

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Valley Energy, Inc. for Expansion : P-2018-3006500  
Project Surcharge and Waiver of Tariff Rule 4 :

**RECOMMENDED DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

This Recommended Decision recommends that the Commission adopt, without modification, the Joint Petition for Settlement submitted by the parties on April 3, 2019. If Valley can begin construction by late May or June 2019, Valley projects that the pipeline and main will be ready for the Winter 2019-2020 heating season.

**HISTORY OF THE PROCEEDING**

On December 11, 2018, Valley Energy, Inc. (Valley) filed a Petition for Expansion Project Surcharge and Waiver of Tariff Rule 4. The Petition requests a natural gas pipeline expansion under and across the Susquehanna River to the East Athens, Pennsylvania area of Valley's service territory (East Athens Expansion).

On December 27, 2018, the Office of Small Business Advocate (OSBA) filed an Answer and Notice of Intervention. On December 28, 2018, the Office of Consumer Advocate (OCA) filed a Notice of Intervention. On December 31, 2018, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance.

On January 11, 2019, a Prehearing Conference Notice was issued scheduling an initial prehearing conference for January 29, 2019; however, because of inclement weather, the

in-person conference was cancelled and an informal telephonic conference was held among the parties.

On March 8, 2019, a settlement in principle was reached by the Parties, and the litigation schedule was suspended.

On March 21, 2019, an evidentiary hearing was held at the Commission's Harrisburg Office. Valley was represented by Pamela C. Polacek, Esquire, and Matthew Garber, Esquire. The OCA was represented by J.D. Moore, Esquire. I&E was represented by Allison C. Kaster, Esquire. Valley presented one witness, Edward Rogers, the President and CEO of Valley. Valley introduced two exhibits which were received into evidence: Valley Energy, Inc. Statement 1, the testimony of Edward Rogers, together with related exhibits EER-1 through EER-7, and Valley Energy, Inc. Statement 2, a map of the East Athens Extension Project, EER-8.

On April 3, 2019, the parties filed a Joint Petition for Settlement and Statements in Support.

The record in this matter closed with the filing of the Joint Petition for Settlement on April 3, 2019 and consists of the Joint Petition and its attachments, the twenty (20) page hearing transcript and Valley Energy, Inc., Statements 1 and 2 with related exhibits EER-1 through EER-8.

#### THE EAST ATHENS EXPANSION PROJECT

Valley is a Pennsylvania natural gas distribution company with its principal office located in Sayre, Bradford County, Pennsylvania. Valley provides natural gas distribution services to nearly 7,000 customers in Bradford County, Pennsylvania, as well as nearly 1,900 customers in New York State. Valley Statement 1 at 1. On December 11, 2018, Valley filed a Petition for Expansion Project Surcharge and Waiver of Tariff Rule 4. The Petition requests a

natural gas pipeline expansion to the East Athens, Pennsylvania area of Valley's service territory (East Athens Expansion). Valley Statement 1 at 3-4.

Valley's service territory is 41 square miles and is comprised of Athens Township, the Borough of Sayre, the Borough of Athens, and several other boroughs and townships. Athens Township is bifurcated by the Susquehanna River. A portion of Athens Township, located on the east side of the river, is called East Athens. Currently, all of Valley's customers in the northern portion of its service territory – in the vicinity of Sayre – are situated on the west side of the Susquehanna River. Residences and businesses in East Athens do not have access to natural gas service from Valley or any other natural gas public utility. Valley Statement 1 at 3. To provide service to East Athens, Valley plans to construct a pipeline across and under the Susquehanna River and to install approximately 18,000 feet of polyethylene (PE) distribution mains. Valley Statement 1 at 4.

The Company's proposed estimate for the project cost was \$1.7 million and included an award of an \$850,000 Pipeline Investment Program (PIPE) grant from the Pennsylvania Department of Community and Economic Development (DCED). Because the remaining costs exceeded the amount allowable under Valley's tariff, Valley proposed a surcharge and waiver to deal with the remaining costs.

### THE PROPOSED SETTLEMENT

The terms of the Settlement are as follows with the original paragraph numbering maintained for ease of reference:

13. The Settlement caps the estimated East Athens Expansion Project construction cost at \$1,700,000.
14. Valley will apply the proceeds of its PIPE grant from the Commonwealth to offset the amount in Paragraph 13, up to \$850,000.
15. Any actual construction cost overruns above the amount in Paragraph 13 will not be added to rate base.

16. Of the Net Construction Cost (defined as total construction costs less the actual value of the PIPE grant):
- a. The "Economic Portion" is \$489,000. This includes (a) \$135,000 toward a 2,400-foot portion of the Expansion Project that will enable Valley to complete needed system reinforcements on the west side of the Susquehanna River for existing customers; and (b) \$354,000 toward the remainder of the Expansion Project on the east side of the River. The Economic Portion will be placed into utility plant and rate base in the upcoming rate case. The \$489,000 figure will not be adjusted based on the actual construction costs.
  - b. The "Uneconomic Portion" is the remaining amount and will be recovered through contribution in aid of construction ("CIAC") payments from customers served through the East Athens Project. The Uneconomic Portion and the revenue from the EA Surcharge will be "below the line activity" and will not be reflected in rate base, expenses, or revenues. The income tax associated with the CIAC payments will not be claimed in rates or rate base. Valley will bear the risk of not recovering the Uneconomic Portion from the East Athens customers.
17. To collect the Uneconomic Portion, Valley will charge an EA Surcharge as proposed in the Valley Petition, with the following modifications or clarifications.
- a. Valley will be permitted to collect interest on the Uneconomic Portion at a rate of 4.99%, calculated on a mortgage basis.
  - b. Valley will assess the EA Surcharge on all customers applying for service in East Athens up to a cap of 134 customers. There will be no reconciliation of this amount.
  - c. Valley will track EA Surcharge payments on an individual basis for each account.
  - d. The EA Surcharge will be \$29.20 per month for 10 years for each new East Athens customer; alternatively, an East Athens customer may make a one-time payment of \$2,754.
  - e. Individual customers paying the EA Surcharge will be permitted to pay off the remaining balance of their individual CIAC \$2,754 at any time.
18. Customers requiring extensions more than 200 feet from the proposed Expansion pipeline route ("Proposed Route," as set forth in Attachment E of the Valley Petition) will be approved. Those customers will be charged an additional

CIAC, in addition to the EA Surcharge, to recover costs to construct any extension beyond 200 feet from the Proposed Route.

19. Valley will be permitted to require customers to sign a line extension agreement.
20. If the customer of record who initiates service moves or sells the property, and the subsequent occupant/owner desires to continue receiving natural gas service, then the subsequent occupant/owner will be required to execute a line extension agreement that commits to pay for the remaining principal or for the remaining term of the original occupant/owner's obligation.
21. The tariff will state that the EA Surcharge is non-basic.
22. The Company commits to obtain all necessary environmental and occupancy permits and approvals for the project. Valley will provide to the Parties, and will file with the Secretary's Bureau at this docket, monthly updates regarding the status of the permits and approvals.
23. Attached to this Settlement as Attachment A are the proposed tariff sheets implementing the Settlement.
24. The Parties agree that Valley's proposed modifications to its tariff rules are accepted and shall be implemented by the Company.
25. The Parties respectfully request that the Commission approve the Settlement to enable the new rates set forth in Attachment A to take effect upon one-days' notice.

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The Parties have also set forth the standard "Conditions of Settlement," including the waiver of Exceptions and Reply Exceptions if this Recommended Decision adopts the Settlement terms without modification:

29. This Settlement is conditioned upon the Commission's approval of terms and conditions contained herein without modification. If the Commission modifies the Settlement, any Party may elect to withdraw from this Settlement and may proceed with litigation, and, in such event, this Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission, and served upon the other Parties within five (5) business days after the entry of an order modifying the Settlement.

30. The Settlement is proposed by the Parties to settle all issues in the instant proceeding and is made without any admission against, or prejudice to, any position that any Party may adopt during any subsequent litigation of this proceeding or any other proceeding.

31. If the ALJ adopts the Settlement without modification, the Parties waive their rights to file Exceptions and Reply Exceptions.

32. If the Commission does not approve the Settlement, and the proceeding continues to further hearing, the Parties reserve their respective rights to present testimony and to conduct full cross-examination, briefing, and argument.

33. The Commission's approval of this Settlement shall not be construed to represent approval of any Party's position on any issue.

34. It is understood and agreed among the Parties that this Settlement is the result of compromises and does not necessarily represent the position(s) that would be advanced by any Party if this proceeding were fully litigated.

## PUBLIC INTEREST CONSIDERATIONS

### A. Background

Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative 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. Many proceedings 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 expense 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. Pub. Util. Comm'n v. C S Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985).

Applying these principles, I recommend that the Joint Settlement Petition be approved without modification by the Commission. I note that the public advocates support the Settlement, and I am convinced by Valley's evidence of record and the testimony of its President and CEO, Edward Rogers, that the Settlement is in the public interest. The Parties have provided Statements in Support of the Settlement.

B. Statements in Support

1. Valley Energy's Statement in Support

The East Athens community has demonstrated strong support for the Expansion Project. In early 2018, Valley mailed surveys to 134 East Athens residences and businesses to ascertain the level of interest in receiving natural gas service. Valley received responses from 67 potential customers. The survey confirmed that customers are very interested in receiving gas service. Additionally, Valley held a public meeting on December 13, 2018, where the East Athens community demonstrated strong interest. Valley Statement No. 1 at 3. By the time of the evidentiary hearing, Valley had received 40 applications for service. Tr. at 6-7. Mr. Rogers explained in Direct Testimony that the primary factor driving the interest in East Athens is economics. New customers in East Athens stand to obtain significant cost savings by switching from fuel oil or electric heat to natural gas. Valley Statement No. 1 at 4. Using data from the Energy Information Administration (EIA), Mr. Rogers demonstrated that heating costs may be reduced substantially by switching to natural gas. Valley Statement No. 1 at 14-15. On page 15 of Mr. Rogers' Direct Testimony, he included the following table to present potential savings opportunities for customers:

<b>Fuel Source</b>	<b>Northeast/Nat. Est. Annual Fuel Cost (EIA)</b>	<b>Valley Est. Annual Fuel Cost w/ Natural Gas</b>	<b>Valley Est. Annual Savings w/ Natural Gas</b>	<b>Valley Est. Annual Savings % w/ Natural Gas</b>
Electricity	\$1,405.00	\$601.58	\$803.42	57%
Heating Oil	\$1,377.00	\$601.58	\$775.42	56%
Propane	\$1,851.00	\$601.58	\$1,249.42	67%

As an additional benefit, the Expansion Project will facilitate the prompt completion of a system strengthening project on the west side of the Susquehanna. Tr. 12-13. Two portions of Valley's service territory (Athens and East Side Sayre) that currently contain only one supply connection will receive an additional supply line, providing needed reinforcement to those areas.

Valley has secured Commonwealth funding to facilitate the Expansion Project. To develop the East Athens Expansion, Valley applied for a PIPE grant from the Pennsylvania DCED. On September 20, 2018, DCED awarded \$850,000 in PIPE grant funds to support the East Athens Expansion. Valley Statement No. 1 at 5. The PIPE grant funds one half of the costs of developing the Expansion Project up to a cap of \$850,000. Valley Statement 1 at 5. Including the support of the PIPE grant, Valley will rely on three sources of funding for the Expansion Project: (a) grant funds; (b) customer base rates; and (c) contributions in aid of construction (CIAC) from the new East Athens customers. Valley Statement 1 at 5.

Rider EA establishes a temporary monthly surcharge applicable only to new customers benefitting from the East Athens Expansion (EA Surcharge). Valley Statement 1 at 6. The EA Surcharge is designed only for new customers taking service via the East Athens Expansion. Consequently, no existing customers will pay the surcharge. Valley Statement 1 at 7. The surcharge will be paid by each new East Athens customer for a time period of ten years, calculated on an individual basis. Tr. at 11. At \$29.20 per month, the surcharge is designed to allow new customers to obtain natural gas service in an affordable fashion by avoiding most large, up-front Contribution In Aid of Construction (CIAC) payments. Valley Statement 1 at 8. Additionally, the surcharge is low enough to allow for immediate savings upon conversion from other fuel sources to natural gas. Valley Statement 1 at 15. Additionally, East



Athens customers have the option to pay off the remainder of their individual CIAC in one lump sum, providing additional flexibility. Tr. at 14.

Valley plans to develop the Expansion Project in time for the 2019-2020 winter heating season. Valley has been making numerous preparations to complete construction in time for new applicants to connect to Valley's system for the 2019-2020 winter heating season. Valley Statement 1 at 5. If Valley can begin construction by late May or June 2019, Valley projects that the pipeline and main will be ready for the Winter 2019-2020 heating season. Valley would like to commence construction rapidly upon the issuance of a Final Order by the Commission.<sup>1</sup> See Valley Statement 1 at 4-5.

Valley maintains that the Expansion Project is in the public interest. The Expansion Project: (a) provides an economical fuel source for residents and businesses of East Athens, allowing for substantial cost savings; (b) enables more residents and businesses to support Pennsylvania's natural gas development; (c) possesses a funding commitment by the Commonwealth of up to one half of the construction costs; (d) demonstrates substantial community support via formal surveying, informal feedback, and new service applications; and (e) is planned to be effective for the 2019-2020 heating season, so there will be no delay in realizing the benefits of the Commonwealth's investment.

Valley avers that the Joint Petition reflects a reasonable balance and appropriate compromise of the Parties' positions regarding the Company's East Athens Expansion Project and the associated surcharges and tariff rules. The Joint Petition facilitates the revenue needed to accomplish the Expansion Project, which will provide natural gas service to currently unserved residents and businesses in the East Athens portion of Valley's service territory. Leveraging a PIPE grant of \$850,000 from DCED, Valley will be able to provide an economical fuel source not currently available in East Athens. The Joint Petition accomplishes these goals with minimal risk for Valley's existing customers. While providing an affordable means for new East Athens

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<sup>1</sup> Valley respectfully requests that the Commission issue a Final Order in this proceeding as quickly as possible, but no later than the June 13, 2019 Public Meeting. This would allow the investment by both the Commonwealth (via the PIPE grant) and by new customers (in transitioning to natural gas heat) to come to fruition quickly, maximizing savings to new customers.

customers to make payments toward the construction cost, the Joint Petition expressly limits the amount of the Expansion Project that will go into rate base. The Joint Petition also provides that the Company bears the risk if there are construction cost overruns or fewer-than-projected new service applications. Finally, the Joint Petition restates Valley's commitment to abide by all permitting requirements and environmental regulations in construction of the pipeline.

2. OCA's Statement in Support

The OCA maintains that the cost to achieve Valley's proposed expansion is reasonable given the complexity of the project, and Valley has ensured that its ratepayers will not bear the risk that this project exceeds its estimated cost. As such, the OCA submits that the funding of Valley's expansion project is in the public interest and should be approved by the Commission. OCA Statement at 4. The OCA opines, and I agree, that the Settlement demonstrates a compromise between Valley's need for customer funds to facilitate construction of the expansion project and the need to protect Valley's ratepayers against excessive costs. Further, the OCA states that the amount of the EA Surcharge is reasonable in light of the complexity of the proposed expansion project and the savings that future ratepayers in East Athens will realize as a result of switching to natural gas service. Additionally, the Settlement requires Valley to designate the EA Surcharge as a non-basic charge. As such, Valley will not be permitted to terminate natural gas service due to nonpayment of the EA Surcharge. The OCA submits that the EA Surcharge crafted by Valley and the Parties to facilitate construction of its East Athens expansion project is in the public interest and should be approved by the Commission. OCA Statement at 5.

3. I&E's Statement in Support

I&E submits that the EA Surcharge, as modified by the Settlement, is in the public interest as it extends Valley's natural gas service to an unserved area of its service territory in a manner that does not harm Valley's existing customers. I&E Statement at 3. I&E believes the Settlement balances the interests of the Company, existing customers and potential new East Athens customers in a fair and equitable manner that best serves the public interest.

I&E maintains that a comparison of the original Petition submitted by the Company and the negotiated agreement demonstrates that compromises are evident throughout the Joint Petition. I&E Statement at 4.

I&E contends that Valley's East Athens Expansion is designed to assist customers on the east side of the Susquehanna River obtain natural gas service by spreading the CIAC cost over 10 years instead of the upfront payment. The Settlement allows Valley to implement the EA Surcharge but includes additional terms that protect existing customers, potential new East Athens customers and the Company. I&E Statement at 4.

I&E states that the Settlement provides that the East Athens Expansion Project construction cost is capped at \$1,700,000 and any construction costs overruns will not be added to rate base. I&E maintains that this cap is appropriate and beneficial to customers, and I agree.

The Settlement defines the Economic Portion to be \$489,000, which will be placed into rate base in an upcoming base rate proceeding. This amount is comprised of \$135,000 to reinforce both the existing system and the East Athens Expansion (Tr. at 13) and \$354,000 for the East Athens Expansion. I&E maintains that the agreed upon economic portion is just and reasonable. The Settlement states that the Uneconomic Portion will be recovered through CIAC payments from the new East Athens customers. The Uneconomic Portion will not be reflected in rate base, expenses or revenues and any income tax associated with CIAC payments will not be claimed in rates or rate base. The Settlement provides that Valley bears the risk of not recovering the Uneconomic Portion from East Athens customers. I&E believes that this protects the Company's existing customers because recovery of the Uneconomic Portion is subject to different variables, primarily the number of customers applying for service in East Athens. Existing ratepayers are protected by capping the amount of base rate recovery at \$489,000 and requiring the Company to be at risk for any under recovery of the Uneconomic Portion. I&E Statement at 6.

The Settlement provides that Valley will assess the EA Surcharge on all customers applying for service in East Athens up to a cap of 134 customers. The Settlement

reflects that the EA Surcharge will be \$29.20 per month for 10 years or the East Athens customer may make a one-time payment of \$2,754. I&E points out that The EA Surcharge is designed to make extensions more affordable by allowing the new customers to pay for the CIAC over a longer period of time and on an aggregate basis. This makes the Company's extension project more attractive by assisting potential new customers with an economical option to pay the costs over time rather than in an up-front payment. However, the Settlement also retains the option for customers to make the one-time payment of \$2,754 or pay off the remaining balance of their CIAC at any time. Providing East Athens customers payment options is appropriate as some may prefer the up-front payment or pay off amount to avoid paying the interest included in the surcharge. I&E Statement at 7.

The Settlement now mandates a 10-year repayment term for each customer. This resolves I&E's concerns with respect to the variable term set forth in the original Petition. I&E Statement at 7.

I&E states that the Settlement permits Valley to require customers to sign a line extension agreement and, importantly, the Settlement mandates that if the customer who initiates service moves or sells the property, the subsequent occupant/owner will be required to execute a line extension agreement to pay the remaining principal of the original obligation. Valley will now track the payments for each account and ensure that full payment is made even if the customer taking service from the property changes over the 10-year period. I&E Statement at 8-9. I&E contends that this is an important clarification of the language of the original Petition.

Finally, I&E points out that the Settlement specifies that the EA Surcharge is non-basic. This is an appropriate clarification and establishes that the EA Surcharge is non-basic; therefore, there will be no issue about the applicability of Commission regulations once this surcharge is implemented. I&E Statement at 9.

4. OSBA's Statement in Support

The OSBA identified two concerns with respect to the original Petition: (1) whether Valley's proposed East Athens Expansion Project would be revenue neutral to general ratepayers under all circumstances; and (2) whether Valley's proposed waiver of Tariff Rule 4 is necessary and reasonable.

The OSBA contends that the Settlement provides protection to general ratepayers by precluding cost overruns from being added to rate base. Furthermore, the proposed Settlement eliminates the need for a waiver of Valley's tariff. For the Net Construction Cost (defined as: total construction costs less the actual value of the PIPE grant), only the "Economic Portion" of the Net Construction Costs will be added to rate base. The OSBA is satisfied that the Economic Portion of the Net Construction Costs proposed in the Settlement (which is 19.2% lower than initially proposed) is reasonable. Additionally, the "Uneconomic Portion" of the Net Construction Costs will not be reflected in rate base and Valley will bear the risk of not recovering these costs. OSBA Statement at 3-4.

C. Conclusion

The Settlement maintains the proper balance of the interests of all parties. Resolution of this case by settlement rather than litigation avoids the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense and regulatory uncertainty. Acceptance of this Settlement removes the need for evidentiary hearings and related 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. The avoidance of litigation yields substantial savings for all parties and ultimately for customers. The Settlement provides regulatory certainty with respect to the disposition of issues and final resolution of this case.

The Settlement represents a reasonable and appropriate plan to bring natural gas service to East Athens through a plan that all parties agree is in the public interest. In sum, the

East Athens Expansion is in the public interest because: 1) it will reduce consumer heating costs; 2) the survey conducted by Valley demonstrated that the residents of East Athens want a natural gas alternative; 3) the proposed cost recovery appears to be reasonable; and, 4) the project will provide benefits to Valley's system. I recommend that the Commission approve the Settlement without modification.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 52 Pa.Code § 5.41.

2. To determine whether the settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Public Utility Comm'n v. C.S. Water and Sewer Associates*, 74 Pa. PUC 767 (1991); *Pa. Public Utility Comm'n v. Philadelphia Electric Company*, 60 Pa. PUC 1 (1985).

3. The Joint Petition for Settlement and the rates, terms and conditions contained therein at Docket No. P-2018-3006500 submitted by Valley Energy, Inc., the Office of Consumer Advocate, the Office of Small Business Advocate, and the Commission's Bureau of Investigation and Enforcement are just, reasonable and in the public interest.

### ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the rates, terms and conditions contained in the Joint Petition for Settlement at Docket No. P-2018-3006500 submitted by Valley Energy, Inc., the Office of Consumer Advocate, the Office of Small Business Advocate, and the Commission's Bureau of Investigation and Enforcement are approved and adopted without modification;

2. That upon entry of the Commission Order approving the recommendation to adopt the Joint Petition for Settlement, Valley Energy, Inc. be permitted to file a tariff supplement to become effective on one day's notice after entry of the Commission's final order;

3. That Valley Energy, Inc.'s Tariff Rule 4 is waived to the extent necessary to permit the establishment of the East Athens Expansion Project;

4. That upon acceptance and approval by the Commission of the tariff supplement filed by Valley Energy, Inc., consistent with this Order, this proceeding at Docket No. P-2018-3006500 shall be marked closed.

Date: April 19, 2019

/s/  
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Dennis J. Buckley  
Administrative Law Judge