**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2014-2430945

David J. Schneider : C-2014-2449779

Office of Consumer Advocate : C-2014-2449258

 :

 v. :

 :

Plumer Water Company :

**RECOMMENDED DECISION**

Before

Mark A. Hoyer

Administrative Law Judge

**TABLE OF CONTENTS**

I. History of the Proceeding 1

II. PUBLIC INPUT HEARING 3

III. DESCRIPTION AND TERMS OF SETTLEMENT 4

 A. Revenue Increase and Allocation 5

 B. Electric Generator 6

 C. Affiliated Interest Agreement 6

 D. Stay-Out Provision 6

IV. DISCUSSION 7

 A. Plumer’s Position 7

 1. Revenue Increase and Allocation 9

 2. Electric Generator 10

 3. Affiliated Interest Agreement 11

 4. Stay-Out Provision 11

 B. I&E’s Position 11

 1. Revenue Increase and Allocation 13

 2. Electric Generator 16

 3. Affiliated Interest Agreement 17

 4. Stay-Out Provision 17

 C. OCA’s Position 18

 1. Revenue Increase and Allocation 19

 2. Electric Generator 19

 3. Affiliated Interest Agreement 20

 4. Stay-Out Provision 20

 D. Recommendation 21

V. CONCLUSIONS OF LAW 25

VI. ORDER 25

I. HISTORY OF THE PROCEEDING

This Recommended Decision approves, without modification, the Joint Petition for Settlement of Rate Investigation (“Joint Petition” or “Settlement”), which the parties joining therein filed on April 1, 2015.

On September 18, 2014, Plumer Water Company (“Respondent” or “Plumer”) filed Supplement No. 13 to Tariff Water-Pa. P.U.C. No. 2 to become effective December 5, 2014, containing proposed changes in rates, rules, and regulations calculated to produce $11,409 (34.92%) in additional annual revenues from customers based on a historic test year ending December 31, 2013.

On October 17, 2014, David J. Schneider filed a formal complaint at Docket No. C-2014-2449779. On October 22, 2014, the Office of Consumer Advocate (“OCA”) filed a formal complaint at Docket No. C-2014-2449258. On October 24, 2014, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance. The OCA’s formal complaint and the formal complaint of David J. Schneider were consolidated in this rate proceeding for mediation, hearing and disposition.

By Order entered November 13, 2014 and pursuant to 66 Pa.C.S. § 1308(d), the filing was suspended by operation of law on December 5, 2014, until July 5, 2015, unless permitted by Commission Order to become effective at an earlier date. The Company subsequently agreed to mediation of this base rate case and further agreed to an additional suspension. Plumer filed Supplement No. 14 to Tariff Water-Pa. P.U.C. No. 2 to suspend the application of the proposed sewer rates until July 5, 2015. On December 16, 2014, the Company filed Supplement No. 15 to Tariff Water-Pa. P.U.C. No. 2 further suspending the effective date until September 5, 2015.

 A Prehearing Conference Notice was mailed to the parties on December 8, 2014, scheduling an initial prehearing conference for December 22, 2014. A Prehearing Conference Order was issued on December 8, 2014 as well. On December 9, 2014, a Mediation Notice was mailed to the parties scheduling the first mediation session for Monday, January 12, 2015 at 10:00 a.m. in Harrisburg, Pennsylvania.

A prehearing conference was held on December 22, 2014, as scheduled. The Company, I&E, the OCA, and David J. Schneider were all present for the conference. A Prehearing Order was issued on January 12, 2015, setting forth the applicable procedures and litigation schedule for this proceeding. In addition, the Prehearing Order scheduled a telephonic public input hearing for January 22, 2015 at 1:00 p.m.

On January 8, 2015, Plumer advertised a Notice of Telephonic Public Input Hearing in *The Derrick* and *The News-Herald*. Proof of Publication was filed with the Commission’s Secretary’s Bureau on January 8, 2015.

Also on January 12, 2015, the first mediation session was held in Harrisburg as scheduled.

On January 22, 2015, the telephonic public input hearing was held as scheduled. Complainant, David J. Schneider, and two others testified.

On January 26, 2015 a Mediation Notice scheduling a further mediation session for January 28, 2015 was mailed to the parties. A second mediation session was held on January 28, 2015, as scheduled.

On April 1, 2015, the Company filed a Joint Petition for Settlement of Rate Investigation executed by Plumer, I&E and the OCA. The parties did not prepare and serve written testimony and exhibits pursuant to the litigation schedule.

The technical evidentiary hearings scheduled for April 15-17, 2015 in Harrisburg were cancelled.

On April 7, 2015, a letter was sent to the only party who did not execute the Joint Petition for Settlement of Rate Investigation, David J. Schneider, requesting that any objection to the Joint Petition be filed by Friday, April 17, 2015. No comment or objection was filed.

On April 22, 2015, an Interim Order Cancelling Litigation Schedule and Closing the Hearing Record was issued.

The record consists of the rate filing, a 27-page transcript of the Prehearing Conference held on December 22, 2014, a 29-page transcript of the Telephonic Public Input Hearing held on January 22, 2015, and the Joint Petition for Settlement of Rate Investigation with Appendices A through and including G.

II. PUBLIC INPUT HEARING

Three individuals, including Complainant, David J. Schneider, offered testimony under oath at the Public Input Hearing. Their respective testimonies will be summarized below in the order in which they testified.

Complainant, David J. Schneider, who resides at 1305 State Route 227, Oil City, Pennsylvania, testified that he is a customer of Plumer. Mr. Schneider testified that he has seen many problems with the water system. He testified that if there is a power outage, water service is interrupted and the water system must be flushed because dirt gets into the system. Tr. 41-42. He testified that Plumer’s water rates are high in comparison to neighboring water systems that provide more than just water service to their customers. Tr. 42-43.

Harold A. Cropp, who resides at 111 Butch Drive, Oil City, Pennsylvania, testified that he is a customer of Plumer. Mr. Cropp agreed with the testimony of Mr. Schneider. In addition, he testified that the rates for water service are high compared to others in the area that offer services in addition to water service. He further testified that he has not seen any upgrades to the water system in the 40 years he has lived there. Tr. 46-48.

Charles W. Turk, who resides at 80 Petroleum Center Road, Oil City, Pennsylvania, testified that he is a customer of Plumer. Mr. Turk opposes the rate increase and questioned why Plumer did not appeal the rate increase passed along to it by Rouseville Borough. He requested that the books of Plumer be audited or that the Commission investigate Plumer because they own other water companies. Mr. Turk agreed with the testimony regarding water service interruptions and the problems caused by the interruptions. He suggested a backup generator to supply electricity to the pumps when there is a power outage. He also testified that he would like the water quality to be tested. Tr. 49-51.

III. DESCRIPTION AND TERMS OF SETTLEMENT

 According to the Joint Petitioners, the Settlement is in the public interest because it (a) minimizes cost-prohibitive litigation and administrative burden; (b) recognizes ratepayers’ concerns; and (c) provides Plumer with additional and necessary cash flow. Settlement, p. 5. The 7-page Joint Petition for Settlement of Rate Investigation includes seven Appendices attached as Appendix A through and including Appendix G. Appendix A is the proposed Settlement Tariff, Supplement No. 16 to Water-Pa. P.U.C. No 2. Appendix B is the Revenue Phase I Verification at Settlement Rates. Appendix C is the Revenue Phase II Verification at Settlement Rates. Appendix D is “Schedule I Distribution of Wages and Benefits to Affiliates.” Appendices E through and including Appendix G are the Statements in Support of the Settlement of the Company, I&E and the OCA respectively. The tariff supplement is designed to produce an increase in annual revenue of $11,409 or 34.92% over two phases. Settlement, p. 3.

Under the presently suspended Supplement No. 13, the monthly cost of water service to a typical residential customer using 2,000 gallons per month would have increased by approximately $14.30, or 35.01%, from $40.84 to $55.14. Under the Settlement, the monthly cost of water service to such residential customer would increase by approximately $13.14, or 32.17%, from $40.84 to $53.98 over two phases. Under Phase I, the monthly cost of water service to such residential customer would increase by approximately $9.94, or 24.34%, from $40.84 to $50.78. Under Phase II, the monthly cost of water service to such residential customer would increase by approximately $3.20, or 6.30%, from $50.78 to $53.98. Settlement, p. 5. The Settlement Tariff attached as Appendix A to the Settlement provides that the consumption charge rate per 1000 gallons/month for Phase I is $13.89. The Settlement Tariff attached as Appendix A

to the Settlement provides that the consumption charge rate per 1000 gallons/month for Phase II is $15.49. Settlement, Appendix A.

Although Joint Petitioners are not in agreement with respect to each claim in the ratemaking process and would not be able to agree upon the specific rate adjustments that may support their respective conclusions, Joint Petitioners assert that their agreement as to the amount of increase in Plumer’s annual water revenue, coupled with the other provisions in the Settlement, provides an appropriate basis for resolution of the instant rate litigation. Settlement, p. 5.

A. Revenue Increase and Allocation

As stated above, the tariff supplement agreed to in the Settlement is designed to produce an increase in annual revenue of $11,409 or 34.92% over two phases. Settlement, p. 3. According to the Settlement, the first phase rates (“Phase I”) produce an annual increase of $8,500 and will become effective upon one day’s notice following the entry of a Commission Order approving this Joint Petition. The second phase rates (“Phase II”), which will produce an additional increase of $2,909, will become effective upon written confirmation from Plumer to the Commission, the OCA and I&E that all conditions contained in Paragraph 10(b) of the Settlement under the heading, “Electric Generator,” have been met. The allocation of design of the Settlement rates provides for a monthly customer charge of $23.00.[[1]](#footnote-1) Proofs of revenue for the two phase increases are attached to the Settlement as Appendices B and C. Settlement, p. 3.

B. Electric Generator

Pursuant to the Settlement, Plumer, at its cost, must purchase a back-up electric generator for installation by the Borough of Rouseville (“Rouseville” or “the Borough”) on the Borough’s water system. Plumer purchases its water supply from the Borough. The back-up generator will provide a source of back-up electric power for water service provided by Rouseville to Plumer to enable water service to continue to Plumer’s customers when there is an outage on the Rouseville system. Plumer agrees to provide written proof and confirmation that the generator has been purchased by Plumer and has been installed by Rouseville and is in working order. Settlement, pp. 3-4.

C. Affiliated Interest Agreement

Within thirty (30) days of the issuance of a Final Order in this matter, the Settlement requires Plumer to file the Revised Schedule I, attached to the Settlement as Appendix D, as an amendment to the Affiliated Interest Agreement (“AIA”) addressed by the Commission at G‑2014-2439212 and approved by Secretarial Letter of the Commission dated December 11, 2014. The Joint Petitioners agreed that the filing will be submitted pursuant to Chapter 21 of the Public Utility Code and that, consistent with submissions under Chapter 21, the amended AIA is not being proposed as a determination that the associated costs or expenses are reasonable or prudent for the purposes of determining just and reasonable rates. Settlement, p. 4.

D. Stay-Out Provision

Plumer agreed that it 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), prior to eighteen (18) months after the entry date of the Commission’s Order approving this Settlement. The Settlement does provide, however, that Plumer may file for a change in rates under Sections 1308(a) and (b) of the Public Utility Code, 66 Pa.C.S. § 1308(a) and (b) (governing general rate relief), or Section 1308(e) of the Public Utility Code, 66 Pa.C.S. § 1308(e) (governing extraordinary rate relief), if a legislative body or administrative agency orders or enacts changes in policy, regulation or statutes which directly and substantially affect Plumer’s rates. Settlement, p. 4.

Additionally, the Settlement provides that Plumer may file for a change in rates if the Borough of Rouseville changes the rates charged to Plumer for water purchased by Plumer from the Borough of Rouseville. Settlement, p. 5.

IV. DISCUSSION

The Commission encourages parties in contested on-the-record proceedings to settle cases. *See*, 52 Pa.Code § 5.231. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

 By definition, a “settlement” reflects a compromise of the parties’ positions, which arguably fosters and promotes the public interest. When parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

A. Plumer’s Position

According to Plumer, it is the stated policy of the Commission to encourage parties in contested proceedings to enter into settlements.[[2]](#footnote-2) Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. 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 replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yields significant expense savings. According to Plumer, such savings directly benefit the individual parties to a proceeding. At the same time, these savings also benefit the Commission and all ratepayers of the utility, who otherwise may have to bear the financial burden such litigation necessarily entails.[[3]](#footnote-3) According to Plumer, the avoidance of further litigation expense in this proceeding is in the public interest. Plumer St. in Support, p. 2.

The Joint Petition proposes a settled resolution of all issues in the rate proceeding. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest.[[4]](#footnote-4) The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest.[[5]](#footnote-5) Plumer St. in Support, p. 3.

The Joint Petitioners agree that the Settlement is in the public interest because it (a) minimizes cost prohibitive litigation and administrative burden; (b) recognizes ratepayers’ concerns; and (c) provides Plumer with additional and necessary cash flow.[[6]](#footnote-6) These three considerations are traditionally recognized as matters that further the public interest in settlement

of rate proceedings.[[7]](#footnote-7) Plumer asserts that each of these considerations applies here where the Settlement minimizes cost prohibitive litigation and administrative burden as set forth above and recognizes ratepayers’ concerns and provides Plumer with additional and necessary cash flow. The Joint Petitioners are also filing individual statements in support of the Joint Petition. Plumer St. in Support, p. 3.

Plumer submits that the proposed comprehensive resolution of this proceeding, presented by the Joint Petitioners after review and analysis and Commission encouraged mediation,[[8]](#footnote-8) is in the public interest and consistent with the requirements of the Public Utility Code, 66 Pa.C.S. § 101 *et seq*., and established Commission policy. While it may not always be the case, Plumer contends that it is the case here that the participation of the Joint Petitioners in Commission encouraged mediation supports the conclusion that the Settlement furthers and is consistent with the public interest. Plumer St. in Support, p. 4.

1. Revenue Increase and Allocation

Under the presently suspended Supplement No. 13, the monthly cost of water service to a typical residential customer using 2,000 gallons per month would have increased by approximately $14.30, or 35.01%, from $40.84 to $55.14. Under the Settlement, the monthly cost of water service to such residential customer would increase by approximately $13.14, or 32.17%, from $40.84 to $53.98. Plumer St. in Support, p. 4.

Plumer explains that the Settlement is “black box,” meaning that the parties have not negotiated each and every revenue and expense line item but rather have, after considerable effort, been able to agree upon a final revenue number based on their individual revenue and expense analysis. Plumer St. in Support, p. 4.

According to Plumer, the financial data it submitted in support of Supplement No. 13 fully supported the original, as-filed for annual increase of $11,409 and, consequently, fully supports the two phase increase of $11,409 provided for in the Settlement. The financial data was submitted in the form of a traditional rate base/rate of return analysis. Plumer St. in Support, p. 5.

Considering all of the foregoing, Plumer submits that it is clear that the Joint Petition and the two phase revenue increase that is reflected in the Settlement rates are in the public interest. Plumer claims that it could have supported the requested increase on a single phase basis if it had proceeded to litigation. According to Plumer, its decision to avoid litigation and mediate a settled resolution avoids costs and expenses as aforesaid. Under the totality of the circumstances presented in this case, Plumer believes that cost avoidance is in its interest and also the interest of its customers. Plumer also explains that the Settlement will provide Plumer with additional and necessary cash flow to pay the increased purchased water charges from Rouseville (in effect since December 25, 2014) and which should be sufficient to allow it to continue to provide reasonable and adequate service.[[9]](#footnote-9) Plumer St. in Support, p. 5.

 2. Electric Generator

The second phase of the Settlement revenue increase is contingent upon Plumer’s purchase of an electric generator and the installation of the generator by Rouseville. The electric generator will provide back-up electric power to enable water service to continue to Plumer’s customers when there is an electric power outage on the Rouseville system. Plumer asserts that the purchase of the generator is a significant investment, the cost of which was not part of Plumer’s ratemaking claims. The purchase and installation of the generator was identified as a way of enhancing service reliability. Plumer accepts the Settlement term as part of the reasonable and appropriate resolution of this proceeding. Plumer St. in Support, pp. 5-6.

3. Affiliated Interest Agreement

Chapter 21 of the Public Utility Code requires Commission approval of contracts or arrangements between a utility and its affiliates. Plumer has an AIA on file with the Commission that was approved at G-2014-2439212. The Joint Petitioners agree that Plumer will file a revised AIA schedule with the Commission. The revised schedule will be submitted pursuant to Chapter 21 of the Public Utility Code. Consistent with submissions under Chapter 21 and significant to the interests of the Company in maintaining rate flexibility going forward, the revised schedule is not being proposed as a binding determination in future rate proceedings. The revised schedule addresses an affiliated interest issue that has been a matter of controversy between and among the Company, I&E and OCA. Plumer accepts the settlement term as part of the reasonable and appropriate resolution of this proceeding. Plumer St. in Support, p. 6.

4. Stay-Out Provision

Plumer agreed as part of the Settlement to an eighteen (18) month rate case stay‑out. A rate case “stay-out” gives ratepayers a specified level of rate security – one and one half years here – that would not exist absent the stay-out. According to Plumer, a rate case “stay‑out” is a traditionally recognized part of the public’s interest in settlement of a rate proceeding.[[10]](#footnote-10) Plumer St. in Support, p. 6.

B. I&E’s Position

I&E is charged with representing the public interest in Commission proceedings related to rates, rate-related services, and applications affecting the public interest. In negotiated settlements, it is incumbent upon I&E to identify how amicable resolution of any such proceeding benefits the public interest and to ensure that the public interest is served. Based upon I&E’s analysis of Plumer’s base rate filing, I&E concludes that acceptance of this proposed Settlement is in the public interest. I&E recommends approval of the Settlement in its entirety. I&E St. in Support, pp. 1-2.

Prior to agreeing to the Settlement, I&E conducted a thorough review of the Company’s filing and supporting information, discovery responses and submitted filing data and contributed to the forthright discussions amongst the parties during settlement discussions. I&E St. in Support, p. 3.

The provisions of the Settlement represent a revenue increase that I&E agrees is just, reasonable, and in the public interest, but is not based upon any specific adjustments or ratemaking approach, unless otherwise specified. I&E St. in Support, p. 3.

According to I&E, it is the policy of the Commission to encourage settlements.[[11]](#footnote-11) The Commission issued the following policy statement that articulates general settlement

guidelines and procedures for major rate cases:

In the Commission’s judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission’s judgment that the public interest will benefit by the adoption of §§ 69.402—69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases.[[12]](#footnote-12)

I&E asserts that this policy statement highlights the importance of settlement in Commission proceedings. I&E St. in Support, p. 4.

The instant rate case was filed on September 18, 2014, and over the past six months, according to I&E, the parties engaged in extensive formal and informal discovery and lengthy settlement discussions. I&E claims that all signatories to the Settlement actively participated in and vigorously represented their respective positions during the course of the settlement process. As such, I&E represents that the issues it raised in this proceeding have been satisfactorily resolved through discovery, discussions, and mediation sessions with the parties and are incorporated in the Settlement. I&E further represents that the Settlement satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. I&E St. in Support, pp. 4-5.

According to I&E, resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense. I&E further submits that the acceptance of this Settlement will negate the need for evidentiary hearings, which would compel the extensive devotion of time and expense for the preparation, presentation, and cross-examination of multiple witnesses, the preparation of Main and Reply Briefs, the preparation of Exceptions and Replies, and the potential of filed appeals, all yielding substantial savings for all parties, and ultimately all customers, as well as certainty on the regulatory disposition of issues. I&E asserts that this Settlement thereby conserves time and expenses for all involved. I&E St. in Support, pp. 11-12.

 1. Revenue Increase and Allocation

As proposed, Plumer requested a revenue increase of $11,409. The allocation of design of the Settlement rates provides for a monthly customer charge of $23.00. I&E analyzed the ratemaking claims contained in the Company’s filing including, but not limited to, operating and maintenance expenses, rate base, and the cost of common equity. After careful and thorough analysis, I&E recommended a revenue increase of the full amount requested, $11,409, because I&E determined that this amount was fully supported by Plumer’s filing and supporting information. Under the presently suspended Supplement No. 13, the monthly cost of water service to a typical residential customer using 2,000 gallons per month would have increased by approximately $14.30, or 35.01%, from $40.84 to $55.14. Under the Joint Petition, the monthly cost of water service to such residential customer would increase by approximately $13.14, or 32.17%, from $40.84 to $53.98. I&E St. in Support, p. 5.

The Joint Petitioners agreed that the increase should be done in two phases, in conjunction with the installation of the electric generator required by the Settlement. Settlement ¶10(b). Therefore, the Settlement tariff is designed to produce an increase in annual revenue of $11,409 or 34.92% over two phases. The Phase I rates produce an annual increase of $8,500 and will become effective upon approval of the Settlement. The Phase II rates, which will produce an additional increase of $2,909, will become effective upon written confirmation from Plumer to the Commission, the OCA and I&E that Plumer has fully complied with the conditions contained in paragraph 10(b) of the Settlement. I&E St. in Support, pp. 5-6.

According to I&E, it is important to note that Plumer’s need for rate relief results, in part, from an unavoidable increase in its purchased water rate pursuant to its purchased water contract with the Rouseville. Specifically, Attachment No. 6 of Supplement No. 13, “Operating Expenses, Cont.” reveals that alongside an adjustment for leaks repaired in 2013 and 2014, the purchased water increase imposed by Rouseville is estimated to cost Plumer $5,433.84. Additionally, as a condition of the Settlement rate, Plumer agreed to purchase a generator in order to provide better service to customers. I&E concludes that the proposed rate increase is in the public interest because it allows Plumer to recoup additional annual revenue needed in order to provide reliable service, while ensuring that Plumer’s ratepayers are paying only necessary costs and that, in turn, they receive safe, effective service. I&E St. in Support, p. 6.

After thorough review and engagement in extensive discovery and settlement discussions, I&E fully supports the revenue level compromised upon in the Settlement. According to I&E, due to the “black box” nature of the Settlement, the Settlement does not reflect agreement upon individual issues; rather, the parties agreed to an overall increase to base rates only in an amount necessary for the provision of safe and reliable service. I&E contends that line-by-line identification and ultimate resolution of every issue raised in the proceeding is not necessary to find that the Settlement is in the public interest, nor could such a result be achieved as part of a settlement. According to I&E, “black box” settlements benefit ratepayers because they allow for the resolution of a contested proceeding at a level of increase that is below the amount requested by the regulated entity and in a manner that avoids the significant expenditure of time and resources related to further litigation. I&E St. in Support, pp. 6-7.

I&E points out that “black box” settlements are not uncommon in Commission practice. Indeed, according to I&E, the Commission has endorsed the use of “black box” settlements, as discussed in a recent Order approving such a settlement:

We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. *See*, *Pa. PUC v. Wellsboro Electric Co*., Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. PUC v. Citizens’ Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company’s revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company’s cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases. For these reasons, we support the use of a “black box” settlement in this proceeding and, accordingly, deny this Exception.[[13]](#footnote-13)

I&E St. in Support, p. 7.

Public utility regulation allows for the recovery of prudently incurred expenses as well as the opportunity to earn a reasonable return on the value of assets used and useful in public service. According to I&E, the increase proposed in the Settlement respects this principle. Ratepayers will continue to receive safe and reliable service at just and reasonable rates while allowing the Company sufficient additional revenues to meet its operating and capital expenses and providing the opportunity to earn a reasonable return on its investment. I&E believes that the Settlement properly balances the interests of all parties. I&E submits that the proposed Settlement is in the public interest and requests that it be approved without modification. I&E St. in Support, pp. 7-8.

 2. Electric Generator

I&E explains that Plumer is under a contract to purchase water from Rouseville, and no other viable water source is available. Unfortunately, according to I&E, significant transmission issues have developed to frustrate water delivery to Plumer’s customers. Specifically, Rouseville pumps the water into Plumer’s system, and when power outages occur in Rouseville, Plumer’s customers are left without water service. Furthermore, once service is reinstated after such outages, customers must flush their systems to clean out debris resulting from the outages.[[14]](#footnote-14) While the pumping issue stems from Rouseville, a non-jurisdictional municipal water utility, the parties devised a solution that will ensure that Plumer ratepayers are no longer left stranded during Rouseville’s power outages. I&E St. in Support, p. 10.

The Settlement provides that Plumer, at its cost, will purchase a back-up electric generator for installation by Rouseville on Rouseville’s water system. The back-up generator will provide a source of back-up electric power for water service provided by Rouseville to Plumer to enable water service to continue to Plumer’s customers when there is an outage on the Rouseville system. The Phase II rates, which will produce an additional increase of $2,909, will become effective only upon Plumer’s written confirmation to the Commission, the OCA and I&E that Plumer has purchased the generator and that the generator has been installed by Rouseville, and is in working order. I&E St. in Support, pp. 10-11.

 3. Affiliated Interest Agreement

As a condition of the Settlement, Plumer agreed to file a Revised Schedule I, attached to the Joint Petition for Settlement as Appendix D, as an amendment to the AIA addressed by the Commission at G-2014-2439212 and approved by Secretarial Letter of the Commission dated December 11, 2014. According to I&E, the amendment to Schedule I is in the public interest because it ensures that ratepayers are not funding the wages and benefits of two of Plumer’s unregulated affiliates that share employees in common with the regulated utilities covered under the current AIA. More specifically, the amended AIA will account for a total wage and benefit allocation of 17%-20% for the unregulated affiliates: B. P. Rhodes & Son, Inc. and B. & B. Rhodes Supply. According to I&E, such allocation will address customer concerns regarding “how much of the company’s money comes from Plumer Water Company to service or take care of the other [affiliated] companies.”[[15]](#footnote-15) I&E St. in Support, p. 8.

The parties agree that the filing will be submitted pursuant to Chapter 21 of the Public Utility Code and that, consistent with submissions under Chapter 21, the amended AIA is not being proposed as a determination that the associated costs or expenses are reasonable or prudent for the purposes of determining just and reasonable rates. However, according to I&E, the amendment will memorialize the existence of the unregulated affiliates so that appropriate allocations may be made in the future, serving to protect ratepayers from paying unreasonable and imprudent costs. Additionally, I&E asserts that the amendment will ensure that Plumer has a guideline to facilitate an accurate accounting of and the separation of costs resulting from unregulated affiliates, making any of its future rate filings for regulated utilities more efficient for all parties. I&E St. in Support, p. 9.

 4. Stay-Out Provision

Absent exigent circumstances**,** the Settlement prevents the Company from filing for a general base rate increase, as that term is defined in Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), prior to eighteen (18) months after the entry date of the Commission’s Order approving this Settlement. The only exceptions to this “stay-out” provision are those that allow the Company to file for a change in rates under Sections 1308(a) and (b) of the Public Utility Code, 66 Pa.C.S. § 1308(a) and (b) (governing general rate relief), or Section 1308(e) of the Public Utility Code, 66 Pa.C.S. § 1308(e) (governing extraordinary rate relief), if a legislative body or administrative agency orders or enacts changes in policy, regulation or statutes which directly and substantially affect its rates. Also, as Plumer is subject to a purchase water contract with Rouseville, an additional exception allows for Plumer to file for a rate change, regardless of the stay-out, if Rouseville changes the purchased water rates charged to Plumer. I&E St. in Support, pp. 9-10.

According to I&E, this stay-out provision provides stability and certainty to rate payers who will experience rate continuity for at least eighteen (18) months from the date of Settlement approval. At the same time, the Company will not be prejudiced, as in the event that it experiences unforeseeable hardship beyond its own control, warranting a rate change, it would be able to seek a rate relief. I&E St. in Support, p. 10.

C. OCA’s Position

Plumer, I&E and the OCA participated in two mediation sessions. Pursuant to the Commission’s policy of encouraging settlements that are in the public interest, the Joint Petitioners also held a number of discussions to resolve the proceeding. The mediation sessions

and discussions resulted in this proposed comprehensive Settlement. The OCA submits that the proposed Settlement is in the interests of the Company’s ratepayers and is in the public interest. OCA St. in Support, p. 3.

The OCA requests approval of the terms and conditions of the Settlement submitted in this proceeding without modification as being in the public interest. OCA St. in Support, p. 6.

 1. Revenue Increase and Allocation

According to the OCA, the proposed Settlement is designed to produce an increase in annual revenue of $11,409 in two phases. In Phase I, the Company will be permitted to increase its annual revenues by $8,500, or 26%, to become effective on one day’s notice after entry of a Commission Order approving the Settlement. Settlement ¶10(a). In Phase II, the Company will be permitted to increase its annual revenues by $2,909, or 7% over Phase I revenues, which will become effective upon written confirmation from Plumer to the Commission, the OCA and I&E that all conditions contained in Settlement ¶10(b) (related to the purchase, installation, and testing of an electric generator on the Rouseville system) have been met. Although the two step phase-in equals Plumer’s original rate increase request, based on the OCA’s analysis of the Company’s filing, and discovery responses, the result would be within the range of likely outcomes in the event of full litigation of the case. The OCA concludes this increase is appropriate when accompanied by other important conditions contained in the Settlement and yields a result that is just and reasonable. OCA St. in Support, p. 3.

The Settlement proposes that the monthly customer charge will be set at $23 (Settlement, ¶10(a)), rather than $27.78 as originally proposed by Plumer. Under the proposed Settlement, the monthly cost of water service to a residential customer using 2,000 gallons of water per month would increase by approximately $13.14, or 32.17%, from $40.84 to $53.98 over two phases. Under Phase I, the monthly cost of water service to a residential customer using 2,000 gallons per month would increase by approximately $9.94, or 24.34%, from $40.84 to $50.78. Under Phase II, the monthly cost of water service to a residential customer using 2,000 gallons of water would increase by approximately $3.20, or 6.30%, from $50.78 to $53.98. OCA St. in Support, pp. 3-4.

 2. Electric Generator

The proposed Settlement requires Plumer to purchase a back-up electric generator for installation by the Borough of Rouseville on the Borough’s water system. Settlement ¶10(b). Plumer purchases all of its water supply from the Borough. Id. When there is an electric outage on the Rouseville system, customers on Plumer’s system experience water outages as well. The back-up generator should enable water service to continue to Plumer’s customers in the event of future electric outages on the Rouseville system. This will provide a benefit to Plumer’s customers. Requiring the generator to be purchased, installed and tested before the second phase of the increase takes effect provides some assurance that the conditions in this section will be met. OCA St. in Support, p. 4.

 3. Affiliated Interest Agreement

The Settlement requires the Company to file a revised Schedule I as an amendment to its AIA pursuant to Chapter 21 of the Public Utility Code. Settlement ¶10(c).

Plumer must file the revised schedule within thirty (30) days of the issuance of a final order in this proceeding. Id. Based on the OCA’s analysis of the Company’s filing, and discovery responses, the OCA opines that the proposed Revised Schedule I should assist parties in future cases to develop a more accurate expense allocation which will help to ensure that ratepayers only bear expenses incurred by the regulated companies. OCA St. in Support, p. 5.

 4. Stay-Out Provision

The Settlement bars the Company from filing a general rate increase, as that term is defined in Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), prior to eighteen (18) months after the entry date of the Commission’s Order approving this Joint Petition for Settlement. Settlement ¶10(d). The OCA contends that the proposed stay-out provision should prevent another rate increase before July 2017, assuming the Company files as soon as the stay-out expires and assuming the next case is fully litigated. Thus, the OCA concludes that the Company’s ratepayers will be assured of some level of rate stability by the stay-out provision. OCA St. in Support, pp. 4-5.

D. Recommendation

 “The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest.” *Pa. Pub. Util. Comm’n v. Philadelphia Electric Company*, 60 Pa. PUC 1, 22 (1985). The Commission has recognized that a settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.” *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

The Settlement in this case is a “black box” settlement. As such, unless otherwise indicated or described therein, the Joint Petitioners have not agreed upon specific adjustments that support their respective positions in this matter. However, the Company, I&E and the OCA all agree to and request approval of the rates proposed in the Settlement as establishing just and reasonable rates for water service provided by Plumer to its customers.

As explained above, a “black box” agreement does not specifically identify the resolution of any disputed issues. Instead, an overall increase to base rates is agreed to and parties retain all rights to further challenge all issues in subsequent proceedings. A “black box” settlement benefits ratepayers as it allows for the resolution of a proceeding in a timely manner while avoiding significant additional expenses.

Realistically, an agreement as to the resolution of each and every disputed issue in this proceeding would have been extremely difficult. If this matter had proceeded as intended in the litigation schedule, written testimony and exhibits would have been prepared and served by the Joint Petitioners, beginning with direct, followed by rebuttal testimony and exhibits, then surrebuttal testimony and exhibits, and lastly, rejoinder. All of this preparation for eventual litigation would have been costly to each of the Joint Petitioners. The Joint Petitioners engaged in discovery, two mediation sessions and settlement discussions wherein I&E and the OCA obtained information necessary to scrutinize Plumer’s rate filing and position themselves for negotiations or perhaps litigation.

The undersigned concludes that the rate increase agreed to in the Settlement adequately balances the interests of ratepayers and the Company and is in the public interest. The Company will receive sufficient operating funds in order to provide safe and adequate service while ratepayers are protected as the resulting Settlement minimizes the impact of the Company’s initial proposal. The negotiated compromise represents an increase in base rates to allow the Company the opportunity to recover an annual increase in intrastate operating revenues of $11,409. Under the presently suspended Supplement No. 13, the monthly cost of water service to a typical residential customer using 2,000 gallons per month would have increased by approximately $14.30, or 35.01%, from $40.84 to $55.14. Under the Settlement, the monthly cost of water service to such residential customer would increase by approximately $13.14, or 32.17%, from $40.84 to $53.98 over two phases. Under Phase I, the monthly cost of water service to such residential customer would increase by approximately $9.94, or 24.34%, from $40.84 to $50.78. Under Phase II, the monthly cost of water service to such residential customer would increase by approximately $3.20, or 6.30%, from $50.78 to $53.98. Settlement, p. 5. Mitigation of the level of the rate increase benefits ratepayers. The increase contained in the Settlement represents an amount which would be within the range of the likely outcomes in the event of full litigation of the case.

Plumer is under a contract to purchase water from Rouseville, and no other viable water source is available for Plumer customers. Unfortunately, according to I&E, significant transmission issues have developed to frustrate water delivery to Plumer’s customers. Specifically, Rouseville pumps the water into Plumer’s system, and when power outages occur in Rouseville, Plumer’s customers are left without water service. Furthermore, once service is reinstated after such outages, customers must flush their systems to clean out debris resulting from the outages.[[16]](#footnote-16) While the pumping issue stems from Rouseville, a non-jurisdictional municipal water utility, the parties devised a solution in this Settlement that will ensure that Plumer ratepayers are no longer left stranded during Rouseville’s power outages. I&E St. in Support, p. 10.

The Settlement provides that Plumer, at its cost, will purchase a back-up electric generator for installation by Rouseville on Rouseville’s water system. The back-up generator will provide a source of back-up electric power for water service provided by Rouseville to Plumer to enable water service to continue to Plumer’s customers when there is an outage on the Rouseville system. The Phase II rates, which will produce an additional increase of $2,909, will become effective only upon Plumer’s written confirmation to the Commission, the OCA and I&E that Plumer has purchased the generator and that the generator has been installed by Rouseville, and is in working order. I&E St. in Support, pp. 10-11.

The undersigned finds that this unique Settlement provision is in the public interest and would benefit both the Company and its customers. If the generator is installed it should prevent future service interruptions with their attendant consequences for customers and Plumer. However, Rouseville was not a party to this rate proceeding and cannot be ordered to install the generator. Despite this concern, the undersigned finds this Settlement provision is in the public interest because the Phase II rates cannot be implemented until after the electric generator is installed and is in working order.

Absent exigent circumstances**,** the Settlement prevents the Company from filing for a general base rate increase, as that term is defined in Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), prior to eighteen (18) months after the entry date of the Commission’s Order approving this Settlement. The only exceptions to this “stay-out” provision are those that allow the Company to file for a change in rates under Sections 1308(a) and (b) of the Public Utility Code, 66 Pa.C.S. § 1308(a) and (b) (governing general rate relief), or Section 1308(e) of the Public Utility Code, 66 Pa.C.S. § 1308(e) (governing extraordinary rate relief), if a legislative body or administrative agency orders or enacts changes in policy, regulation or statutes which directly and substantially affect its rates. Also, as Plumer is subject to a purchase water contract with Rouseville, an additional exception allows for Plumer to file for a rate change, regardless of the stay-out, if Rouseville changes the purchased water rates charged to Plumer. I&E St. in Support, pp. 9-10. The undersigned finds this stay-out provision with the accompanying caveats to be in the public interest. The undersigned concludes that this stay-out provision will assure some level of rate stability for Plumer’s customers.

As a condition of the Settlement, Plumer agreed to file a Revised Schedule I, attached to the Joint Petition for Settlement of Rate Investigation as Appendix C, as an amendment to the AIA addressed by the Commission at G-2014-2439212 and approved by Secretarial Letter of the Commission dated December 11, 2014. The amendment to Schedule I is in the public interest because it ensures that ratepayers are not funding the wages and benefits of two of Plumer’s unregulated affiliates that share employees in common with the regulated utilities covered under the current AIA. More specifically, the amended AIA will account for a total wage and benefit allocation of 17%-20% for the unregulated affiliates: B. P. Rhodes & Son, Inc. and B. & B. Rhodes Supply. I&E St. in Support, pp. 7-8.

In the Settlement, the parties agree that the filing will be submitted pursuant to Chapter 21 of the Public Utility Code and that, consistent with submissions under Chapter 21, the amended AIA is not being proposed as a determination that the associated costs or expenses are reasonable or prudent for the purposes of determining just and reasonable rates.

The undersigned agrees with I&E that the amendment will memorialize the existence of the unregulated affiliates so that appropriate allocations may be made in the future, serving to protect ratepayers from paying unreasonable and imprudent costs. Additionally, the undersigned agrees with I&E that the amendment will ensure that Plumer has a guideline to facilitate an accurate accounting of and the separation of costs resulting from unregulated affiliates, making any of its future rate filings for regulated utilities more efficient for all parties.

 Upon due consideration of the terms and conditions of the Joint Petition for Settlement of Rate Investigation, including the Statements in Support of the Joint Petitioners, and consideration of the public input testimony, the undersigned concludes this Settlement constitutes a fair, just and reasonable resolution of the Commission’s investigation. Therefore, the Joint Petition for Settlement of Rate Investigation is in the public interest and is hereby recommended for approval.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 501, *et seq*.
2. The Joint Petition for Settlement of Rate Investigation is in the public interest and is consistent with the requirements contained in *Lloyd v. Pa. Pub. Util. Comm’n*, 904 A.2d 1010 (Pa.Cmwlth. 2006).

VI. ORDER

 THEREFORE,

 IT IS RECOMMENDED:

1. That the Joint Petition for Settlement of Rate Investigation that the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, the Office of Consumer Advocate and Plumer Water Company have filed at Docket No. R‑2014-2430945, including all terms and conditions stated therein, be approved without modification.
2. That Plumer Water Company shall be permitted to file a tariff supplement incorporating the terms of the Joint Petition for Settlement of Rate Investigation and changes to rates, rules and regulations as set forth in the Joint Petition for Settlement of Rate Investigation, to become effective upon at least one day’s notice after entry of the Commission’s Order approving the Joint Petition for Settlement of Rate Investigation.

3. That, within thirty (30) days of the issuance of the Commission’s Final Order, Plumer Water Company shall file the Revised Schedule I, attached to the Joint Petition for Settlement of Rate Investigation as Appendix D, as an amendment to the Affiliated Interest Agreement addressed by the Commission at G-2014-2439212 and approved by Secretarial Letter of the Commission dated December 11, 2014.

 4. That the formal complaints of David J. Schneider at Docket No. C-2014-2449779 and the Office of Consumer Advocate at Docket No. C‑2014-2449258 be satisfied or denied consistent with the tariff supplement incorporating the terms of the Joint Petition for Settlement of Rate Investigation and changes to rates, rules and regulations as set forth in the Joint Petition for Settlement of Rate Investigation.

5. That the Commission’s investigation at Docket No. R-2014-2430945 and

the formal complaints at Docket No. C-2014-2449779 and Docket No. C‑2014-2449258, be marked closed.

Date: April 23, 2015 /s/

 Mark A. Hoyer

 Administrative Law Judge

1. The Settlement Tariff attached as Appendix A to the Settlement provides that each customer will be assessed a customer charge based upon the size of the customer’s meter. There are four meter sizes and four different customer charges provided for in the Settlement Tariff. The customer charge of $23.00 is for a 5/8 inch meter. [↑](#footnote-ref-1)
2. 52 Pa.Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement or stipulation in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. [↑](#footnote-ref-2)
3. *Pa. Pub. Util. Comm’n v. Imperial Point Water Service Company*, Docket No. R-2012-2315536, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated June 25, 2013, at 11; *Pa. Pub. Util. Comm’n v. The Newtown Artesian Water Company*, Docket No. R-2011-2230259, Recommended Decision of Administrative Law Judge Elizabeth H. Barnes dated September 20, 2011 (“*Recommended Decision of ALJ Barnes*”), at 9; *Pa. Pub. Util. Comm’n v. Reynolds Disposal Company,* Docket No. R-2010-2171339, Recommended Decision of Administrative Law Judge Conrad A. Johnson dated January 11, 2011, at 12; *Pa. Pub. Util. Comm’n v. Lake Spangenberg Water Company,* Docket No. R-2009-2115743, Recommended Decision of Administrative Law Judge Ember S. Jandebeur dated March 2, 2010, at 11; *Pa. Pub. Util. Comm’n v. Reynolds Water Company,* Docket No. R-2009-2102464, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated February 16, 2010, at 5. [↑](#footnote-ref-3)
4. *Recommended Decision of ALJ Barnes*, at 9, citing *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991) and *Pa. Pub. Util. Comm’n v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985). [↑](#footnote-ref-4)
5. *Recommended Decision of ALJ Barnes*, at 9, citing *Warner v. GTE North, Inc.*, Docket No. C‑00902815, Opinion and Order entered April 1, 1996 and *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates,* 74 Pa. PUC 767 (1991). [↑](#footnote-ref-5)
6. Settlement, ¶12. [↑](#footnote-ref-6)
7. *See Recommended Decision of ALJ Barnes*, at 9-10, wherein Judge Barnes concludes that the joint petition in settlement of a water rate proceeding is in the public interest because it (a) minimizes cost prohibitive litigation and administrative burden; (b) recognizes ratepayers’ concerns; and (c) provides [the utility] with additional and necessary cash flow. [↑](#footnote-ref-7)
8. The Commission’s Order entered November 13, 2014, in this matter assigned the case to the Office of Administrative Law Judge for Alternate Dispute Resolution, if possible. [↑](#footnote-ref-8)
9. The public interest is furthered when a utility is provided with sufficient revenue to meet its obligations under Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, to provide safe, reliable and adequate service. The courts have long recognized that, in order to function in the public interest, the utility must have rates which are sufficient to recover legitimate operating costs, and at the same time not result in an excessive return. *Recommended Decision of ALJ Barnes,* citing *Orlosky v. Pa. Pub. Util. Comm’n,* 171 Pa.Super. Ct. 409, 89 A.2d 903 (1952). [↑](#footnote-ref-9)
10. *See, for example, Pa. Pub. Util. Comm’n v. Reynolds Disposal Company,* Docket No. R-2010-2171339, Recommended Decision of Administrative Law Judge Johnson, *supra*, at16 and *Pa. Pub. Util. Comm’n v. Reynolds Water Company*, Docket No. R-2009-2102464, Recommended Decision of Administrative Law Judge Dunderdale, *supra*, at 8-9. [↑](#footnote-ref-10)
11. 52 Pa.Code § 5.231. [↑](#footnote-ref-11)
12. 2 Pa.Code § 69.401. [↑](#footnote-ref-12)
13. *Pa. Pub. Util. Comm’n v. Peoples TWP LLC*, Docket No. R-2013-2355886, p. 28 (Order entered December 19, 2013). [↑](#footnote-ref-13)
14. Tr. 42, 50-51. [↑](#footnote-ref-14)
15. Tr. 50. [↑](#footnote-ref-15)
16. Tr. 42, 50-51. [↑](#footnote-ref-16)