unjust, unreasonable, and therefore unlawful.

6. That Reynolds Water Company shall file a tariff or tariff supplement containing the rates, rules and regulations consistent with Appendix A to the Joint Petition for Settlement designed to produce additional annual operating revenues of approximately $158,600 over two Phases, the modifications noted in Attachment A, and the change proposed by the Office of Consumer Advocate as set forth in Ordering Paragraph No. 2, above.

7. That the said tariff or tariff supplement be filed on at least one day’s notice to become effective for service rendered on and after the date on which this Opinion and Order is entered.

8. That the following Formal Complaints filed against Reynolds Water Company’s Supplement No. 5 to Tariff Water-Pa. P.U.C. No. 4, shall be dismissed, consistent with this Opinion and Order:

James Vessella C-2017-2634797

Bea DeCianco C-2017-2635838

Office of Consumer Advocate C-2017-2636654

John D’Urso C-2017-2636679

Margaret Foust C-2018-2644372

Plem Patterson C-2018-2647045

Matthew Nestor C-2018-2647060

Ryan Foust C-2018-2647069

Brain Hills C-2018-2647070

Laurel Litwiler C-2018-2647272

Thomas Hanzes C-2018-2647305

Clark Eberhart C-2018-2647318

Mildred J. Heile C-2018-3000054

Helene Canady C-2018-3000065

Lucas Schilling C-2018-3000087

Diana Cole C-2018-3000207

Gilbert V. and Marilyn A. Brant C-2018-3000208

David R. Roeder, Sr. C-2018-3000250

Natalie M. McCloskey C-2018-3000419

Marie T. Potts C-2018-3000505

Sean Belback C-2018-3000566

9. That, upon Commission approval of the tariff supplement filed by Reynolds Water Company in compliance with this Opinion and Order, the investigation at Docket No. R-2017-25631441, shall be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 2, 2018

ORDER ENTERED: August 2, 2018

1. For the purpose of this proceeding, the individual Complainants shall be collectively referred to as “Complainants.” We note that only nineteen out of the twenty individual Complainants in this proceeding filed Exceptions. [↑](#footnote-ref-2)
2. Exceptions were due on June 18, 2018. However, one of the Complainants (Bea DeCiancio) filed her Exceptions on June 20, 2018, after the deadline for filing Exceptions. Nevertheless, under the circumstances of this proceeding, we shall consider the late-filed Exceptions of Ms. DeCiancio to secure a just, speedy, and inexpensive determination in this proceeding, particularly as the Complainant is appearing *pro se*. See [52 Pa. Code § 1.2(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS1.2&originatingDoc=I1fa48ff15f9e11e8a2e69b122173a65f&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), (d). [↑](#footnote-ref-3)
3. On June 18, 2018, the OCA submitted a letter with the Commission indicating that it will not be filing Exceptions to the Recommended Decision. In the letter, the OCA avers that, although it accepts the minor modifications to the Settlement by the ALJ as set forth in Appendix A to the Recommended Decision, paragraph 4 of Appendix A which refers to Page No. 5 of the proposed tariff should be revised to Page No. 4A of the proposed tariff. As will be discussed, *supra*, we will modify the ALJ’s Recommended Decision to reflect this revision. [↑](#footnote-ref-4)
4. Reynolds provides water service to approximately 722 total customers (551 residential customers) in portions of the Townships of Pymatuning, Hempfield, and Delaware in Mercer County. [↑](#footnote-ref-5)
5. Reynolds’ last general rate increase was filed on June 30, 2009, at Docket No. R‑2009-2102464. In that case, Reynolds’ requested an increase of $207,503 or 50.5%. However, pursuant to the Settlement by the Parties in that proceeding, the Commission awarded Reynolds an increase of $139,000 or 34% over two phases. The rates from that rate increase filing became effective on April 15, 2010. [↑](#footnote-ref-6)
6. Settlement Objections were also filed by James Vessella and John D’Urso, on April 26, 2018, after the deadline for filing comments. [↑](#footnote-ref-7)
7. Although, the ALJ referred to this Interim Order as the Fifth Interim Order, our review of the record indicates it is the Fourth Interim Order. [↑](#footnote-ref-8)
8. *See,* Attachment A to the Recommended Decision for the minor modifications to the Settlement. [↑](#footnote-ref-9)
9. The Settlement explains that the “Joint Petitioners agreed on a revenue requirement increase of $160,000. This amount was decreased to $158,600 to reflect the ADIT Adjustment ($160,000 - $1,400).” Settlement at 5, n.1. [↑](#footnote-ref-10)
10. For the remainder of this document, we will refer to this term of the Settlement as the stay-out provision. [↑](#footnote-ref-11)
11. The ALJ discusses on pages eight to eighteen of her Recommended Decision, the positions of the Joint Petitioners on the issues addressed in the Settlement, including additional and necessary cash flow, the TCJA, significant capital projects, matters of interest to ratepayers, revenue increase and phase-in, federal taxes considerations, and the public interest. *See* R.D. at 8-18. [↑](#footnote-ref-12)
12. A complete list of the modifications is included as Attachment A to the ALJ’s Recommended Decision. [↑](#footnote-ref-13)
13. Although the ALJ’s Attachment A in the Recommended Decision referenced pages 2, 5, 7A and 8A of Supplement No. 5, filed on October 30, 2017, our review of the record shows the ALJ’s recommended modifications should be made to pages 2, 4A, 7A and 8A to the sample tariff supplement that is contained in Appendix A of the Joint Petition. [↑](#footnote-ref-14)
14. The Settlement Objections by James Vessella and John D’ Urso were filed on April 26, 2018, after the deadline for filing comments. [↑](#footnote-ref-15)
15. *See,* R.D. at 20-21 for additional comments by the Complainants in their Settlement Objections. [↑](#footnote-ref-16)
16. Four of the Complainants (Bea DeCiancio, Margaret Foust, Thomas Hanzes and Clark Eberhart) submitted individual comments in addition to the form-letter format Exceptions they filed. [↑](#footnote-ref-17)
17. Ordering Paragraph No. 5 of the *December 2017 Order* states “[t]hat the case be assigned to the Office of Administrative Law Judge for Alternative Dispute Resolution, if possible, or for the prompt scheduling of such hearings as may be necessary culminating in the issuance of a recommended decision.” *December 2017 Order* at 3. [↑](#footnote-ref-18)
18. *See,* Reynolds’ Statement in Support of the Settlement at 4. [↑](#footnote-ref-19)
19. None of the Parties to this proceeding oppose the change proposed in the OCA’s letter. [↑](#footnote-ref-20)