

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2022-3031704
Office of Small Business Advocate	:	C-2022-3031902
Richard Shorin	:	C-2022-3031902
	:	
v.	:	
	:	
Borough of Ambler – Water Department	:	

**RECOMMENDED DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

and

John Coogan  
Administrative Law Judge

**INTRODUCTION**

The Borough of Ambler – Water Department (Ambler) filed a request for an increase in the distribution rates it charges its outside-Borough customers. Ambler, the Commission’s Bureau of Investigation and Enforcement (I&E) and the Pennsylvania Office of Consumer Advocate (OCA) (together, Joint Petitioners) filed a Joint Petition for Settlement of Rate Investigation (Joint Petition) by which they reached a settlement of all issues in the case.<sup>1</sup> This decision recommends, with two modifications, approval of the Joint Petition. The two modifications are that: 1) Ambler also file an update to Tables 2 and 3 of Ambler Exhibit JJS-2 with the Pennsylvania Public Utility Commission (Commission); and 2) Ambler file revised

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<sup>1</sup> The Pennsylvania Office of Small Business Advocate (OSBA) and *pro se* Complainant Richard Shorin were also parties in the case. OSBA and Mr. Shorin did not sign the Joint Petition but do not oppose the settlement.

distribution system improvement charge (DSIC) tariff language and a long-term infrastructure improvement plan (LTIIP) within 45 days and 180 days, respectively, of entry of a final Commission order in this proceeding.

In its original filing to the Commission, submitted on March 31, 2022, Ambler proposed rates designed to result in an increase in annual distribution operating revenues from its outside-Borough customers of approximately \$637,691.00, an increase of approximately 45.4% over existing rates. If approved, the total average monthly bill of a residential customer using 4,000 gallons per month would have increased from \$31.08 to \$44.34. Under the settlement, the increase in Ambler's rates to its outside-Borough customers will result in additional annual distribution operating revenues of approximately \$424,948.00. If the Commission approves the settlement without modification, the total average monthly bill of a residential customer using 4000 gallons per month would increase from \$31.08 to \$40.03, or approximately 28%.

The settlement includes agreement as to the \$424,948.00 increase in annual distribution operating revenues on a "black box" basis, meaning that the parties do not specifically identify or resolve individual rate base, revenue, expenses, and rate of return issues. In addition, the settlement includes agreement on a number of other specific issues addressed by the parties. We will discuss the revenue requirement and additional specific issues below.

The Commission must act on this matter no later than its Public Meeting of December 8, 2022. The suspension date is December 30, 2022.

### HISTORY OF THE PROCEEDING

On March 31, 2022, Ambler filed with the Pennsylvania Public Utility Commission (Commission) Supplement No. 40 to Tariff Water – PA. P.U.C. No. 5 (Supplement No. 40) requesting an increase in its total annual operating revenues from outside-Borough customers to become effective May 30, 2022. The Borough provides water service to 2,151 total inside-Borough customers, of which 1,968 are residential customers. Additionally, the Borough provides Commission-jurisdictional water service to 3,644 total outside-Borough customers, of

which 3,541 are residential customers. The amount of the requested increase to the outside-Borough customers equaled \$637,691.

On April 14, 2022, OSBA filed a Formal Complaint in this proceeding. I&E filed a Notice of Appearance on April 22, 2022, and OCA filed a Notice of Intervention and Public Statement on May 19, 2022. A Formal Complaint was filed by Richard Shorin on May 23, 2022.

On May 12, 2022, the Commission suspended Supplement No. 40 for investigation until December 30, 2022, unless otherwise directed by Order of the Commission. The filing was referred to the Office of Administrative Law Judge.

On May 18, 2022, the Commission issued a Prehearing Conference Notice to the parties scheduling a Prehearing Conference for June 6, 2022, before the undersigned Administrative Law Judges (ALJs).

The telephonic Prehearing Conference was held as scheduled on June 6, 2022. No public input hearings were requested. A procedural schedule was adopted for the submission of written direct, rebuttal, surrebuttal, and rejoinder testimony in advance of hearings. Telephonic Evidentiary hearings were scheduled for August 1-3, 2022.

In accordance with the previously established schedule, on June 2, 2022, Ambler served direct testimony and exhibits supporting the information set forth in Supplement No. 40. Ambler's direct testimony and exhibits consisted of: Borough of Ambler Statement No. 1 (the direct testimony and exhibits of Mary Aversa); Borough of Ambler Statement No. 2 (the direct testimony of Constance E. Heppenstall); Borough of Ambler Statement No. 3 (the direct testimony of John J. Spanos); and Borough of Ambler Statement No. 4 (the direct testimony and exhibits of Dylan W. D'Ascendis).

I&E and OCA subsequently served direct testimony and exhibits on July 1, 2022. I&E's direct testimony and exhibits consisted of: I&E Statement No. 1 and I&E Exhibit No. 1 (the direct testimony and exhibit of Christine Wilson); I&E Statement No. 2 and I&E Exhibit

No. 2 (the direct testimony and exhibit of Christopher Keller); and I&E Statement No. 3 and I&E Exhibit No. 3 (the direct testimony and exhibit of Joseph Kubas). OCA's direct testimony and exhibits consisted of: OCA Statement No. 1 and Appendix A and B (the direct testimony and exhibits of Morgan N. DeAngelo); and OCA Statement No. 2 and Appendix A (the direct testimony and exhibit of Terry L. Fought).

On July 15, 2022, Ambler and I&E served rebuttal testimony and exhibits. Ambler's rebuttal testimony and exhibits consisted of: Borough of Ambler Statement No. 1-R (the rebuttal testimony of Mary Aversa); Borough of Ambler Statement No. 2-R (the rebuttal testimony and exhibits of Constance E. Heppenstall); and Borough of Ambler Statement No. 4-R (the rebuttal testimony and exhibits of Dylan W. D'Ascendis). I&E's rebuttal testimony consisted of I&E Statement No. 2-R (the rebuttal testimony of Christopher Keller).

I&E and OCA served surrebuttal testimony and exhibits on July 27, 2022. I&E's surrebuttal testimony consisted of: I&E Statement No. 1-SR (the surrebuttal testimony of Christine Wilson); I&E Statement No. 2-SR (the surrebuttal testimony of Christopher Keller); and I&E Statement No. 3-SR (the surrebuttal testimony of Joseph Kubas). OCA's surrebuttal testimony and exhibits consisted of: OCA Statement No. 1-SR and Schedules MND-1SR through MND-6SR (the surrebuttal testimony and exhibits of Morgan N. DeAngelo); and OCA Statement No. 2-SR and Exhibit TLF-1SR (the surrebuttal testimony and exhibit of Terry L. Fought).

Ambler served rejoinder testimony on July 29, 2022, and an Errata to its direct testimony on August 1, 2022. Ambler's rejoinder testimony and exhibits, as corrected by the Errata, consisted of: Borough of Ambler Statement No. 1-RJ (the rejoinder testimony and exhibit of Mary Aversa); Borough of Ambler Statement No. 2-RJ (the rejoinder testimony and exhibits of Constance E. Heppenstall); and Borough of Ambler Statement No. 4-RJ (the rejoinder testimony of Dylan W. D'Ascendis).

The parties conducted an initial settlement conference on June 20, 2022. Following the initial conference, the parties held additional conferences by telephone to try to achieve a settlement of some or all of the issues in this case.

At the request of the parties, the presiding ALJs cancelled the evidentiary hearing scheduled for August 1, 2022. On August 2, 2022, an evidentiary hearing was held at which all testimony and exhibits were placed on the record, and witnesses were presented for cross-examination. As the hearing was concluded on August 2, 2022, the August 3, 2022, hearing was cancelled.

Following the evidentiary hearing, the parties continued settlement discussions. As a result of these discussions, Ambler, I&E, and OCA were able to agree to settlement terms, which OSBA and Mr. Shorin do not oppose. Accordingly, on August 22, 2022, Ambler notified the ALJs that the parties had reached a settlement-in-principle. On September 2, 2022, Ambler, OCA and I&E filed with the Commission their Joint Petition for Settlement of Rate Investigation. Attached to the Joint Petition were a proposed tariff supplement, proof of revenues, and statements in support from Ambler, I&E, and OCA.

While the Joint Petitioners acknowledge that, except to the extent specifically set forth herein, they have not sought, nor would they be able to agree upon, the specific rate case adjustments which support their respective conclusions, they are in full agreement that the overall settlement is in the public interest.

The record in this case closed on September 2, 2022, upon the filing of the Joint Petition. For the reasons discussed below, the Joint Petition will be recommended for approval in its entirety, with two modifications, because it is supported by substantial evidence and in the public interest.

## LEGAL STANDARDS

The Commission applies certain principles in deciding any general rate increase case brought pursuant to 66 Pa.C.S. § 1308(d). A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of its property dedicated to public service. *Pa. Gas and Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa. Cmwlth. 1975). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works and Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission v. Hope Natural Gas Company*, 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 reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

*Bluefield* at 692-93.

The public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request, pursuant to 66 Pa.C.S. § 1308(d). The statute at 66 Pa.C.S. § 315(a) sets forth the standard to be met by the public utility:

**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 proceeding 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.

In a general rate increase proceeding, the burden of proof does not shift to parties challenging a requested rate increase. The utility has the burden of establishing the justness and reasonableness of every component of its rate request throughout the rate proceeding. Other parties to the proceeding do not have the burden of proof to justify an adjustment to the public utility's filing. In this regard, the Pennsylvania Supreme Court in *Berner v. Pa. Pub. Util. Comm'n*, 116 A.2d 738, 744 (Pa. 1955) stated:

the appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations, and that is the burden which the utility patently failed to carry.

However, a public utility, in proving that its proposed rates are just and reasonable, does not have the burden to affirmatively defend claims it has made in its filing that no other party has questioned. In *Allegheny Center Associates v. Pennsylvania Public Utility Commission*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990), the Pennsylvania Commonwealth Court stated:

[W]hile it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.

In analyzing a proposed general rate increase, the Commission also determines a rate of return to be applied to a rate base, measured by the aggregate value of all the utility's property used and useful in the public service. In determining a proper rate of return, the Commission calculates the utility's capital structure and the cost of the different types of capital during the period in issue. The Commission has wide discretion, because of its administrative expertise, in determining the cost of capital. *Equitable Gas Co. v. Pa. Pub. Util. Comm'n*, 405 A.2d 1055 (Pa. Cmwlth. 1979).

In this general rate increase case, Ambler, OCA and I&E have reached a full settlement, which is not opposed by the other parties. 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 precious 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

In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165, (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C S Water & Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

In this case, the parties have reached what is referred to as a “black box” settlement where the settlement provides for an increase in the utility’s revenues but does not indicate how the parties calculated the increase. The Commission has permitted “black box” settlements as a means of promoting settlements in contentious base rate proceedings. *Pa. Pub. Util. Comm'n v. Wellsboro Elec. Co.*, Docket No. R-2010-2172662 (Order entered Jan. 13, 2011); *Pa. Pub. Util. Comm'n v. Citizens' Elec. Co. of Lewisburg*, Docket No. R-2010-2172665 (Order entered Jan. 13, 2011). The Commission has observed that determining a utility’s revenue requirement is a calculation that involves many complex and interrelated adjustments affecting expenses, depreciation, rate base, taxes and the utility’s cost of capital. Reaching an agreement among the parties on each component can be difficult and impractical. As a result of this complexity, the Commission supports the use of “black box” settlements. *Pa. Pub. Util. Comm'n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered Dec. 19, 2013); *Pa. Pub. Util. Comm'n v. Columbia Water Co.*, Docket No. R-2017-2598203 (Opinion and Order entered Mar. 1, 2018).

For the following reasons, we find that the settlement is in the public interest and is supported by substantial evidence and recommend that it be approved by the Commission, with two modifications.

## TERMS OF THE SETTLEMENT

The settlement terms are set forth in Section II of the Joint Petition and are re-stated *in verbatim* below using the paragraph numbers in the Joint Petition for ease of reference.

12. The Settlement consists of the following terms and conditions:
  - a. Upon the Commission's approval of this Settlement, the Borough will be permitted to charge the rates for water service set forth in the proposed Tariff Supplement annexed hereto as Appendix A (hereafter, the "Settlement Rates"). The Settlement Rates reflect an annual revenue increase of \$424,948 from Outside-Borough customers, as shown on the proof of revenues annexed hereto as Appendix B. The Tariff Supplement set forth in Appendix A has been reviewed by the Joint Petitioners and complies with the terms of the Settlement.
  - b. The Borough agrees to a two-year "stayout." The Borough will not file a distribution base rate case within two years from the effective date of new rates. However, if a legislative body or administrative agency, including the Commission, orders or enacts fundamental changes in policy or statutes which directly and substantially affect the Borough's rates, this Settlement shall not prevent the Borough from filing tariff supplements to the extent necessitated by such action. The Joint Petitioners further agree this provision shall not prevent the Borough from filing a rate increase to recover additional revenues necessary to address extraordinary or unanticipated events beyond the Borough's control.
  - c. The Borough will provide I&E and OCA with an update to Tables 2 and 3 of Ambler Exhibit JJS-2 no later than January 1, 2024, which shall include actual capital expenditures, plant additions and retirements for the twelve months ending September 30, 2023.
  - d. Annual Reports: The Borough will continue to file Annual Reports with the PUC and will file the missing 2019 report within 90 days of a Final PUC Order approving the Settlement.

- e. Customer Complaint Log: The Borough will continue complying with the customer complaint log requirement contained in 52 Pa. Code § 65.3(b). The customer complaint log will give the parties information about customer service and water quality issues going forward. The Borough agrees to provide the customer complaint log annually by April 15 to the parties and agrees to file the customer complaint log for the future test year to date at the time of its filing in its next base rate case. For each complaint log, the Borough agrees to identify the utility-side customer complaints regarding pressure and the resolution of those complaints. The Borough agrees that if its recordkeeping changes to permit providing the customer complaint log in a live Excel format it will do so at the first possible filing deadline.
- f. Pressure survey: The Borough will continue conducting an annual pressure survey as required by 52 Pa. Code § 65.6. This provision will allow OCA to monitor the pressures in the system and to help identify pressure problems. The Borough agrees to provide the annual pressure surveys in a live Excel format with its filing in its next base rate case.
- g. Unaccounted for Water Calculations: The Borough will continue providing separate volumes for the amount of water used for flushing and backwashing when preparing Unaccounted for Water calculations. This provision will make the Borough's method of calculating Unaccounted for Water consistent with the method the Commission uses for calculating Unaccounted for Water.
- h. System Flushing: The Borough agrees to continue flushing its entire system annually. This provision will ensure that regular flushing of the distribution system occurs and that customers will not experience lower quality of water at the tap due to distribution system issues.
- i. The Borough agrees to continue its exercise program and further exercise all 10-inch or larger valves in the jurisdictional service area each year. In its next base rate case, the Borough agrees to update its capital plan to include replacement of at least 30 valves that cannot be exercised each year. The Borough will accelerate valve replacements subject to recovery of such costs through the Distribution System Improvement Charge if it is implemented in accordance with all applicable provisions of the Public Utility Code, applicable regulations, and implementation

orders. The Borough also agrees to continue preparing an exercising and replacement schedule that tabulates the following information on all isolation valves within its system:

- (i) Location
  - (ii) Size
  - (iii) Date installed
  - (iv) Municipality
  - (v) Dates exercised, opened/closed for any reason, and notes of any difficulties.
- j. The Borough further agrees to continue providing the schedule for the actual exercising and replacing of valves to OCA and I&E by March 1 of each year for the preceding calendar year.
- k. Fire Hydrants: The Borough agrees to test the 56 fire hydrants that are connected to less than 6-inch water mains by measuring the flow with a pilot gauge and using a pressure gauge mark (or other similar method). Any of these hydrants that have not been tested and found to meet a minimum fire flow of 500 gpm within 120 days of the Final Order in this proceeding would be marked to be used for flushing and blow-offs until a successful test has been registered.
- l. Meter Testing: Within 90 days following the entry of an Order in this proceeding, the Borough will provide a schedule of proposed meter testing/replacements to the parties.
- m. Cost of Service Study Issues: The Borough will file a fully allocated cost of service study with its next base rate case. At least 3 months prior to filing the base rate case, the Borough will provide the cost of service study to I&E, OCA, and OSBA for purposes of determining whether the cost of service study supports elimination of the Second Block rate. When preparing the Customer Notices for its next base rate case, the Borough will directly notify customers that the elimination of the Second Block Rate is an issue reserved for discussion and potential implementation in the rate case.
- n. The Settlement Rates set forth in Appendix A reflect the Joint Petitioners' agreement with regard to rate structure, rate

design and the distribution of the increase in revenues in this case, as follows:

- (1) The monthly cost of water service to an Outside-Borough Commission jurisdictional residential usage customer using 4,000 gallons per quarter is presently \$31.08. Under the initially filed Supplement No. 40 to Tariff Water – Pa. P.U.C. No. 5, the monthly cost of water service to the same residential usage customer would have increased by approximately \$13.25 or 42.6%, from \$31.08 to \$44.34. Under the Joint Petition, the monthly cost of water service to the same Outside-Borough Commission jurisdictional residential usage customer would increase by \$8.95 or 28.8%, from \$31.08 to \$40.03. The monthly charge for water usage service at current, proposed, and settlement rates to an Outside-Borough Commission jurisdictional residential usage customer using 4,000 gallons per month, is therefore as follows:

Current Rates	\$31.08
Proposed Rates	\$44.34
Settlement Rates	\$40.03

- (2) Residential, commercial, industrial, and other class revenue increases will be in accordance with tariff supplement attached as Appendix A.
  - (3) The percentage increases to each customer class under the Settlement Rates are shown in Appendix B.
13. The Borough, I&E, and OCA have each prepared, and attached to this Joint Petition, Statements in Support identified as Appendices C, D, and E made by the parties specifically to settle this case, setting forth the basis upon which they believe that the Settlement, including the Settlement Rates, is fair, just, reasonable, non-discriminatory, lawful and in the public interest.
  14. The Joint Petitioners submit that the Settlement is in the public interest for the following additional reasons:
    - a. The Settlement provides for an increase in annual operating revenue from Outside-Borough customers of \$424,948, or

30.1%, in lieu of the \$637,691, or 45.4%, originally requested increase.

- b. Acceptance of the Settlement will avoid the necessity of further administrative and possible appellate proceedings at substantial cost to the Joint Petitioners, the other parties, and the Borough's customers.
  - c. The Settlement Rates will allocate the agreed upon revenue requirement to each customer class in a manner which is reasonable in light of the rate structure and rate design positions of all parties.
15. This Settlement is proposed by the Joint Petitioners to settle the instant case and is made without any admission against, or prejudice to, any position which any Joint Petitioner might adopt during subsequent litigation. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or modify the terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within three business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission denies the Settlement, or the Borough or any other Joint Petitioner elects to withdraw as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including but not limited to presentation of witnesses, conduct of cross-examination and presentation of legal arguments through submission of Briefs, Exceptions and Replies to Exceptions.
16. If the ALJs, in their Recommended Decision, recommend that the Commission adopt the Settlement as herein proposed, the Joint Petitioners agree to waive the filing of Exceptions. However, the Joint Petitioners do not waive their rights to file Exceptions with respect to any modifications to the terms and conditions of this Settlement, or any additional matters proposed by the ALJs in their Recommended Decision. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed.

Joint Petition at 4-9.

## PUBLIC INTEREST

As more fully explained below, the settlement terms recited above are reasonable and in the public interest and balance the interests of Ambler and its customers. However, we recommend one modification to the reporting requirement found at ¶ 12.c of the settlement. Additionally, as explained in further detail below, we recommend that the Commission direct Ambler to file revised DSIC tariff language and an LTIP within 45 days and 180 days, respectively, after entry of a final Commission order in this proceeding.

## **REVENUE REQUIREMENT, RATE DESIGN, AND RATE STRUCTURE**

**(Settlement at ¶¶ 12.a, n)**

The total increase in annual revenues of \$424,948 that the Joint Petitioners have agreed to is approximately 66.6% of Ambler's original request of \$637,691.

In supporting the agreed-upon revenue requirement, Ambler states, “[t]he settlement represents a black-box revenue requirement that the Joint Petitioners agree is reasonable in consideration of the various revenue issues raised and addressed in this proceeding.” Ambler St. in Supp. 3. I&E states that “[t]he overall revenue levels are within the levels advanced on the evidentiary record and reflect a full compromise of all revenue-related issues raised by the parties.” I&E St. in Supp. 4. I&E also asserts the settlement reflects a black box settlement and “[l]ine-by-line identification and ultimate resolution of every issue raised in the proceeding is not necessary to find that the Settlement satisfies the public interest ....” I&E St. in Supp. 4-5. OCA also asserts that the settlement reflects a black box approach, and that “the amount of the rate increase under the proposed Settlement represents a result that could be within the range of likely outcomes in the event of full litigation of the case.” OCA St. in Supp. 3.

Ambler, OCA, and I&E also support the settlement as regards rate design and rate structure. Ambler St. in Supp. 6; OCA St. in Supp. 3; I&E St. in Supp. 8-9. The Joint Petitioners highlight that the bill for the typical residential customer using 4,000 gallons would

increase from \$31.08 to \$40.03, or 28.8%, rather than from \$31.08 to \$44.34, or 42.6% as originally proposed by the Borough. *Id.*

As noted above, the Commission permits “black box” settlements as a means of promoting settlements in base rate proceedings. Here, Ambler originally sought an increase of \$637,691 in its revenue from customers outside the Borough. Ambler St. 1 at 4. OCA originally recommended an increase of \$528,866 from customers outside the Borough. OCA St. 1 at 2. I&E originally recommended an increase of \$308,921 from customers outside the Borough.

After extensive negotiations, the Joint Petitioners agreed to an overall increase of \$424,948. Appendix A reflects the Joint Petitioners’ agreement with regard to rate structure, rate design, and the distribution of the increase in revenues. Ambler St. in Supp. 6. While the agreed upon increase in revenues is less than it originally requested, Ambler asserts that the settlement rates will allow it “an opportunity to achieve an adequate return on the original cost measure of the value of its used and useful property that services Outside-Borough customers.” Ambler St. in Supp. 3 (citing Ambler St. No. 1 at 4). Additionally, all parties to the Joint Petition agree that the settled-upon increase falls within the range of likely outcomes that would result from a fully litigated proceeding. Further, the compromise allows the parties and the Commission to avoid the expenditure of potentially substantial additional time and expense that would be involved in fully litigating this case to its conclusion, a result that is fully encouraged and supported by the Commission. For all these reasons, we find that the agreed upon increase in annual revenues reflected in Appendix A to the Joint Petition is in the public interest and recommend that it be approved.

Although we recommend that the tariff at Appendix A be approved,<sup>2</sup> we recommend that the Commission order Ambler to file a tariff in compliance with the Model DSIC Tariff attached as Appendix A to the Commission’s Supplemental Implementation Order

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<sup>2</sup> As filed, Ambler’s proposed Supplement No. 40 to Tariff Water – PA. P.U.C. No. 5, includes a number of pages that have been revised many times. Although we do not make a particular recommendation to the Commission regarding this issue, future filings may be more readable should Ambler consider filing a new tariff altogether, *i.e.*, Tariff Water Pa. P.U.C. No. 6.

at Docket No. M-2012-2293611 within 45 days of the entry date of the Commission's Final Order at this docket. *See Implementation of Act 11 of 2012*, Supplemental Implementation Order, Docket No. M-2012-2293611 (Order entered September 21, 2016) (*DSIC Supplemental Implementation Order*). We also recommend that the Commission order Ambler to file an LTIIP within 180 days of the entry date of the Commission's Final Order at this docket. *See Id.*

Ambler's DSIC was first approved by the Commission in 2007. *Pa. Pub. Util. Comm'n v. Borough of Ambler Water Dep't*, Order, Docket No. R-00062017 (Order entered Dec. 24, 2007). Since 2007, there have been a number of significant updates to a water utility's use of a DSIC mechanism, including passage of Act 11<sup>3</sup> and numerous Commission actions to implement Act 11 across a variety of public utilities. *See Implementation of Act 11 of 2012*, Tentative Implementation Order, Docket No. M-2012-2293611 (Order entered May 11, 2012); *Implementation of Act 11 of 2012*, Final Implementation Order, Docket No. M-2012-2293611 (Order entered August 2, 2012); *Implementation of Act 11 of 2012*, Tentative Supplemental Implementation Order, Docket No. M-2012-2293611 (Order entered November 5, 2015); *Implementation of Act 11 of 2012*, Supplemental Implementation Order, Docket No. M-2012-2293611 (Order entered September 21, 2016). In the *DSIC Supplemental Implementation Order*, the Commission ordered jurisdictional water utilities with a Commission-approved DSIC mechanism to file a tariff in compliance with the Model DSIC Tariff and to file an LTIIP. The Commission stated its goal was to ensure all utilities with a Commission-approved DSIC are following uniform rules and procedures, and that it was time for water utilities to begin to comply with the many requirements of Act 11. *DSIC Supplemental Implementation Order* at 31.

Ambler's DSIC tariff language is not consistent with the Model DSIC Tariff language, and Ambler has not filed an LTIIP with the Commission. We can find no reason why Ambler should be exempted from the requirements placed on water utilities in the *DSIC Supplemental Implementation Order*. Rather than recommend specific changes to Ambler's proposed DSIC language in this Recommended Decision, we think it is reasonable to provide Ambler a similar timeframe as was provided to other water utilities to submit revised DSIC tariff

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<sup>3</sup> We note that Act 11 repealed subsection 1307(g) of the Public Utility Code, which provided authority for Ambler to implement its DSIC in 2007.

language and an LTIP (*i.e.*, 45 days and 180 days, respectively). *See DSIC Supplemental Implementation Order*. As a result, we will recommend below that Ambler be directed to make such a finding.

### **STAY OUT (Settlement at ¶ 12.b)**

Ambler has agreed to a two-year “stayout”, *i.e.*, that, unless certain extraordinary or unanticipated circumstances occur, it will not file a distribution base rate case within two years from the effective date of the new rates approved in this proceeding. OCA asserts this stayout provision “will provide an important level of rate stability that benefits ratepayers.” OCA St. in Supp. 4. I&E states “[t]here is no restriction on when or how often utilities can seek to increase rates; therefore, this stay out provision benefits customers as it provides for a period of rate stability. At the same time, Ambler will not be prejudiced, as it would be able to seek a rate relief if it experiences unforeseeable hardship beyond its own control.” I&E St. in Supp. 6.

We find the settlement’s stayout provision is in the public interest and recommend it should be approved. As noted by the settling parties, this provision will provide ratepayers a definite period of rate stability. This should help ratepayers forecast costs for water service and their budgets in general. However, Ambler will not be prevented from seeking rate relief in extraordinary or unanticipated circumstances. This provision balances the interests of ratepayers and Ambler and is therefore in the public interest.

### **REPORTING REQUIREMENTS (Settlement at ¶ 12.c)**

Ambler has agreed to provide an update to Tables 2 and 3 of Ambler Exhibit JJS-2 no later than January 1, 2024. This update will include the actual capital expenditures, plant additions and retirements for the FPFTY, which ends September 30, 2023. OCA asserts this provision is important because it “will permit the parties and the Commission to review the accuracy of the Borough’s FPFTY projections.” OCA St. in Supp. 5. I&E similarly asserts this provision is important because it allows the parties and the Commission to compare actual

numbers to Ambler's projections "to gauge the accuracy of these projected investments in future proceedings." I&E St. in Supp. 7.

We find this settlement provision to be reasonable and in the public interest, and therefore recommend its approval. As the parties note, this update will allow for a reconciliation of claims or projections of capital expenditures, plant additions and retirements made by Ambler for the FPFTY with actual results at the time of the update. This will facilitate calculating any necessary adjustments that may be necessary in future rate proceedings. We also recommend, however, that at the same time this information is submitted to I&E and OCA, the Commission's Bureau of Technical Utility Services (TUS) also be provided a copy. I&E and OCA's Statements in Support appear to anticipate the Commission will also be provided this data, and the only way the Commission can review and compare data is if it is filed with the Commission. We believe it would also be in the public interest for the Commission to have access to the same data provided to I&E and OCA so it can monitor the accuracy of Ambler's projections. *See* 66 Pa. Code § 315(e).

#### **ANNUAL REPORTS (Settlement at ¶ 12.d)**

During the course of the proceeding, it was discovered that Ambler's 2019 Annual Report was not on file with the Commission. I&E St. in Supp. 7. Per the settlement term, Ambler agrees it will continue to file Annual Reports with the Commission and it will file the missing 2019 report within 90 days of a final Commission order approving the Settlement. OCA and I&E both support this settlement term so Commission reporting requirements will be adhered to. OCA St. in Supp. 5; I&E St. in Supp. 7. We recommend that this settlement term be approved because it is in the public interest for Ambler to correct past filing omissions and continue to adhere to Commission reporting requirements. The Commission's annual reporting requirements imposed on utilities must be adhered to so that the Commission can fulfill its obligations to ensure that utilities are acting in the public interest at all times.

## **CUSTOMER COMPLAINT LOG REQUIREMENTS (Settlement at ¶ 12.e)**

Ambler agrees that, in addition to complying with the requirements of 52 Pa. Code § 65.3(b), it will provide customer complaint logs to the parties on an annual basis and for the future test year when the next base rate case is filed. Additionally, customer complaints regarding pressure and their resolution will be identified, and the customer complaint log will be provided in Excel format, if recordkeeping changes allow.

OCA supports Ambler providing customer complaint logs to the parties because it “will allow the OCA to better monitor the complaints that the Borough is receiving about pressure and other issues not only in the next rate case but also on an annual basis starting in 2023.” OCA St. in Supp. 5. Providing OCA with improved ability to monitor service-related issues should help ensure that Ambler is providing ratepayers with adequate, efficient, safe, and reasonable service and facilities. Additionally, retention of customer complaint logs is required by Commission regulations at 52 Pa. Code § 65.3(b). This settlement term merely assures that Ambler will meet its reporting obligations under the Commission’s regulations and that its customers believe they are receiving satisfactory service. *See* OCA St. 2 at 14-15. Therefore, we believe this settlement term is in the public interest and recommend that it be approved.

## **ANNUAL PRESSURE SURVEYS (Settlement at ¶ 12.f)**

Ambler will continue to conduct an annual pressure survey as required by 52 Pa. Code § 65.6 and will provide the surveys in Excel format with the filing of the next base rate case. OCA supports Ambler continuing to conduct annual pressure surveys as required by Commission regulations and providing the surveys in live Excel format with the next base rate case because it “will allow an immediate and timely review of the pressure survey results and will assist the OCA in identifying concerns regarding pressure levels.” OCA St. in Supp. 6. OCA expressed concern regarding the resolution of several customer complaints related to water pressure. OCA St. 2 at 13. Providing OCA with improved ability to monitor service issues related to water pressure will help ensure that Ambler is providing ratepayers with adequate, efficient, safe, and reasonable service and facilities. Additionally, conducting annual pressure

surveys is required by Commission regulations at 52 Pa. Code § 65.6. This settlement term assures that Ambler will meet its reporting obligations under the Commission's regulations. *See* OCA St. 2 at 10-14. Therefore, we believe this settlement term is in the public interest and recommend that it be approved.

#### **UNACCOUNTED FOR WATER CALCULATIONS (Settlement at ¶ 12.g)**

Ambler will continue to provide separate volumes for the amount of water used for flushing and backwashing its system when it prepares its Unaccounted for Water calculations. Ambler supports this term, noting that it “will make the Borough’s method of calculating Unaccounted for Water consistent with the method the Commission uses for calculating Unaccounted for Water.” Ambler St. in Supp. 4-5. OCA supports this term because it “will permit the OCA to review the Borough’s ongoing calculations in a way that is comparable to its historic calculations.” OCA St. in Supp. 6. Providing Unaccounted for Water calculations consistent with the Commission’s methods will allow interested parties to more readily review the Unaccounted for Water on Ambler’s system and take action as appropriate to help keep Ambler’s overall expenses down. Therefore, we believe this settlement term is in the public interest and recommend that it be approved.

#### **SYSTEM FLUSHING (Settlement at ¶ 12.h)**

Ambler agrees to continue flushing its entire system annually. Ambler supports this term because it “will ensure that regular flushing of the distribution system occurs and that customers will not experience lower quality of water at the tap due to distribution system issues.” Ambler St. in Supp. 5. OCA supports this term because “[t]he regular flushing of the distribution system should help to ensure that the water at the customers’ taps will not be impacted by distribution system issues.” OCA St. in Supp. 6. Ambler’s regular flushing of the distribution system will help ensure that it is providing ratepayers with adequate, efficient, safe, and reasonable service and facilities by ensuring that the water quality is higher. Therefore, we believe this settlement term is in the public interest and recommend that it be approved.

## **VALVE EXERCISING AND REPLACEMENT PROGRAM (Settlement at ¶ 12.i and j)**

OCA expressed concern with Ambler’s exercising and replacement of isolation valves. OCA St. 2 at 2-7. OCA explained the importance of exercising an isolation valve is to prevent valves from seizing up and that, if an isolation valve becomes inoperable, isolation valves are very expensive to repair or replace. OCA St. 2 at 3. Under this term, Ambler will continue its valve exercising program and further commits to exercise the 10-inch and larger valves in the PUC-jurisdictional service area. Also, in its next rate filing, Ambler will include capital expenditures associated with a commitment to replace at least 30 valves that cannot be exercised each year. Ambler agrees to accelerate valve replacements “subject to recovery of such costs through the Distribution System Improvement Charge if it is implemented in accordance with all applicable provisions of the Public Utility Code, applicable regulations, and implementation orders.” Joint Petition, ¶ 12.i. OCA supports acceleration of valve replacement because “it is important to the operation of the distribution system.” OCA St. in Supp. 7.

Ambler will also continue to prepare an exercising and replacement schedule, and provide the schedule to OCA and I&E. OCA supports this reporting requirement so it can review Ambler’s efforts related to valve exercising and replacement. OCA St. in Supp. 7.

We believe this settlement term is in the public interest and recommend that it be approved. A more robust valve exercising and replacement program, including reporting requirements to OCA and I&E, will help ensure that Ambler is providing ratepayers with adequate, efficient, safe, and reasonable service and facilities by taking additional steps to ensure its valves are functioning properly and are replaced when necessary. *See* OCA St. 2 at 2-7. However, we do note our recommendation above that Ambler be required to file revised DSIC tariff language, and an LTIIP. Therefore, as the Joint Petition states, recovery of costs related to accelerated valve replacements may not occur until a DSIC is properly implemented in accordance with the Public Utility Code, applicable regulations, and implementation orders.

### **HYDRANT MARKING (Settlement at ¶ 12.k)**

OCA expressed concern that 56 of Ambler's fire hydrants that are connected to less than 6-inch water mains cannot provide the minimum fire flow of 500 gallons per minute. OCA St. 2 at 7-8. This settlement term states that 56 fire hydrants will be tested by measuring the flow with a pilot gauge and using a pressure gauge mark or other similar device. Any of the hydrants that do not meet a minimum fire flow of 500 gallons per minute within 120 days of the Commission's Final Order in this proceeding must be marked to be used for flushing and blow-offs only until successful tests have been registered. OCA supports this term because it "will provide an important protection for quality of service and safety and should be adopted as in the public interest." OCA St. in Supp. 7. We agree that ensuring Ambler's fire hydrants can provide a minimum fire flow will help ensure that Ambler is providing ratepayers with adequate, efficient, safe, and reasonable service and facilities. Fire safety is of the utmost public importance. Therefore, we believe this settlement term is in the public interest and recommend that it be approved.

### **METER TESTING (Settlement at ¶ 12.l)**

OCA asserted that Chapter 110 Reports from the Department of Environmental Protection indicated Ambler should be testing and replacing meters more often than they have been doing recently. OCA St. 2 at 9. This settlement term requires Ambler to provide, within 90 days of entry of a final Commission Order in this case, a schedule of proposed meter testing/replacements to the parties. OCA supports this term because it "will permit the OCA to review the schedule and pace of meter testing and replacements by the Borough." OCA St. in Supp. 6. Commission regulations mandate that water meters comply with certain accuracy requirements. 52 Pa. Code § 65.8. Providing OCA with improved ability to monitor Ambler's meter testing and replacements will help ensure that Ambler's meters are operating in compliance with Commission regulations and customers are being billed accurately for their usage. *See* OCA St. 2 at 8-10. It is very important that ratepayers receive accurate bills, and we therefore agree that this settlement term is in the public interest and recommend that it be approved.

## **COST OF SERVICE STUDY ISSUES (Settlement at ¶ 12.m)**

OCA expressed concern with Ambler’s use of a second block rate as not reflective of actual cost of service. OCA St. 1; OCA St. 1SR. This settlement term requires that Ambler file a fully allocated cost of service study with its next base rate case. Ambler will provide the cost of service study to I&E, OCA and OSBA at least three months prior to its next base rate case filing to allow for an assessment of whether the study supports the elimination of the second block rate.

OCA supports this term because it “will permit the parties to begin early discussions regarding the issues related to possible elimination of the second block [rate] in the next case” OCA St. in Supp. 4. I&E’s witness expressed concern with Ambler’s direct allocation of 100% of the rate case expense to jurisdictional customers because, absent a cost of service study, I&E asserted singling out one expense for direct allocation was improper given that all other expenses, costs, and revenues could not be assigned to jurisdictional and non-jurisdictional customers. I&E St. No. 3 at 7-10. Therefore, I&E supports this settlement term because “it ensures that all expenses, not just rate case expense, will be allocated by applicable function in the next base rate proceeding.” I&E St. in Supp. 8.

We agree that requiring Ambler to submit a fully allocated cost of service study with its next base rate filing will help ensure that all expenses are properly allocated and will assist the Commission in establishing and assigning rates among the various customer classes that more closely track the true cost of service to each customer class. This term addresses the parties’ various concerns and will help ensure that Ambler is charging just and reasonable rates to its outside-Borough customers. We agree that this settlement term is in the public interest and recommend that it be approved.

## **CONCLUSION**

We find that the settlement, with the recommended modifications, produces rates that are just and reasonable, is in the public interest, and otherwise is consistent with the

requirements of 66 Pa.C.S. § 1308. The active parties engaged in extensive discovery and thoroughly reviewed and evaluated the filing. Correspondingly, the settlement is supported by substantial evidence because the parties admitted into the record the various pre-served testimonies and exhibits noted above.

The active parties also engaged in extensive settlement negotiations and made compromises, which the Commission has stated “fosters and promotes the public interest.”<sup>4</sup> The unanimous agreement of the Joint Petitioners resulted in a lower rate increase than originally proposed by Ambler. Additionally, the settlement saves the cost of further litigation, including any appeal, which conserves administrative resources and reduces rate case expense for the next rate case. Accordingly, we recommend that the Commission approve the proposed settlement and the recommended modifications, and that Ambler file a tariff supplement reflecting the rates set forth in its proposed compliance tariff attached to the Joint Petition as Appendix “A” to become effective no earlier than one day after entry of a final Commission Order in this proceeding.

As we are recommending approval of the Joint Petition, but with the modifications addressed above, we note here the rights of the Joint Petitioners under the Joint Petition to file, if they so choose, exceptions and replies to exceptions related to the recommended modifications.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. §§ 1301, 1308(d).
2. Under Section 1301 of the Public Utility Code, a public utility’s rates must be just and reasonable. 66 Pa.C.S. § 1301.
3. In determining just and reasonable rates, the Commission has discretion to determine the proper balance between the interests of ratepayers and utilities. *Popowsky v. Pa. Pub. Util. Comm’n*, 665 A.2d 808 (Pa. 1995).

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<sup>4</sup> *Pa. Pub. Util. Comm’n v. C S Water & Sewer Assocs.*, 74 Pa. PUC 767, 771 (1991).

4. The term “just and reasonable” is not intended to confine the ambit of regulatory discretion to an absolute or mathematical formula; rather, the Commission is granted the power to balance the prices charged to utility customers and returns on capital to utility investors. *Pa. Pub. Util. Comm’n v. Pa. Gas & Water Co.*, 424 A.2d 1213 (Pa. 1980).

5. 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 resources.

6. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

7. The Commission supports the use of black box settlements. *Pa. Pub. Util. Comm’n v. Aqua Pa., Inc.*, Docket No. R-2011-2267958 (Opinion and Order entered June 7, 2012); *Pa. Pub. Util. Comm’n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered Dec. 19, 2013); Statement of Chairman Robert F. Powelson, *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611, Public Meeting, August 2, 2012.

8. 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. UGI Utils., Inc. – Gas Div.*, Docket No. R-2015-2518438 (Opinion and Order entered Oct. 14, 2016); *Pa. Pub. Util. Comm’n v. Phila. Gas Works*, Docket No. M-00031768 (Opinion and Order entered Jan. 7, 2004).

9. The Joint Petitioners have the burden to prove that the Settlement is in the public interest. *Pa. Pub. Util. Comm’n v. Pike Cnty. Light & Power (Elec.)*, Docket No. R-2013-2397237 (Opinion and Order entered Sept. 11, 2014).

10. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

11. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep’t of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

12. The rates and terms of service set forth in the Joint Petition are supported by substantial evidence and are in the public interest.

### ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Borough of Ambler – Water Department not place into effect the rates contained in Supplement No. 40 to Tariff Water-Pa. P.U.C. No. 5.

2. That the Joint Petition for Settlement of Rate Investigation filed on September 2, 2022, by the Borough of Ambler – Water Department, the Commission’s Bureau of Investigation and Enforcement and the Pennsylvania Office of Consumer Advocate be approved and adopted with the modifications described herein.

3. That the Borough of Ambler – Water Department shall file a tariff supplement reflecting the rates set forth in its proposed compliance tariff attached to the Joint Petition as Appendix “A” to become effective on at least one day’s notice after entry of the Commission’s Order approving the settlement, for service rendered on and after December 30, 2022, which tariff supplement increases rates so as to produce an increase in annual operating revenues of not more than \$424,948 from outside-Borough customers.

4. That the Commission direct Ambler to file a tariff in compliance with the Model Distribution System Improvement Charge Tariff attached as Appendix A to the Commission's Supplemental Implementation Order at Docket No. M-2012-2293611 within 45 days of the entry date of the Commission's Final Order at this docket.

5. That the Commission direct Ambler to file a Long Term Infrastructure Improvement Plan within 180 days of the entry date of the Commission's Final Order at this docket.

6. That the investigation at Docket No. R-2022-3031704 be terminated and marked closed.

7. That the formal complaint filed by the Pennsylvania Office of Small Business Advocate in this proceeding at Docket No. C-2022-3031902 be terminated and marked closed.

8. That the formal complaint filed by Richard Shorin in this proceeding at Docket No. C-2022-3032690 be terminated and marked closed.

Date: October 11, 2022

\_\_\_\_\_/s/  
Steven K. Haas  
Administrative Law Judges

\_\_\_\_\_/s/  
John Coogan  
Administrative Law Judges