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| **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | |
|  | Public Meeting held November 19, 2015 |
| Commissioners Present:  Gladys M. Brown, Chairman  John F. Coleman, Jr., Vice Chairman  Pamela A. Witmer  Robert F. Powelson  Andrew G. Place | |
| Pennsylvania Public Utility Commission  Office of Consumer Advocate  Office of Small Business Advocate  PP&L Industrial Customer Alliance  D. Wintermeyer  Cathleen A. Woomert  Michael B. Young  Joseph E. McAndrew  Michael C. Muller  v.  PPL Electric Utilities Corporation | R-2015-2469275  C-2015-2475448  C-2015-2478277  C-2015-2480265  C-2015-2485827  C-2015-2484588  C-2015-2485860  C-2015-2489524  C-2015-2501983 |
| PPL Electric Utilities Corporation  Petition for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Revenues | P-2015-2474714 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Letter in Lieu of Exceptions (Letter) filed by the PP&L Industrial Customer Alliance (PPLICA) [[1]](#footnote-1) on October 13, 2015, seeking clarification of the record regarding a statement included in the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Susan D. Colwell, issued October 5, 2015, in the above-captioned proceedings. A letter response to PPLICA’s Letter (Response) was filed by PPL Electric Utilities Corporation (PPL or the Company) on October 22, 2015.[[2]](#footnote-2)

Also before the Commission is the Joint Petition for Approval of Settlement of All Issues (Joint Petition or Settlement), filed September 3, 2015, by PPL, the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), PPLICA,[[3]](#footnote-3) the Commission for Economic Opportunity (CEO), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Clean Air Council (CAC), Sustainable Energy Fund (SEF), The Alliance for Solar Choice (TASC), Keystone Energy Efficiency Alliance Energy Education Fund (KEEA), Natural Resources Defense Council (NRDC), Environmental Defense Fund (EDF), and Eric Joseph Epstein, all parties to the above-captioned proceeding (collectively, Parties or Joint Petitioners). For the reasons set forth herein, we shall deny PPLICA’s request for clarification of the Recommended Decision, adopt the Recommended Decision, consistent with this Opinion and Order, and approve the Settlement.

**I. History of the Proceeding[[4]](#footnote-4)**

On March 31, 2015, PPL filed Supplement No. 179 to Tariff – Electric Pa. P.U.C. No. 201 (Supplement No. 179), containing proposed changes in rates, rules, and regulations calculated to produce approximately $167.5 million in additional annual revenues based upon data for a Fully Projected Future Test Year (FPFTY) ending December 31, 2016. This proposed rate change represented an average increase in the Company’s distribution rates of approximately 18.5%, and an average increase in total rates (distribution, transmission, and generation charges) of approximately 3.9%. Supplement No. 179 was originally proposed to become effective on June 1, 2015, but as noted *infra*, was subsequently suspended by the Commission until January 1, 2016.

Also on March 31, 2015, PPL filed a Petition at Docket No. P-2015-2474714 requesting (1) waiver of the Distribution System Improvement Charge (DSIC) cap of 5% of billed revenues; and (2) approval to increase the maximum allowable DSIC cap from 5% to 7.5% of billed revenue for service rendered on or after January 1, 2016 (DSIC Petition). Because issues related to the waiver and increase in the DSIC cap are interrelated with the base rate case, PPL requested that the DSIC Petition be consolidated and considered in conjunction with the rate case.

On April 11, 2015, notice of the filing of PPL’s DSIC Petition was published in the *Pennsylvania Bulletin*. 45 *Pa. B.* 1917.

By Order entered April 23, 2015, the Commission suspended Supplement No. 179 until January 1, 2016, unless otherwise directed by Order of the Commission.

On April 27, 2015, the OCA and OSBA filed Answers to the DSIC Petition, and PPLICA filed a Petition to Intervene and Protest to the DSIC Petition.

Formal Complaints against Supplement No. 179 were filed by the OCA, OSBA, PPLICA, D. Wintermeyer, Cathleen A. Woomert, Michael B. Young, Joseph E. McAndrew, and Michael C. Muller. Petitions to intervene were filed by CEO, CAUSE-PA, CAC, SEF, TASC, NRDC, KEEA, EDF, and Eric Joseph Epstein. I&E filed a Notice of Appearance. The petitions to intervene were granted in subsequent orders issued by the ALJ.

Two public input hearings were held in Harrisburg, Pennsylvania on June 2, 2015. A separate public input hearing was held in Allentown, Pennsylvania on June 4, 2015. A total of twenty-three witnesses testified at the public input hearings.

On July 28, 2015, PPL informed the ALJ that a partial settlement in principle had been reached among the Parties on a majority of the issues in the proceeding, and by August 3, 2015, all issues but one had been settled. At the request of the Parties, the scheduled hearing dates were reduced from four to one. On August 5, 2015, PPL informed the ALJ that the case had been fully settled.

On August 11, 2015, the hearing was held as scheduled in order to hear testimony of *pro se* Complainants and to receive prepared testimony into the record. The testimony and exhibits of the Parties were admitted without opposition.

As noted, the Joint Petition was filed on September 3, 2015. Individual Statements in Support of the Settlement were also filed by the Joint Petitioners.[[5]](#footnote-5)

On September 8, 2015, Formal Complainants Cathleen A. Woomert, D. Wintermeyer, Michael B. Young, and Joseph E. McAndrew were each sent a copy of the Joint Petition and given until September 21, 2015, to file comments on the Settlement. On September 23, 2015, Formal Complainant Michael C. Muller was served with the Joint Petition and given until September 28, 2015 to respond. A response was filed by D. Wintermeyer on September 21, 2015. None of the other *pro se* Complainants filed responses.

On October 5, 2015, the Commission issued the Recommended Decision of ALJ Colwell, in which she recommended, *inter alia*, that the Joint Petition be approved without modification. R.D. at 66. The Parties were given until October 13, 2015, to file exceptions to the Recommended Decision. As noted above, PPLICA filed its Letter on October 13, 2015, seeking clarification with regard to a statement included in the Recommended Decision. PPL filed its Response to PPLICA’s Letter on October 22, 2015. None of the other Joint Petitioners filed exceptions to the Recommended Decision or responses to PPLICA’s Letter.

**II. Discussion**

**A. Joint Petition for Approval of Settlement of All Issues**

The Joint Petition represents a full settlement of all issues raised in this proceeding, and provides for increases in rates designed to produce a net increase in PPL’s annual distribution operating revenues of $124 million, based upon a FPFTY ending December 31, 2016, to become effective for service rendered on and after January 1, 2016. Joint Petition at 2. The Joint Petition consists of a twenty-two-page document with attached Appendices A and B. The body of the document contains the terms and conditions of the Settlement as agreed to by the Joint Petitioners. Appendix A consists of a *pro forma* tariff supplement reflecting the rates and tariff changes agreed to by the Joint Petitioners. Appendix B is a proof of revenues statement reflecting the rates agreed to by the Joint Petitioners.

The substantive terms of the Settlement are set forth in Paragraphs 19 through 55 of the Joint Petition, and are repeated verbatim below as follows:

**A. GENERAL**

19. The following terms of this Settlement reflect a carefully balanced compromise of the interests of all of the active parties in this proceeding. The Joint Petitioners unanimously agree that the Settlement is in the public interest.

20. The Joint Petitioners unanimously agree that PPL Electric’s March 31, 2015 distribution base rate increase filing will be approved, including those tariff changes included in and specifically identified in Appendix A attached hereto, subject to the terms and conditions of this Settlement specified below:

**B. REVENUE REQUIREMENT**

21. PPL Electric will be permitted to submit a revised Supplement to PPL Electric’s Tariff – Electric Pa. P.U.C. No. 201 designed to produce an annual distribution rate revenue increase of $124 million, to become effective for service rendered on and after January 1, 2016. The increase in annual operating revenue is in lieu of the as filed net increase of approximately $167.5 million. The settlement as to revenue requirement shall be a “black box” settlement, except for the following items: (1) the $14,700,000 for reportable storm damage expenses; (2) the roll-in of the DSIC capital investment and associated depreciation and tax effects in base rates per the Company’s proposal; (3) as provided in I&E Statement No. 2, the 2011 amortized storm expense of $5,324,000 will be included in the base rate component of the Storm Damage Expense Rider (“SDER”) beginning January 1, 2018, as specified below; and (4) the return on equity (“ROE”) for purposes of the DSIC and Smart Meter Rider (“SMR”) will be the ROE for the DSIC set forth in the Commission’s Report on the Quarterly Earnings of Jurisdictional Utilities.

22. As provided in I&E Statement No. 3, on or before April 1, 2016, PPL Electric will provide the Commission’s Bureau of Technical Utility Services (“TUS”), I&E, OCA, and OSBA an update to PPL Electric Exhibits JJS-2 and JJS-3, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ending December 31, 2015. On or before April 1, 2017, PPL Electric will update Exhibits JJS-2 and JJS-3 filed in this proceeding for the twelve months ending December 31, 2016. In PPL Electric’s next base rate proceeding, the Company will prepare a comparison of its actual expenses and rate base additions for the twelve months ended December 31, 2016 to its projections in this case. However, it is recognized that this is a black box settlement that is a compromise of the parties’ positions on various issues.

**C. REVENUE ALLOCATION**

23. The Joint Petitioners agree or do not oppose the following revenue allocation:[[6]](#footnote-6)

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| --- | --- |
| Rate Schedule | Revenue Allocation (thousands) |
| RS | $110,875 |
| RTS | $1,800 |
| GS-1 | $9,745 |
| GS-3 | $(3,200) |
| LP-4 | $3,900 |
| LP-5 | $(750) |
| LPEP | $1,071 |
| GH-2 | $355 |
| SL/AL | $204 |
| Total | $124,000 |

24. The proposal in OSBA Statement No. 1 that the rate increase for Rate Schedule BL match Rate Schedule GS‑-1 is accepted.

25. The proposal in OSBA Statement No. 1 that Rate Schedule GH-2 continue to be phased out is accepted.

**D. RATE DESIGN**

26. PPL Electric’s proposal to move to a daily customer charge for all Rate Schedules and Riders is withdrawn without prejudice.

27. The proposed customer charge for Rate Schedule RS will be maintained at $14.09 per month.

28. PPL Electric’s proposal to roll the Small Commercial & Industrial (“Small C&I”) Merchant Function Charge (“MFC”) and Purchase of Receivables (“POR”) uncollectible accounts expense percentages into base rates and to set the uncollectible percentage at 0.0% for both the MFC and POR is withdrawn. PPL Electric’s proposal to annually adjust the uncollectible percentage for both the MFC and POR is withdrawn. The Residential uncollectible percentage will be set at 2.31% for both the MFC and the POR, and the Small C&I uncollectible percentage will be set at 0.23% for both the MFC and the POR

**E. AMTRAK**

29. PPL Electric and National Railroad Passenger Corporation (“Amtrak”) agree that for purposes of settlement of this proceeding the customer charge for Rate Schedule LPEP will be reduced from the proposed $252,647.17 per month to $126,323.59 per month, effective January 1, 2016, subject to further resolution of the issues as described in Paragraphs 30 and 31 below.

30. PPL Electric and Amtrak agree to continue to work together to resolve all open issues regarding the upgrade of the Conestoga Substation, including possible alternative resolution regarding the final scope, timing, and costs of the upgrades needed for the Conestoga Substation. PPL Electric and Amtrak agree to make good faith efforts to conclude the negotiations and execute a final agreement by no later than September 1, 2016.

31. PPL Electric and Amtrak agree that PPL Electric will submit a further tariff filing for Rate Schedule LPEP to reflect (i) the negotiated agreement ultimately reached by PPL Electric and Amtrak or (ii) the fact PPL Electric and Amtrak were unable to reach an agreement by September 1, 2016.

**F. DSIC**

32. The DSIC capital investment and associated depreciation and tax effects will be rolled into base rates per PPL Electric’s proposal and the DSIC will be reset to 0% upon implementation of new base rates.

33. As of the effective date of rates in this proceeding, PPL Electric will be eligible to include plant additions in the DSIC once eligible account balances exceed the levels projected by PPL Electric at December 31, 2016. The foregoing provision is included solely for purposes of calculating the DSIC, and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in a FPFTY filing.

34. PPL Electric’s proposal to increase the DSIC cap from 5% to 7.5% of billed revenues is withdrawn without prejudice.

35. PPL Electric will modify the DSIC tariff to exclude Rate Schedule LPEP prospectively beginning January 1, 2016.

**G. SDER**

36. The reportable storm damage expenses to be recovered annually through base rates will be set at $14,700,000. The SDER will recover from customers or refund to customers, as appropriate, only applicable expenses from reportable storms that are less than or greater than $14,700,000 million recovered annually through base rates.

37. Beginning January 1, 2018, the amortized 2011 storm expense of $5,324,000 will be included in the base rate component of the SDER as provided in I&E Statement No. 2.

38. To the extent that actual eligible storm damage expenses for 2015 are more or less than the $14.7 million PPL Electric is recovering through base rates, this over/under collection will be refunded/recouped during the 2016 SDER recovery period (January 1, 2016 through December 31, 2016).

39. PPL Electric will continue to recover the Hurricane Sandy amortization during the 2016 SDER recovery period (January 1, 2016 through December 31, 2016), consistent with Commission-approved consecutive three year recovery period for major storm events.

40. The SDER rate structure for the Large Commercial and Industrial Class (“LC&I”) will be changed from a $/kW charge to a monthly customer charge.

41. Notwithstanding any agreements made herein as to the SDER, the Joint Petitioners agree that the final determination of the courts as to the disposition of the SDER in the current appeal process will control as to the legality of the SDER under Section 1307(a) of the Public Utility Code, 66 Pa.C.S. § 1307(a). All Joint Petitioners reserve their rights, however, to address design and public policy issues as to the SDER in any future proceeding. By agreeing to these terms at this time, no Joint Petitioner is waiving or relinquishing any of its rights or claims that are currently before the courts.

**H. CUSTOMER ASSISTANCE PROGRAMS**

42. PPL Electric will increase its maximum CAP credits by a percentage equal to 50% of the overall percentage increase in Rate Schedule RS rates. The Joint Petitioners reserve the right to evaluate further revisions to CAP credits and to recommend additional changes in the Company’s next universal service proceeding. The Joint Petitioners retain the right to review and file testimony concerning any such proposals as permitted by the normal Commission process for review of Universal Service Plans.

43. PPL Electric will increase its annual Low Income Usage Reduction Program (“LIURP”) funding by $500,000, effective January 1, 2016. The Joint Petitioners reserve the right to evaluate further revisions in LIURP funding and to recommend additional changes in the Company’s next universal service proceeding. The Joint Petitioners retain the right to review and file testimony concerning any such proposals as permitted by the normal Commission process for review of Universal Service Plans.

44. PPL Electric intends to continue to use community based organizations to assist in the implementation of its universal service programs, subject to changes in the Company’s future universal service proceedings. The Joint Petitioners retain the right to review and file testimony concerning any such proposals as permitted by the normal Commission process for review of Universal Service Plans.

45. PPL Electric commits to evaluate existing senior education programs established by comparable utilities and to recommend whether or not to adopt a senior education program in its next universal service proceeding.

46. PPL Electric agrees to undertake a pilot program in the Lancaster County area using local churches and food banks to further promote and educate customers about LIURP and Act 129 programs.

47. To address the bad debt, arrearage forgiveness, and Cash Working Capital issues raised in OCA Statement No. 4, PPL Electric will provide a fixed Universal Service Rider (“USR”) credit of $100 per month for all CAP customers above 44,000. The Joint Petitioners further agree to evaluate further revisions in the USR credit and arrearage forgiveness and to recommend additional changes in the Company’s next universal service proceeding. The Joint Petitioners retain the right to review and file testimony concerning any such proposals as permitted by the normal Commission process for review of the Universal Service Plan.

48. PPL Electric shall apply all residential payments in compliance with Rule 9.D(8) of its Tariff, which provides in relevant part: “Payments which are insufficient to pay for both a balance due for prior use and billing for current use are first applied to the balance due for prior use, except when an unpaid bill is a disputed bill or when a payment plan for an overdue balance is agreed upon.” Residential payments will be posted against late payment charges only when there is no unpaid balance due for prior consumption, and late fees will not be compounded.

49. PPL Electric commits to hold a collaborative by May 31, 2016, with all interested stakeholders to discuss and evaluate CAP customer participation in the competitive shopping market as set forth in OCA Statement No. 4 and CAUSE-PA Statement No. 1-R. In advance of the collaborative, PPL Electric shall obtain and provide data to interested stakeholders regarding the number of CAP customers that are shopping, whether the rates paid by shopping CAP customers is above or below the Price to Compare, and the impact that shopping CAP customers have on CAP credits and CAP customers’ bills. The Joint Petitioners reserve the right to evaluate further revisions to CAP customer participation in the competitive shopping market and to recommend changes to CAP customer shopping in the Company’s next default service procurement plan proceeding. The Joint Petitioners retain the right to review and file testimony concerning any such proposals as permitted by the normal Commission process for review of the default service plan proceeding.

**I. NET METERING**

50.PPL Electric’s proposal to revise Rate Schedule RS to move residential customers with a renewable generation facility greater than 50 kW from residential rates to a general service rate is adopted.

51. PPL Electric’s proposed revisions to its Net Metering tariff provisions on (Tariff Pages 19L.2 and 19L.4) are withdrawn with the exception of the proposal to eliminate the Time-of-Use language.

**J. INTERCONNECTION RULES**

52.For Level 1, 2, 3, and 4 interconnection requests, PPL Electric will undertake best efforts to return a fully executed Certificate of Completion, approving the facility for operation, within (i) ten days from the date of a witness test or inspection that confirms all the equipment has been properly installed and that all electrical connections meet the Company’s requirements, or (ii) ten days after the witness test has been deemed waived.

53. PPL Electric agrees to undertake a study of the legality, feasibility, and technical requirements of interconnecting distributed generation storage and battery facilities, including solar storage facilities. PPL Electric agrees to consult with TASC in preparing the study.

54. The Joint Petitioners agree that TASC’s proposed distributed generation interconnection standards and reporting requirements should be addressed through a statewide proceeding that provides all potentially affected parties with the opportunity to fully participate and/or comment. In the event that the Commission initiates a statewide stakeholder collaborative or discussion of the distributed generation interconnection standards and reporting requirements, PPL Electric agrees not to oppose the opening of a statewide process and will participate in any such proceeding. PPL Electric reserves the right to raise any and all arguments and positions in any such stakeholder process (other than an opposition to holding such a process), and this agreement is made without any admission against, or prejudice to, any position that any party may raise in any such stakeholder process.

**K. REVENUE DECOUPLING[[7]](#footnote-7)**

55. On or before March 1, 2016, PPL Electric will hold a collaborative open to all interested parties to seek input regarding revenue decoupling. All Joint Petitioners reserve their right to raise any and all arguments and positions in the collaborative, or to the Commission, including opposing the implementation of decoupling in whole or in part.3

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3 I&E, PPLICA, and CEO do not endorse or support the revenue decoupling collaborative in Paragraph 55 but, for the sole purpose of reaching a settlement of this rate case, do not actively oppose Paragraph 55.

Joint Petition at 7-15.

The Settlement is conditioned upon the Commission’s approval of the terms and conditions contained therein without modification. The Joint Petitioners agree that if the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from the Joint Petition and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. The Joint Petitioners acknowledge and agree that if the Settlement is approved, the rates, rules, and proposals set forth in PPL’s base rate filing, as modified by the Settlement, shall be Commission-made rates. *Id.* at 16.

The Joint Petitioners agree that if the Commission does not approve the Settlement and the proceedings continue, the Joint Petitioners reserve their respective rights to evidentiary hearings, submission of additional testimony and exhibits, cross-examination of witnesses, briefing, and argument of their respective positions. The Joint Petitioners further agree that the Settlement is made without any admission against, or prejudice to, any position that any Joint Petitioner may adopt in the event of any further litigation in these proceedings or any other proceeding. *Id*. at 16-17.

The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Joint Petitioner’s position with respect to any issues raised in this proceeding. The Joint Petitioners agree that the terms and conditions of the Settlement are limited to the facts of this specific case and are the product of compromise for the sole purpose of settling this case. The Settlement is presented without prejudice to any position that any of the Joint Petitioners may have advanced and without prejudice to the position any of the Parties may advance on the merits of the issues in future proceedings. The Joint Petitioners further agree that the Settlement does not preclude them from taking other positions in proceedings of other public utilities under Section 1308 of the Public Utility Code (Code), 66 Pa. C.S. § 1308, or any other proceeding. Finally, the Joint Petitioners agree that if the ALJ adopts the Settlement without modification, the Joint Petitioners waive their right to file Exceptions. *Id*. at 17.

**B. Legal Standards**

The purpose of this investigation is to establish rates for PPL’s customers that are “just and reasonable” pursuant to Section 1301 of the Code, 66 Pa. C.S. § 1301. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pennsylvania Gas and Water Co. v. Pa. PUC*, 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 Co. v. Public Service Comm’n of West Virginia,* 262 U.S. 679 (1923) and *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield,* the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

*Bluefield,* 262 U.S. at 692-93.

It is the Commission’s policy to promote settlements. 52 Pa. Code §§ 5.231 and 69.401. 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. 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. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M‑00031768 (Order entered January 7, 2004); *Pa. PUC v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

Typically in proceedings before the Commission, the public utility has the burden to establish the justness and reasonableness of every element of its rate increase in all proceedings conducted under Section 1308(d) of the Code, [66 Pa. C.S. § 1308(d)](http://www.lexis.com/research/buttonTFLink?_m=6840269e96d866f7def0bd999ce92e73&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b293%20P.U.R.4th%20235%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=14&_butInline=1&_butinfo=66%20PACS%201308&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=464915d2447578a011ff30165eef4e75). Section 315(a) of the Code, [66 Pa. C.S. § 315(a)](http://www.lexis.com/research/buttonTFLink?_m=6840269e96d866f7def0bd999ce92e73&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b293%20P.U.R.4th%20235%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=15&_butInline=1&_butinfo=66%20PACS%20315&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=a106ff73ba6d63872120ef8ca081a002), specifies that “[i]n 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.” *See Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2010-2215623 (Order entered October 14, 2011) (*Columbia Gas*). In addition, Section 332(a) of the Code, 66 Pa. C.S. § 332 (a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. Consequently, in this proceeding, the Joint Petitioners have the burden to prove that the terms and conditions of the Settlement are just, reasonable, and in the public interest.

It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-ling Hosiery v. Margulies,* 364 Pa. 45, 70 A.2d 857 (1950).

**C. ALJ’s Recommendation**

As a preliminary matter, we note that the ALJ made sixteen Findings of Fact and reached nineteen Conclusions of Law. R.D. at 8-10; 66-69. We will adopt the Findings of Fact and Conclusions of Law unless they are overruled expressly or by necessary implication.

In her Recommended Decision, ALJ Colwell provided an extensive discussion of the issues addressed by the terms and conditions of the Settlement, as well as the positions of the Joint Petitioners regarding the Settlement, as set forth in the individual Statements in Support of the Settlement. The ALJ found the Settlement terms with regard to each issue to be reasonable and in the public interest. R.D. at 33-63. In addition, the ALJ stated as follows:

The proposed Settlement is an indication that the litigating parties agree that the agreed-upon rates will permit the utility 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. The parties are confident that the return is sufficient to assure confidence in the financial soundness of the utility and is adequate to maintain and support its credit and enable it to raise the money necessary for the proper discharge of the utility’s public duties, consistent with *Bluefield,* supra.

*Id*. at 65.

The ALJ also addressed the response in opposition to the Settlement filed by the *pro se* Complainant D. Wintermeyer. The ALJ found that Mr. Wintermeyer failed to sustain his burden of supporting his claims “that the operations of the Company [were] in any way unconstitutional or criminal or that its nature as a regulated monopoly [was] illegal or in violation of the Federal antitrust laws, or that the Company has enjoyed unfair partiality at the hands of this Commission.” *Id*. at 65-66. Accordingly, the ALJ dismissed Mr. Wintermeyer’s Formal Complaint. *Id*. at 66. The ALJ also dismissed the Formal Complaints of *pro se* Complainants Cathleen A. Woomert, Michael B. Young, Joseph E. McAndrew, and Michael C. Muller. *Id*. at 71.

Based on her analysis of the Settlement, the ALJ concluded that the Joint Petition “is in the public interest, and is consistent with the legal standards required under *Bluefield, supra.”* *Id*. Accordingly, the ALJ recommended that the Settlement be approved without modification. *Id*.

**D. PPLICA’s Letter and PPL’s Response[[8]](#footnote-8)**

In its Letter, PPLICA, a signatory Party to the Settlement, states that it does not except to the findings in the Recommended Decision, and supports the ALJ’s finding that the Settlement is in the public interest. However, PPLICA asserts that the Recommended Decision includes a factual statement regarding Amtrak’s savings under Rate Schedule LPEP that merits clarification of the record. PPLICA Letter at 1. PPLICA expresses its concern that, absent such clarification, the subject language in the Recommended Decision could be cited with prejudice, contrary to the language set forth in Paragraph 63 of the Joint Petition. *Id*., n.1.[[9]](#footnote-9)

As the ALJ noted, Amtrak is the sole customer taking service under Rate Schedule LPEP, which is the rate schedule under which PPL provides electricity for electric propulsion service from the Company’s high voltage lines of 69,000 volts or higher, when the customer furnishes and maintains all equipment necessary to transform the energy from line voltage. R.D. at 44, citing PPL St. No. 4-R at 30. In accordance with the Settlement, PPL and Amtrak agree that the customer charge for Rate Schedule LPEP will be reduced from the proposed $252,647.17 per month to $126,323.59 per month, effective January 1, 2016, and that PPL and Amtrak will continue to work together to resolve all open issues regarding the upgrade of the Conestoga Substation.[[10]](#footnote-10) PPL and Amtrak agree to make good faith efforts to conclude the negotiations and execute a final agreement by no later than September 1, 2016. PPL will then submit a further tariff filing for Rate Schedule LPEP to reflect either the negotiated agreement ultimately reached by PPL and Amtrak, or the fact that PPL and Amtrak were unable to reach an agreement by September 1, 2016. Joint Petition at 9-10.

In her discussion of Rate Schedule LPEP and the applicable Settlement provisions, the ALJ stated that “[t]he history of how Rate Schedule LPEP has evolved and the very significant savings Amtrak has received as a result of being on Rate Schedule LPEP is explained in PPL Electric St. No. 4-R, pp. 30-32.” R.D. at 44.[[11]](#footnote-11) PPLICA asserts that this statement regarding PPL’s testimony about Amtrak’s savings under Rate Schedule LPEP “should be clarified to reflect PPLICA’s record testimony stating that Rate LPEP eliminated cross-subsidization, as ‘Amtrak would have been subsidizing LP-5 customers had it not changed to the LPEP rate.’” PPLICA Letter at 1, citing R.D. at 44, PPL St. No. 4-R at 30-32 and PPLICA St. No. 3-S at 5. PPLICA argues that because the Settlement did not address the matter of whether Amtrak received savings as a result of being on Rate Schedule LPEP, PPLICA’s proposed limited clarification “benefits the Commission and all parties by avoiding uncertainty and providing a full account of the record supporting the Settlement.” PPLICA Letter at 2.

In its response, PPL considers PPLICA’s Letter to represent an exception to the Recommended Decision, and asserts that it is improper, is without merit, and should be denied. PPL points out that the Joint Petitioners agreed to waive their right to file exceptions if the ALJ adopted the Settlement without modification. Because PPLICA was a Party to the Settlement, and because the ALJ adopted the Settlement without modification, PPL argues that PPLICA’s exception must be denied. PPL contends that consideration of PPLICA’s exception by the Commission would set a very bad precedent by allowing a party to a settlement to disregard and take actions contrary to the express terms and conditions of that settlement. According to PPL, the only conditions under which a party to the Settlement in this proceeding may file exceptions are if the ALJ does not adopt the Settlement, or if the ALJ adopts the Settlement with modifications. PPL Response at 3.

PPL also contends that the basis for PPLICA’s Letter is contrary to the Settlement. According to PPL, PPLICA’s concern that the language in the Recommended Decision regarding Amtrak’s savings under Rate Schedule LPEP might be cited with prejudice already has been addressed and resolved by the Settlement. PPL points out that the Joint Petition expressly provides that the Settlement is “presented without prejudice to any position which any of the Joint Petitioners may have advanced, and without prejudice to the position any of the parties may advance on the merits of the issues in future proceedings.” *Id*., citing Joint Petition ¶ 63.

Finally, PPL asserts that the ALJ’s statement regarding Amtrak’s savings under Rate Schedule LPEP is not a finding of fact or conclusion of law, but is simply a summary of PPL’s position in support of its original proposal regarding Rate Schedule LPEP. PPL argues that it is not necessary to modify the Recommended Decision to clarify the record regarding PPLICA’s own position as PPLICA requests, because that position is already a part of the record in the form of PPLICA’s testimony and exhibits, which were admitted to the record without objection. PPL Response at 4.

**E. Disposition**

Based on our review of the record, we concur with the ALJ that the Joint Petition is reasonable and in the public interest, and we will approve it without modification. We believe the proposed Settlement reasonably balances the interests of the Joint Petitioners, and is consistent with the applicable legal standards, as the ALJ found.

With regard to PPLICA’s Letter, we find the request to modify the Recommended Decision regarding the language in question to be improper and without merit, and we will deny it. Although PPLICA states that it does not except to the findings set forth in the Recommended Decision, it clearly is not comfortable with the ALJ’s statement that PPL’s testimony regarding Rate Schedule LPEP included a discussion of “[t]he history of how Rate Schedule LPEP has evolved and the very significant savings Amtrak has received as a result of being on Rate Schedule LPEP. . . .” R.D. at 44. Accordingly, PPLICA requests that the Recommended Decision be modified to include its counter position that such so-called savings were due to the fact that the creation of Rate Schedule LPEP eliminated the subsidization of Rate Schedule LP-5 customers by Amtrak. *See* PPLICA St. No. 3-S at 5. Thus, while PPLICA apparently does not characterize its Letter as an exception, we believe it clearly functions as an exception to the extent that it expresses dissatisfaction with the Recommended Decision as issued, and seeks to have it modified in order to provide what it believes to be a necessary clarification of the record. However, PPLICA, as a Party to the Settlement, expressly agreed to waive its right to file exceptions if the ALJ adopted the Settlement without modification. Thus, we agree with PPL that PPLICA’s Letter requesting a modification to the Recommended Decision was filed in violation of the terms of the Settlement, and must be denied.

In addition, we agree with PPL that no clarification of the record is necessary with regard to PPLICA’s position, because this position is clearly set forth in its testimony, which is already part of the record. *See* PPLICA St. No. 3-S at 5. We find no harm in the ALJ’s failure to specifically recount this position in her Recommended Decision, because the Settlement—which the ALJ adopted without modification—was not based on any one of the Joint Petitioners’ positions on any issue, and was presented without prejudice to any position that any of the Joint Petitioners may have advanced in this proceeding, or may advance in future proceedings. *See* Joint Petition at 17. Moreover, the ALJ made it clear that the statement regarding savings experienced by Amtrak under Rate Schedule LPEP was the testimony of PPL, and she did not present this statement as a finding of fact. Thus, we find no reason to modify the Recommended Decision as PPLICA requests.

**III. Conclusion**

Based upon our review of the record in this proceeding, the Joint Petition, the Joint Petitioners’ Statements in Support of the Settlement, the Recommended Decision, and the applicable law, we shall: (1) approve the Settlement without modification; (2) deny PPLICA’s request for clarification of the Recommended Decision, as set forth in its Letter; (3) adopt the Recommended Decision, consistent with this Opinion and Order; (4) mark the Formal Complaints of the OCA, OSBA, and PPLICA, as satisfied, in part, and dismissed, in part, consistent with this Opinion and Order; and (5) dismiss the Formal Complaints of D. Wintermeyer, Cathleen A. Woomert, Michael B. Young, Joseph E. McAndrew, and Michael C. Muller; **THEREFORE,**

**IT IS ORDERED:**

1. That the request of the PP&L Industrial Customer Alliance to modify the Recommended Decision as set forth in its Letter in Lieu of Exceptions filed on October 13, 2015, is denied, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Susan D. Colwell, issued October 5, 2015, is adopted, consistent with this Opinion and Order.

3. That the Joint Petition for Approval of Settlement of all Issues filed September 3, 2015, by PPL Electric Utilities Corporation, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the PP&L Industrial Customer Alliance, the Commission for Economic Opportunity, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Clean Air Council, Sustainable Energy Fund, The Alliance for Solar Choice, Keystone Energy Efficiency Alliance Energy Education Fund, Natural Resources Defense Council, Environmental Defense Fund, and Eric Joseph Epstein, is approved without modification.

4. That PPL Electric Utilities Corporation shall not place into effect the rules, rates and regulations contained in Supplement No. 179 to Tariff – Electric Pa. P.U.C. No. 201.

5. That the proposals set forth in PPL Electric Utilities Corporation’s March 31, 2015 distribution base rate increase filing are approved, subject to the terms and conditions of the Joint Petition for Approval of Settlement of All Issues.

6. That PPL Electric Utilities Corporation shall be permitted to file a tariff supplement to its Tariff – Electric Pa. P.U.C. No. 201, incorporating the terms of the Joint Petition for Approval of Settlement of All Issues and changes to rates, rules and regulations as set forth in Appendix A of the Joint Petition for Approval of Settlement of All Issues, to become effective upon one (1) days’ notice after entry of this Opinion and Order, for service rendered on and after January 1, 2016, which tariff supplement increases PPL Electric Utilities Corporation’s rates so as to produce an annual increase in distribution rate revenues of not more than $124,000,000.

7. That the proof of revenues statement attached as Appendix B to the Joint Petition for Approval of Settlement of All Issues is approved.

8. That PPL Electric Utilities Corporation shall file detailed calculations with its tariff supplement demonstrating to the Parties’ satisfaction that the filed tariffs with the adjustments comply with the provisions of this Opinion and Order.

9. That PPL Electric Utilities Corporation shall allocate the authorized increase in operating revenue to each customer class and rate schedule in the manner prescribed in this Opinion and Order.

10. That the Formal Complaint of the Office of Consumer Advocate, filed at Docket No. C‑2015‑2475448, be marked satisfied, in part, and dismissed, in part, consistent with this Opinion and Order, and that the docket be marked closed.

11. That the Formal Complaint of the Office of Small Business Advocate, filed at Docket No. C-2015-2478277, be marked satisfied, in part, and dismissed, in part, consistent with this Opinion and Order, and that the docket be marked closed.

12. That the Formal Complaint of the PP&L Industrial Customer Alliance, filed at Docket No. C‑2015‑2480265, be marked satisfied, in part, and dismissed, in part, consistent with this Opinion and Order, and that the docket be marked closed.

13. That the Formal Complaints filed by D. Wintermeyer at Docket No. C-2015-2485827, Cathleen A. Woomert at Docket No. C-2015-2484588, Michael B. Young at Docket No. C-2015-2485860, Joseph E. McAndrew at Docket No. C‑2015‑2489524, and Michael C. Muller at Docket No. C-2015-2501983, are dismissed, consistent with this Opinion and Order, and that the dockets be marked closed.

14. That the Petition of PPL Electric Utilities Corporation for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Revenues, filed at Docket No. P-2015-2474714, be marked withdrawn without prejudice and the docket marked closed.

15. That, upon Commission approval of the tariff supplement filed by PPL Electric Utilities Corporation in compliance with this Opinion and Order, the investigation at Docket No. R-2015-2469275 be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 19, 2015

ORDER ENTERED: November 19, 2015

1. PPLICA is an *ad hoc* association of energy-intensive commercial and industrial customers receiving electric service in PPL’s service territory. [↑](#footnote-ref-1)
2. PPL labels its Response as “Reply to Exceptions of PP&L Industrial Customer Alliance.” [↑](#footnote-ref-2)
3. PPLICA joined the Settlement on behalf of one its participating members, the National Railroad Passenger Corporation (Amtrak), which supported the Settlement. The remaining members of PPLICA did not join the Settlement, but did not object to it. [↑](#footnote-ref-3)
4. A more detailed procedural history can be found on pages 1 through 7 of the Recommended Decision. [↑](#footnote-ref-4)
5. PPLICA did not file a Statement in Support of the Settlement, but filed a letter on September 4, 2015, stating that it did not oppose the Settlement. [↑](#footnote-ref-5)
6. The revenue allocation table set forth in the Joint Petition and reproduced in the Recommended Decision appears to be presented incorrectly. PPL’s Statement in Support of the Settlement appears to contain the correct version of the table, which is shown above. *See* PPL Statement in Support at 9-10. [↑](#footnote-ref-6)
7. Revenue decoupling is a regulatory mechanism that allows a utility to recover its full authorized revenues, regardless of sales volumes or the reason for changes in sales volumes. R.D. at 62; CAC Statement in Support of Joint Petition at 7. [↑](#footnote-ref-7)
8. As noted above, PPL considers its Response to PPLICA’s Letter to be a Reply to Exceptions. We note that the October 5, 2015 Secretarial Letter under which the Recommended Decision was issued stated that “Replies to Exceptions will not be accepted and will not be entertained by the Commission.” However, in the interest of providing due process, and in order to present a more balanced analysis of the issue in question, we will exercise our discretion in this instance and entertain PPL’s Response. [↑](#footnote-ref-8)
9. Paragraph 63 of the Joint Petition states:

   The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Joint Petitioner’s position with respect to any issues raised in this proceeding. The terms and conditions of the Settlement are limited to the facts of this specific case and are the product of compromise for the sole purpose of settling this case. This Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the parties may advance on the merits of the issues in future proceedings. This Settlement does not preclude the Joint Petitioners from taking other positions in proceedings of other public utilities under Section 1308 of the Public Utility Code, 66 Pa.C.S. § 1308, or any other proceeding. [↑](#footnote-ref-9)
10. The Conestoga Substation exists solely to serve Amtrak, and investments made at this substation are attributed entirely to Rate Schedule LPEP. PPL St. No. 4-R at 33. [↑](#footnote-ref-10)
11. In its Letter, PPLICA cites to page 46 of the Recommended Decision as the source of this statement. Letter at 1. However, the statement is found on page 44. [↑](#footnote-ref-11)