**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2016-2537349

Office of Small Business Advocate : C-2016-2544355

Office of Consumer Advocate : C-2016-2543247

Met-Ed Industrial Users Group : C-2016-2549787

David Johnson : C-2016-2565550

Jeanette Lippy : C-2016-2549370

Dennis Miller : C-2016-2551248

John O’Mara : C-2016-2556970

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v. :

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Metropolitan Edison Company :

Pennsylvania Public Utility Commission : R-2016-2537352

Office of Small Business Advocate : C-2016-2544356

Office of Consumer Advocate : C-2016-2543266

Penelec Industrial Customer Alliance : C-2016-2549792

Borough of Athens : C-2016-2552366

Borough of South Waverly : C-2016-2552369

Borough of Sayre : C-2016-2553194

Larry Cole : C-2016-2551244

Larry Gates : C-2016-2552878

Kenneth Hall : C-2016-2551643

Eric Hetrick : C-2016-2551207

Kim Hillegass : C-2016-2553215

Charles Hoover : C-2016-2560032

Maureen Hoover : C-2016-2552615

Robert Moore : C-2016-2551236

Janine & Jeff Riblett : C-2016-2550110

Kenneth Springirth : C-2016-2546231

Rebecca Stiles : C-2016-2551230

Nicholson Borough : C-2016-2560016

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v. :

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Pennsylvania Electric Company :

Pennsylvania Public Utility Commission : R-2016-2537355

Office of Small Business Advocate : C-2016-2544358

Office of Consumer Advocate : C-2016-2543268

John Catterson : C-2016-2552384

Richard Collins : C-2016-2547484

Roland Gassman : C-2016-2553461

John McDowell : C-2016-2551614

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v. :

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Pennsylvania Power Company :

Pennsylvania Public Utility Commission : R-2016-2537359

Office of Small Business Advocate : C-2016-2544359

Office of Consumer Advocate : C-2016-2543315

West Penn Power Industrial Intervenors : C-2016-2549413

Jean Bitner : C-2016-2554871

Mary Ellen McConnell : C-2016-2552601

Troy Mckenzie : C-2016-2553313

Eleanor Pinchok : C-2016-2555095

Robert Redinger, Jr. : C-2016-2542278

Kathleen Tretinik : C-2016-2552271

Worthington Boro Street Lights : C-2016-2548424

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v. :

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West Penn Power Company :

**RECOMMENDED DECISION**

Before

Mary D. Long

Administrative Law Judge

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I. INTRODUCTION

A. Overview of the Decision

This decision recommends that the Commission approve joint petitions for settlement of the base rate requests of each of the FirstEnergy electric distribution companies.

The question of how the General Assembly’s amendment to Section 1301.1 of the Public Utility Code impacts the calculation of the DSIC should be resolved in the context of the Company’s DSIC petitions. OCA has offered no justification for resolving the issue in the base rate proceeding or explained why the DSIC proceeding offers an inadequate forum for the thorough consideration of the issue. Therefore, OCA’s claim is dismissed without prejudice.

B. Customer Class Rate Impacts

1. Metropolitan Edison Company

Met-Ed sought Commission approval of rates and rate changes that would modify existing tariff provisions and increase the level of rates that Met-Ed charges for providing electric distribution service to its customers. If Supplement No. 23 had become effective as proposed, Met-Ed would have had an opportunity to recover an estimated annual increase in distribution revenues of $140.2 million, or an increase of 9.53% over Met-Ed’s total electric operating revenues. Under the Settlement, Met-Ed will be permitted an increase in distribution base rate operating revenues of $90.5 million, or 6.52% over present rates.

As part of this increase, Met-Ed proposed to increase the residential monthly customer charge from $10.25 to $17.42 for residential customers. On a total bill basis, a typical residential customer using 1,000 kWh per month will see the monthly bill increase from $139.91 to $153.82, or by $13.91 or 9.94%. This is less than the Company’s original proposal, which would have increased this customer’s monthly bill by $17.52 or 13.5%.

For the commercial class, the proposed monthly distribution charge for a Rate Schedule GS Medium, three-phase customer will increase from $34.29 to $45.19. Under the Settlement the monthly distribution charge will increase to $43.03. Under Settlement Rates, the bill for a typical Rate Schedule GS Medium, three-phase customer with a monthly billing demand of 40 kW and 250 hours use of demand will increase by $35.32 per month, from $1,029.63 to $1,064.94 (3.4%), including default service generation, taxes and other rider surcharges.[[1]](#footnote-1)

For the industrial class, under the Settlement, the monthly distribution charge for a Rate Schedule TP customer increased $1,760.68 (49.9%) from $3,530 to $5,290.68. This increase in the distribution charge is in lieu of the Company’s proposed monthly distribution customer charge of $5,462.26, a 54.7% increase over current rates. In addition under the Settlement Rates, the bill for a typical TP customer with a monthly billing demand of 20 MW and 474 hours of use of demand will increase by $6,255.48 per month, from $851,326.80 to $857,582.28 (.07%), including default service generation, taxes and other rider surcharges.

2. Pennsylvania Electric Company

Penelec sought Commission approval of rates and rate changes that would modify existing tariff provisions and increase the level of rates that Penelec charges for providing electric distribution service to its customers. If the proposed rates had become effective as proposed, Penelec would have had an opportunity to recover an estimated annual increase in distribution revenues of $158.8 million, or an increase of 11.42% over Penelec’s total electric operating revenues. Under the Settlement, Penelec will be permitted an increase in distribution base rate operating revenues of $94.6 million, or 7.22% over present rates. This increase is $64.2 million less than the amount originally requested by Penelec.

On a total bill basis, a typical residential customer using 1,000 kWh per month will see the monthly bill increase from $145.86 to $163.49, or by $17.63 or 12.08%. This is

less than the Company’s original proposal, which would have increased this customer’s monthly bill by $23.61 or 17.1%

For the commercial class, the proposed monthly distribution charge in the Company’s original filing for a Rate Schedule GS Medium, three-phase customer would increase from $26.01 to $46.82. Under the Settlement the monthly distribution charge will increase to $39.38. Under Settlement Rates, the bill for a typical Rate Schedule GS Medium, three-phase customer with a monthly billing demand of 40 kW and 250 hours use of demand will increase by $42.37 per month, from $1,059.58 to $1,101.96 (4%), including default service generation, taxes and other rider surcharges.

For the industrial class, the monthly distribution charge for a Rate Schedule LP customer under the Settlement will increase $348.98 from $3,065.00 to $3,413.98 (11.4%). This increase in the distribution charge is in lieu of the Company’s proposed monthly distribution customer charge of $3,523.22, a 15% increase over current rates. In addition under the Settlement rates, the bill for a typical LP customer with a monthly billing demand of 20 MW and 474 hours of use of demand will increase by $8,320.18 per month, from $672,812.02 to $681,132.20 (1.2%), including default service generation, taxes and other rider surcharges.

3. Pennsylvania Power Company

In its filing Penn Power proposed to increase its annual revenues by approximately $42.0 million, or an increase of 9.57% over Penn Power’s total electric operating revenues. Under the Settlement, Penn Power will be permitted an increase in distribution base rate operating revenues of $27.5 million, or 6.54% over present rates. This increase is $14.5 million less than the amount originally requested by Penn Power.

On a total bill basis, a typical residential customer using 1,000 kWh per month will see the monthly bill increase from $141.24 to $154.75, or by $13.51 or 9.56%. This is less than the Company’s original proposal, which would have increased this customer’s monthly bill by $18.45 per month or 14.18%.

For the commercial class, the Company proposed that the monthly distribution charge for a Rate Schedule GS Medium, three-phase customer would increase from $19.11 to $30.44. Under the Settlement the monthly distribution charge will increase to $26.87. Under Settlement Rates, the total bill for a typical Rate Schedule GS Medium, three-phase customer with a monthly billing demand of 40 kW and 250 hours use of demand will increase by $37.49 per month, from $1,105.88 to $1,143.37 (3.4%).

For the industrial class, the monthly distribution charge for a Rate Schedule GT customer under the Settlement will increase $65.87 from $258.42 to $324.29 (25.5%). This increase in the distribution charge is in lieu of the Company’s proposed monthly distribution customer charge of $376.85, a 45.8% increase over current rates. In addition under the Settlement rates, the total bill for a typical GT customer with a monthly billing demand of 20 MW and 474 hours of use of demand will increase by $3,065.87 per month, from $455,363.61 to $458,429.48 (0.7%).

4. West Penn Power Company

West Penn Power proposed to increase its annual revenues by approximately $98.2 million, or an overall increase of 5.74% over West Penn Power’s total electric operating revenues. Under the Settlement, West Penn Power will be permitted an increase in distribution base rate operating revenues of $60.6 million, or 3.83% over present rates. This increase is $37.6 million less than the amount originally requested by West Penn Power.

On a total bill basis, a typical residential customer using 1,000 kWh per month will see the monthly bill increase from $113.27 to $121.36, or by $8.09 or 7.14%. This is less than the Company’s original proposal, which would have increased this customer’s monthly bill by $10.89 per month or 9.6%.

For the commercial class, the Company proposed that the monthly distribution charge for a Rate Schedule 30 would increase from $17.42 to $19.05. Under the Settlement the monthly distribution charge will increase to $18.91. Under Settlement Rates, the total bill for a typical Rate Schedule 30 customer with a monthly billing demand of 40 kW and 250 hours use of demand will increase by $8.04 per month, from $943.28 to $951.32 (.9%).

For the industrial class, the monthly distribution charge for a Rate Schedule 40 customer under the Settlement will increase $429.90 from $553.30 to $983.20 (77.7%). This increase in the distribution charge is in lieu of the Company’s proposed monthly distribution customer charge of $744.58, a 34.6% increase over current rates. In addition under the Settlement rates, the total bill for a typical Rate Schedule 40 customer with a monthly billing demand of 20 MW and 474 hours of use of demand will increase by $1,829.90 per month, from $544,234.55 to $546,064.45 (0.3%).

II. HISTORY OF THE PROCEEDINGS

On April 28, 2016, each of the FirstEnergy companies filed a request for a general base rate increase. Metropolitan Edison Company (Met-Ed), filed Supplement No. 23 to Met-Ed’s Tariff Electric – Pa. P.U.C. No. 52 proposing an annual increase in rates of $140.2 million (9.08%), with a proposed overall rate of return of 8.14% and an effective date of June 27, 2016.

Pennsylvania Electric Company (Penelec), filed Supplement No. 23 to Penelec’ s Tariff Electric – Pa. P.U.C. No. 81 proposing an annual increase in rates of $158.8 million (10.94%), with a proposed overall rate of return of 8.58% and an effective date of June 27, 2016.

Pennsylvania Power Company (Penn Power), filed Supplement No. 17 to Penn Power’ s Tariff Electric – Pa. P.U.C. No. 36 proposing an annual increase in rates of $42 million (8.43%), with a proposed overall rate of return of 8.7% and an effective date of June 27, 2016.

West Penn Power Company (WPP or West Penn Power), filed Supplement No. 10 to West Penn Power’s Tariff Electric – Pa. P.U.C. No. 38 and Supplement No. 15 to West Penn Power’s Tariff Electric – Pa. P.U.C. No. 40, proposing an annual increase in rates of $98.2 million (5.51%), with a proposed overall rate of return of 7.9% and an effective date of June 27, 2016.[[2]](#footnote-2)

By order entered June 9, 2016, the Commission suspended the filings pursuant to Section 1308(d) of the Public Utility Code, until January 27, 2017, unless permitted by Commission Order to become effective at an earlier date.

The Commission’s Bureau of Investigation and Enforcement (BIE) entered its appearance in these proceedings, while the Office of Consumer Advocate (OCA)[[3]](#footnote-3) and the Office of Small Business Advocate (OSBA) filed complaints.[[4]](#footnote-4) Formal complaints were also filed by West Penn Power Industrial Intervenors (WPII), C-2016-2549413; Met-Ed Industrial Users Group (MEIUG), C-2016-2549787; and Penelec Industrial Customer Alliance (PICA), C-2016-2549792 (collectively, Industrials). Additional formal complaints were filed by the Boroughs of Athens, South Waverly and Sayre,[[5]](#footnote-5) Nicholson Borough,[[6]](#footnote-6) Worthington Borough Street Lights[[7]](#footnote-7) and numerous individuals. AK Steel,[[8]](#footnote-8) CAUSE-PA, Clean Air Council, Environmental Defense Fund (EDF),[[9]](#footnote-9) International Brotherhood of Electrical Workers, Local 459 (IBEW),[[10]](#footnote-10) North American Honagas (NAH),[[11]](#footnote-11) Citizens for Pennsylvania’s Future, the Pennsylvania State University (PSU) and Wal-mart Stores East and Sam’s Club (Walmart), were granted permission to intervene.

A prehearing conference was convened on June 17, 2016, wherein those who were parties to the proceeding at that time agreed to a schedule for the service of written testimony, locations for public input hearings and a litigation schedule. Evidentiary hearings were scheduled to begin on September 6, 2016, in Harrisburg.

At the prehearing conference, the parties requested that the base rate proceedings be consolidated. Counsel for the Companies explained that the approach to calculating the various elements of the rates were consistent across all four companies even though the final numbers would be unique to each company. The parties in attendance at the prehearing conference supported the Companies’ proposal and the cases were consolidated.

The parties undertook discovery and served written direct, rebuttal and surrebuttal testimony. By email dated September 2, 2016, the parties informed me that they had achieved agreement on some issues, but that discussions regarding other issues were ongoing. Therefore, they requested that the first day of hearing be cancelled and that the hearing convene instead on September 7, 2016, in order to permit more time for settlement discussions. The request was granted.

The evidentiary hearing convened on September 7, 2016. Although the parties had not achieved an agreement on all of the issues raised in the proceeding, all parties agreed to waive the cross-examination of witnesses. Any argument necessary on unresolved claims would rely solely on the written testimony admitted into the record. Accordingly, the written testimony of the Companies,[[12]](#footnote-12) BIE, OCA, OSBA, the Industrials, AK Steel, CAUSE-PA, PSU and Walmart was admitted into the record. The parties agreed that a separate petition for settlement would be filed for each company, but that each party would file one omnibus statement in support of the settlement and one brief on the unresolved issues that would address all four companies.

The Joint Petitions for Partial Settlement (Settlement) were filed on October 14, 2016. The only issue which was not resolved by the settlements is the treatment of adjusted deferred income tax in each Company’s DSIC. The Companies and OCA filed main briefs on September 30, 2016. No other Party took a position or filed a brief on this issue. Reply briefs were filed on October 14, 2016. By order dated October 17, 2016, the parties who did not actively participate in the litigation were provided an opportunity to join or object to Settlement. These responses were due on or before October 28, 2016. By letters dated October 27, 2016, the Boroughs of South Waverly, Athens, Sayre and Nicholson joined the Settlement of Penelec’s base rates. No other complainant responded. By order dated October 31, 2016, the record was closed.

III. PUBLIC INPUT HEARINGS

A. Introduction

At the time of the prehearing conference, 12 formal complaints had been filed in the four base rate proceedings. These in combination with written letters in opposition identified sufficient interest and 12 public input hearings were held in seven different locations. In total, 81 people[[13]](#footnote-13) offered testimony:

|  |  |
| --- | --- |
| **Location** | **Witnesses Testifying** |
| Reading  Thursday, July 21, 2016  Afternoon and Evening | 11 |
| Erie  Tuesday, July 26, 2016  Afternoon and Evening | 47 |
| Lyndora (Butler)  Thursday, July 28, 2016  Afternoon and Evening | 2 |
| State College  Thursday, August 4, 2016  Afternoon and Evening | 6 |
| Washington  Thursday, August 11, 2016  Afternoon | 4 |
| Greensburg  Thursday, August 11, 2016  Evening | 5 |
| East Stroudsburg  Thursday, August 18, 2016  Afternoon and Evening | 6 |

Several of the locations were chosen because they were in proximity to more than one company’s service territory. Therefore, any customer of any of the companies was permitted to testify at any of the public input locations.

The public testimony can be grouped into two basic categories: residential consumers and witnesses testifying on behalf of municipalities who are affected by the companies’ proposal regarding the tariff for street lighting. Summaries of the testimony of each group are set forth below. Many witnesses from both groups expressed similar concerns. The topics addressed by customers of the respective companies are set forth below.

B. Consumer Concerns

1. Metropolitan Edison Company

Customers of Met-Ed testified in Reading and East Stroudsburg.

Deanna Keyser testified as a customer of Met-Ed and an AARP volunteer. She stated that the proposed increase in the customer charge is unfair because it would hurt lower usage and lower income Met-Ed customers the most. In her view, customers should have some control over their electric bills, but to the extent that they have to pay a larger and larger share of their bill through a high fixed customer charge they have less control.[[14]](#footnote-14) Her concern was echoed by Stephen Anton.[[15]](#footnote-15)

Lawrence O. Spilbe, Jr., stated that he and his wife took steps to increase their energy efficiency in their all-electric home, including insulation and the use of a time of day meter. Mr. Spilbe and his wife are now receiving Social Security, and he cited the absence of a cost of living increase this year. Mr. Spilbe opined that FirstEnergy is part of an oligopoly able to force the issue of price on people. Mr. Spilbe testified that elderly people cannot afford increases in electric rates. He opposes any rate increase unless it is linked to a cost of living adjustment. Mr. Spilbe stressed that any rate increase should be viewed from the perspective of senior citizen ratepayers, not Met-Ed’s shareholders.[[16]](#footnote-16) Mr. Spilbe’s sentiments were shared by several other witnesses.[[17]](#footnote-17)

Others specifically stated that the residential class was carrying too much of the burden of the rate increase.[[18]](#footnote-18) Two customers complained that Met-Ed should control costs, and specifically cited executive pay,[[19]](#footnote-19) and the costs of bill inserts.[[20]](#footnote-20) Pat Murray was concerned that the requested increase in the LED rate for her municipality would be passed onto her through higher taxes.[[21]](#footnote-21)

Several individuals described their efforts to conserve energy and keep their bill costs down. Stephen Anton lives in Reading, Pennsylvania, and is a Met-Ed customer. He testified that he is a low-income consumer who has cut his expenses as much as possible. In the winter, he keeps his thermostat between 62 and 65, and in the summer, he runs his air conditioner as little as possible. Mr. Anton argued that although the overall proposed rate increase may be 9.53%, the residential customer charge will be increased by 70%, from $10.25 to $17.42. Mr. Anton stated that millions of people work for paltry wages and subsidize those with larger incomes.[[22]](#footnote-22) Robert L. Schaeffer pointed out that the cost of energy is down, generally, and that he has energy saving appliances and lightbulbs, yet his rates continue to increase. The Schaeffers also have an “energy saving meter.” Mr. Schaeffer opined that electric bills are higher than taxes.[[23]](#footnote-23) Gail Hammond testified that she is frugal, uses energy efficient light bulbs and only turns on the air conditioning when she has to. Yet her bills keep increasing.[[24]](#footnote-24)

Several ratepayers also objected to the rate increase and raised customer service and reliability concerns. Linda Hammond complained that the bill format is difficult to understand.[[25]](#footnote-25) At least two witnesses testified that they either received too many estimated meter readings or the estimated meter readings were substantially higher than what they actually used. Robert Schaeffer specifically complained about Met-Ed’s estimated meter readings, contending that those estimated readings are sometimes 60% over normal.[[26]](#footnote-26) Johnathan L. Gowombeck concurred with Mr. Schaeffer’s complaint about estimated meter readings.[[27]](#footnote-27)

Vegetation management and frequent outages were a concern for several witnesses. Robert L. Schaeffer complained about the frequency of service outages, saying that they occur at least three times each winter, but that the frequency lessened in the past year. Mr. Schaeffer stated that he has not seen Met-Ed doing any tree trimming in his area, citing that as a potential problem. Jonathan L. Gowombeck complained that as a result of having to fuel his generator during an outage, he had a heart attack. Mr. Gowombeck testified that he sees Met-Ed’s contract tree trimming service but asserted that they do no work. Mr. Gowombeck concurred with Mr. Schaeffer’s complaint about estimated meter readings. Mr. Gowombeck specifically objected to the reason for the proposed rate increase, i.e. infrastructure improvement, stating that he has seen no infrastructure improvements.[[28]](#footnote-28) Thomas Connor stated that he shares concerns with respect to lack of tree trimming by Met-Ed as a system issue as his distribution lines are underground. He stated that they experience three or four storm related outages per year, and testified that he has installed a generator in consequence.[[29]](#footnote-29)

Richard Kauffman resides in Reading, Pennsylvania, and he is a Met-Ed customer. He and his wife have been happy with Met-Ed’s service, but they are concerned about the amount of the requested rate increase.[[30]](#footnote-30)

Like ratepayers in Penelec’s territory, several Met-Ed customers complained that there was no time of day rate. Linda Hammond criticized Met-Ed for ending the on-peak/off-peak option in May 2015, and objected to the smart meter charge. Mr. Gowombeck criticized Met-Ed for not having time of day meters and for not providing incentives to conserve and save.

2. Pennsylvania Electric Company

Residential customers of Penelec, or witnesses expressing the concerns of residential customers testified in Erie, State College and Reading.

Many witnesses testified generally that the rate increase requested by Penelec was too high. Several expressed the view that the burden on residential ratepayers was too great. Robert Whaling testified that stockholders should bear more of the burden.[[31]](#footnote-31) Michael Timon, is retired and is not only a Penelec customer, but is also a customer of Florida Power and Light. He testified that he pays Penelec more per kilowatt hour than he pays Florida Power and Light, but feels he has better service and that the meter technology is superior in Florida.

Several witnesses testified that Erie is a depressed area and that many area employers have either closed or laid off employees.[[32]](#footnote-32) Specifically, Brittany Prischak, who is employed as the sustainability coordinator for the City of Erie, explained her personal view that the proposed rate increase would have a negative impact on lower income families that are already overburdened with the cost of utilities. The poverty rate for the County of Erie is 18.3%. The poverty rate in the City of Erie is 29.2%.[[33]](#footnote-33) Other witnesses, several of whom were educators, noted that several school districts have high percentages of children who qualify for free lunches, which is an indicator of poverty in the community.[[34]](#footnote-34) Ms. Prischak noted that “electricity should not be a privilege for those who can afford it, but, rather, a right guaranteed to all.”[[35]](#footnote-35) She referred to a study by the American Council for Energy Efficient Economy which stated that low-income households devote a higher percentage of income to utility service than other households: 7.2% of income for low-income families compared to 2.3% for higher income families.

This reality was also expressed by many witnesses who specifically testified that although they managed their money carefully, the costs for everything were increasing. The Mayor of Altoona, Matt Pacifico, explained that in his jurisdiction, Blair County had recently increased property taxes and that the low-income and senior citizens were particularly impacted.[[36]](#footnote-36) David Jarrett, the manager for Sayre Borough, Bradford County painted a similar picture of his community.[[37]](#footnote-37) He explained in detail the changes that the community has experienced with the loss of jobs, particularly in the gas industry. Homes have lost their value and people are struggling. An increase in electricity rates would create a substantial strain on family budgets which are already stretched.

Many senior citizens and other individuals on fixed incomes opposed the proposed rate increase and noted the strain that the increase would put on their budgets. David Aitken, representing AARP, noted that in 2014 social security benefits increased by 1.7% in 2015, but were not increased at all in 2016.[[38]](#footnote-38) Eleven other witnesses testified that increasingly, utilities and other bills were taking a larger and larger portion of their social security benefit, which for many is their only source of income. Others stated that although they were employed, the rate increase requested by Penelec was more than any increase that they had received in salary over the past several years. Seven individuals also expressed frustration that they worked hard to conserve electricity and reduce their consumption, but the amount of their bill continues to increase.[[39]](#footnote-39)

Several ratepayers described specific impacts that a rate increase would have for them. For example, Kathleen Schaaf testified in Erie. She is a schoolteacher and daycare worker. She testified that she is not sure how long she will have her job because her employer is in the process of reorganizing. She and her husband have cut their expenses in order to pay their bills and send their children to college. She likes to leave her porch light on at night in order to help neighbors or passersby who may need help. She does not think she will be able in continue this practice if she must pay more for electricity.[[40]](#footnote-40) Lenora Robinson described her struggle to recover from a debilitating accident which caused neurological damage. She was recently prescribed a new but expensive medication which controls her seizures. She worried that the rate increase would require her to choose between paying her electric bill and paying for her medicine.[[41]](#footnote-41) Similarly, Dorine Clausen is also disabled. She is a single mother with a teenaged daughter. It is important to her to be independent, but she questioned her ability to pay an increased electricity bill without seeking public assistance.[[42]](#footnote-42)

Detailed testimony was provided by Kenneth C. Springirth, a long-time customer of Penelec.[[43]](#footnote-43) Mr. Springirth first stated that the Company’s request for a 11.3% cost rate for common equity capital is unreasonable given current market conditions. He noted that since regulatory actions take the place of marketplace forces, the Commission must take into account the fact that Penelec has less business risk than an unregulated business company when determining the common equity capital cost rate. He observed that the CAPM method of calculating the cost rate for common equity has been criticized in academic journals as “simplistic” and is therefore not an appropriate method for calculation. He also reviewed several financial sources which note that FirstEnergy is a financially stable utility. Therefore, there is no support for an “excessive” cost rate for common equity proposed by the Company.

More than one witness also took the position that the rate increase was too high given that interest rates are now low.[[44]](#footnote-44) Two witnesses stated that because interest rates are low, Penelec should borrow money to finance infrastructure improvements rather than seeking more funds from ratepayers.[[45]](#footnote-45)

The increase in the customer charge was also opposed by many witnesses.[[46]](#footnote-46) Specifically, Mr. Springirth expressed his opposition for the proposed 72% increase in the customer charge from $9.99 to $17.10 per month. He stated that the purpose of the customer charge should be to recover costs for meter reading, meter service and customer accounting. With the advent of smart meters deployed by Penelec, which have been paid for by customers, the company should be experiencing savings which should be passed on to customers.

Mr. Springirth next turned to certain expenses claimed by Penelec which should be disallowed by the Commission, including rate case expenses, corporate civic dues and association fees and dues. He said “[o]rganizations receiving money from the Respondent are not likely to oppose the Respondent’s request for a rate increase, and they might even have different points of view than their customers.”[[47]](#footnote-47) Mr. Springirth also quoted a *Morningstar* analysis which observed that FirstEnergy has failed to control costs and that management has made some ill-advised operational decisions. He specifically called for the 109% salary increase to FirstEnergy’s Chief Executive Officer to be rescinded and refunded to customers.

Several other witnesses echoed Mr. Springirth’s concern that Penelec had failed to adequately control costs. Six witnesses specifically observed that, in their view, executive salaries were too high and should be reduced before Penelec requested more funds from ratepayers.[[48]](#footnote-48) Steve Scieford, who is retired and testified in Erie, could not understand why Penelec had requested an increase in rates when the costs of materials has decreased.[[49]](#footnote-49)

Many witnesses questioned the need for an increase in rates when Penelec had just increased its rates. Rate increases so close in time did not seem fair to those ratepayers. While some individuals recognized the need for infrastructure improvement, some stated that savings from the use of smart meters should be used to fund improvements rather than a rate increase. Mr. Jack Sturges, a truck driver who testified in Erie, explained that other deregulated industries such as shipping, trucking and rail had resulted in lower rates. In his view, deregulation should have the same effect on electric utilities.[[50]](#footnote-50)

Several customers complained about the elimination of the “time-of-day” rate in the 2014 base rate case. Many noted that they had invested in certain facilities at their property in reliance on the rate. Not only is much of the investment now useless, but their bills have increased significantly. Clark Deforce felt that the 2014 base rate increase was deceptive, because the published increase in residential customer rates failed to take into account the effect of the elimination of the time-of-day rate.[[51]](#footnote-51)

Several were critical of the customer service and reliability offered by Penelec. David Uglow[[52]](#footnote-52) and Joan Counts[[53]](#footnote-53) both testified that Penelec was unresponsive to their complaints. Mr. Springirth[[54]](#footnote-54) also noted several customer service concerns, some of which remain unresolved from Penelec’s 2014 rate increase proceeding. He repeated his request for a local office in Erie where customers could review rate case documents. He noted that there is no listing for a local office in at least two telephone books that he consulted. He also called on FirstEnergy to properly train its customer service representatives. He explained that he had contacted customer service regarding the smart meter charges on his bill on three different occasions and that he received three different answers to his question.

E. McCauley lives in Westfield, Pennsylvania, and is a Penelec customer. Ms. McCauley owns an all-electric home. She testified that power is off more than on and claimed that her household appliances have been damaged or destroyed on more than one occasion, in consequence.[[55]](#footnote-55) Similar experiences were expressed by Jennifer Luczak[[56]](#footnote-56) and Karen Bean.[[57]](#footnote-57) Ms. McCauley, Vincent Esposito[[58]](#footnote-58) and Wilbur Nass[[59]](#footnote-59) all complained that too many of the bills were estimated.

Some witnesses raised broader issues than the rates themselves, but posited the notion that Penelec and the Commission should take a more systemic look at the changing electricity sector. Stephen Porter, a witness in Erie, is a Penelec customer and works as an environmental consultant. He objected to the proposed rate increase because it seems to be “business as usual.” In his view, it is time for the Commission and the electricity industry to be more forward-looking and consider the decentralized production microgrids, distributed generation, storage systems, and other revolutionary concepts in energy production. He further explained that the current rate proposal does not demonstrate any strategic thinking by Penelec, therefore he does not support it.[[60]](#footnote-60)

Mr. Porter’s thoughts were echoed by Margaret Czajakowski who did not feel that Penelec is keeping up with advances in technology. She stated that the rates should be structured to encourage people to install solar panels.[[61]](#footnote-61) Etta Albright, a retired nurse who testified in State College, stated that the structure of the rate increase discriminates against customers who shop for electricity, especially generation with “green” technologies.[[62]](#footnote-62)

Several witnesses raised concerns regarding customer service issues. Patricia Brozich,[[63]](#footnote-63) Richard Noel,[[64]](#footnote-64) and Barbara Vinkler[[65]](#footnote-65) all testified that their bills were difficult to understand. Other witnesses complimented the customer service they received from West Penn Power. Ms. Graff complained that there was no longer a local office for West Penn Power in Butler. She missed being able to discuss her bills in person with a representative and found it difficult to get her questions answered over the telephone.[[66]](#footnote-66)

Richard Noel questioned the smart meter charge.[[67]](#footnote-67) Ruth Graff, Don Marco and Barbara Vinkler all complained that they were still getting bills based on estimated readings and yet they were being charged for a smart meter.

3. Pennsylvania Power Company

No residential customers of Penn Power testified at any of the public input hearings.

4. West Penn Power Company

Residential customers of West Penn Power testified in Lyndora, State College, Washington and Greensburg. At least two witnesses observed that West Penn Power had just increased their rates and that an additional increase would have a substantial impact.[[68]](#footnote-68) Four customers opposed the proposed increase in rates on the basis that the rates are proposed to increase more than the increase for their social security benefits.[[69]](#footnote-69) Five stated that their budgets are already tight and that the proposed increase will add further strain on an already stressed budget.[[70]](#footnote-70) Marge Davis, testifying in Lyndora on her own behalf and also as a representative of AARP, observed that the proposed increase will wipe out any savings earned by shopping.[[71]](#footnote-71) Another witness stated that it was not fair to ask for a rate increase when the company had just paid dividends to its stockholders.[[72]](#footnote-72) Other witnesses posited that West Penn Power had failed to control costs, and pointed to executive salaries.[[73]](#footnote-73) Ms. Davis opposed the proposed increase in the customer charge.[[74]](#footnote-74)

C. Municipal Concerns

1. Introduction

Several witnesses testified concerning the effect of the Companies’ proposed street lighting tariff on municipalities. In East Stroudsburg, Chris Cap, the Executive Director of the Pennsylvania State Association of Boroughs (PSAB) spoke on behalf of member boroughs in all four service territories. PSAB represents 919 borough communities across the Commonwealth.[[75]](#footnote-75)

Mr. Cap explained the challenges faced by community leaders who are tasked with providing public services to their citizens while at the same time keeping the tax burden on those citizens as low as possible. A significant method for doing so is by reducing energy consumption. He further stated that LED street lighting has been a major savings option under consideration by municipalities as a means by which to reduce energy consumption, minimize maintenance requirements and improve overall visibility for residents. Mr. Cap went on to describe the challenges facing borough officials in quantifying potential cost savings and understanding transition costs to newer technologies such as LEDs.

PSAB opposes the rate increase for LED lighting proposed by the Companies because the future projected local budgetary savings would be significantly reduced. He further explained that the rate increase would particularly challenge municipalities which had already begun the process of implementing the deployment of LED lighting. He posited that any rate increase would not only hamper cost-saving strategies employed by local governments but may discourage local leaders from seeking further well-intentioned energy conservation strategies in the future.

2. Metropolitan Edison Company

Jeanne Johnston is the Manager of Cumru Township in Berks County, Pennsylvania, and testified in that capacity with the authorization of her board of commissioners. Ms. Johnston’s testimony specifically focused on street lights. Ms. Johnston testified that the current rate request significantly reduces the savings in distribution charges for conversion to LED street lights from the reductions discussed with Met-Ed in February 2016. Over half of the billed street lights are 100 watt sodium vapor lights. If those lights are replaced with 50 watt LED lights, the distribution charge would be $6.87 under present rates; however, the proposed rates would result in a charge of $13.30, representing an increase of 94%. While the replacement of sodium vapor lights would still result in a net savings, those savings would be considerably less for the township and its taxpayers, in the range of a 35% rate reduction versus a 12% rate reduction. Further, if a municipal customer requests conversion and the system is less than 20 years old, the municipality would pay the removal cost plus the remaining value of the system. Ms. Johnston testified that these costs are not quantified in the rate proposal. Currently, there is a remaining life charge for street lights within the original ten year lease period with no removal charge.[[76]](#footnote-76)

3. Pennsylvania Electric Company

Sid Goldstein is the purchasing manager for the City of Erie. He testified concerning the proposed increase in rates on LED street lights. He observes that the maintenance costs for LED street lights are lower than other types of street lights and they are more energy efficient. Therefore, he fails to see how an increase in the rates for LED street lights is justified.[[77]](#footnote-77)

Nate Kissell is the Director of Public Works for the City of Altoona. He testified that Altoona has approximately 2,300 street lights and pays somewhere around $75,000 annually in distribution charges to Penelec. So far, about 400 street lights have been replaced by LEDs. He noted that the proposed increase in the street lighting rate was not well-communicated to affected municipalities. He calculated that an 11% increase in distribution rates for street lighting would have a substantial impact on Altoona, a distressed city.[[78]](#footnote-78)

4. West Penn Power Company

Mark A. Kunkle is the Township Manager for Ferguson Township in Centre County. He testified on behalf of Ferguson Township to oppose the increase in the distribution rate for street lights. He explained that representatives from the Township had attended a workshop in October 2015, which included a presentation by FirstEnergy about the potential savings in energy usage and maintenance costs which could be realized by the conversion of high pressure sodium and mercury vapor lighting to LED street lighting. The Township began the process of converting to LED lights, in part, in reliance on the street lighting tariff which had been approved by the Commission in 2015. However, FirstEnergy initiated the proposed 2016 rate increase before the Township had begun the conversion to LEDs and “we felt as though we were the victims of a bait and switch…”[[79]](#footnote-79) He went on to explain that the increased rates for street lighting in the proposed tariff would double the Township’s budget for street lighting. He believed that the effect of the increase would make LED street lights more expensive even though the technology uses less energy and requires less maintenance. Therefore, the Township strenuously objected to the proposed street lighting rate increase.[[80]](#footnote-80)

Ryan Eggleston is the Township Manager for South Fayette Township. South Fayette Township has 15,000 residents and covers 21 square miles. He pointed out that the Township enjoys a good relationship with FirstEnergy and remains optimistic about the conversion of street lighting from sodium vapor to LED. The Township currently budgets approximately $250,000 in energy street light costs and the proposed rate increase to the street lighting tariff will have a significant negative impact. He explained that the proposed increase on the high pressure sodium street lights will amount to an additional $37,000, to the Township’s 2017 budget. That amount might otherwise be invested in a police cruiser, snow removal equipment or an additional employee. While recognizing the need of the company to meet rising costs, he requested that the increase be phased in over time or mitigated in some other way.[[81]](#footnote-81)

Garry Armstrong is the Mayor of West Middletown Borough. West Middletown Borough has 161 residents. Like Mr. Kissell, he also felt that the Borough had been the subject of a “bait and switch”[[82]](#footnote-82) by being enticed to switch to LED street lighting, only to have the rates for street lighting increase shortly thereafter. He explained that the Borough had converted all of its street lights to LEDs. Although the conversion was very satisfactory, and the Borough would still enjoy a level of savings over the use of sodium vapor lighting, he was dismayed that those savings would be considerably diminished.[[83]](#footnote-83)

IV. DESCRIPTION OF THE SETTLMENTS

Each of the four companies filed a separate Joint Petition for Partial Settlement (Settlement). Each of the petitions include the terms of Settlement for each company, which include terms related to the revenue requirement, distribution base rate stay out, the application of Act 40, revenue allocation and rate design, uncollectible accounts expense, universal service programs, smart meters and LED street lighting. Each Settlement petition included Exhibits 1 –6. Although each exhibit provides the data specific to each company, each exhibit includes the same information:

|  |  |
| --- | --- |
| Exhibit 1 | Settlement Rates (Proposed Tariffs)[[84]](#footnote-84) |
|  |  |
| Exhibit 2 | Proof of Revenues |
| Exhibit 3 | Revenue Allocation |
| Exhibit 4 | Rate Design |
| Exhibit 5 | Bill Comparisons |
| Exhibit 6 | Exhibit LWG-3 (smart meter cost and savings data) |

Statements in support of each party joining the Settlement are attached to each joint petition as well as copies of the relevant letters of non-opposition.

V. TERMS OF THE SETTLEMENTS

A Settlement for each company was filed separately. However, the numbered paragraphs describing the settlement terms track each other for each company. For example, Paragraph 12 in each Settlement describes the base rate operating revenue agreed to by the parties. However, the numbers and docket number references are unique to each company.

Each Settlement petition also included the usual “additional terms and conditions” that are typically included in settlements. These terms, which, among other things, protect the parties’ rights to file exceptions if any part of the Settlement is modified, condition the agreement upon approval by the Commission and provide that no party is bound in future rate cases by any particular position taken in this case. These additional terms and conditions will not be repeated here verbatim. The reader is directed to the petitions themselves.

A. Metropolitan Edison Company

The Joint Petitioners to the Met-Ed Settlement include BIE, OCA, OSBA, MEIUG, CAUSE-PA, and Walmart. EDF, Penn Future, CAC and PSU do not oppose the Settlement. The settlement terms among the Joint Petitioners and Met-Ed consist of the following terms and conditions:

Revenue Requirement

12. Met-Ed will be permitted to charge, effective for service rendered on and after January 27, 2017, the Settlement Rates set forth in Exhibit 1. The Settlement Rates are designed to produce an increase in distribution base rate operating revenues of $90.5 million for the twelve months ending December 31, 2017, as shown on the proof of revenues provided as Exhibit 2. The Joint Petitioners acknowledge and agree that: (1) the Settlement Rates were designed on the basis of the sales and billing units proposed by the Company in its initial filing; and (2) the Company’s overall revenue requirement to be recovered by the Settlement Rates has been reduced such that the Settlement Rates reflect only the average loss in revenues projected to occur over the five-year period (plan years 2017 through 2021) encompassing the Company’s Commission-approved Phase III Energy Efficiency and Conservation Plan.

13. The Joint Petitioners agree that the baseline for restarting charges under the Company’s DSIC Rider (Rider R) will be based on gross plant balances per Exhibit RAD-46, which includes Commission-approved 2016 and 2017 Long-Term Infrastructure Improvement Plan (“LTIIP”) plant total investment of $16.68 million.

14. The Company’s total revenue requirement includes $28.597 million associated with smart meter deployment. Once the aggregate investment and expense revenue requirements exceed $28.597 million, the Company may begin deferring costs that are eligible for recovery under its Smart Meter Technologies Charge (“SMT-C”) Rider (Rider G). When the $28.597 million threshold is exceeded and the Company begins deferring costs in excess of that amount, the Company will file a smart meter rate under its SMT-C Rider to recover all investment and expense revenue requirements in excess of the $28.597 million included in base distribution rates.

15. The Company will amortize its legacy meter stock, as updated in this case, over the original five-year period which began on May 3, 2015, under the settlement approved by the Commission at Docket No. R-2014-2428745 on April 9, 2015, until fully amortized.

16. The Company will continue to maintain its Storm Reserve Account on the Company’s balance sheet, which began on May 3, 2015, per the settlement approved by the Commission at Docket No. R-2014-2428745 on April 9, 2015. The Company’s total revenue requirement includes $13 million to be recovered for purposes of funding this reserve.

17. For accounting purposes, the Company will continue to depreciate assets using the average service life methodology based upon its depreciation rates as established in the Company’s service life study and annual depreciation report approved by the Commission at M-2015-2501728 until modified by subsequent Commission order. The Company will recognize its cost of removing plant in service through an amortization based on the Company’s five-year average of experienced cost of removal.

18. On or before May 1, 2017, the Company will provide to the statutory advocates an update to Met-Ed Exhibit RAD-47, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ended December 31, 2016. On or before May 1, 2018, the Company will provide to the statutory advocates an update to Met-Ed Exhibit RAD-46, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ended December 31, 2017. In the Company’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, 2017 to its projections in this case. However, it is recognized by the Joint Petitioners that this is a black box settlement that is a compromise of Joint Petitioners’ positions on various issues.

19. The Joint Petitioners agree and hereby stipulate that the Company shall use the rate of return on equity as calculated for electric utilities and published in the “Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities” for the most recent quarter for the following purposes:

a. Calculating the Company’s DSIC;

b. Calculating the incremental revenue requirement associated with smart meter deployment that exceeds the smart meter revenue requirement being recovered in the Settlement Rates as described in Paragraph 14 of this Joint Petition and therefore eligible for recovery through the Company’s SMT-C Rider; and

c. Calculating the allowance for funds used during construction.

Distribution Base Rate Stay-Out

20. Met-Ed will not file for another general increase to its distribution rates under Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), prior to January 27, 2019. However, if a legislative body or administrative agency, including the Commission, orders or enacts fundamental changes in policy or statutes, including changes in federal or other tax rates, which would have an impact on the Company’s rates, this Settlement shall not prevent the Company from filing tariffs or tariff supplements seeking increases in distribution base rates to the extent necessitated by such action. Additionally, the Company will not file a petition seeking a waiver of the five percent DSIC cap under Section 1358(a)(1) of the Public Utility Code, 66 Pa.C.S. § 1358(a)(1) prior to January 27, 2019.

21. Changes to rates charged under riders are not to be subject to the rate stay out contemplated under Paragraph 20, above, except as applied to any proposed waiver of the five-percent cap applicable to the Company’s DSIC Rider.

22. The Company shall not be precluded from seeking extraordinary rate relief under Section 1308(e) of the Public Utility Code, 66 Pa.C.S. § 1308(e).

Act 40 of 2016

23. Section 1301.1(a), 66 Pa.C.S. § 1301.1(a), which was added to the Public Utility Code by Act 40 of 2016, provides in relevant part that a utility’s federal income tax expense shall be calculated on a “stand-alone” basis for ratemaking purposes. As a consequence, consolidated tax adjustments would no longer be reflected in calculating income tax expense for ratemaking purposes. Section 1301.1(b), 66 Pa.C.S. § 1301.1(b) deals with the use of amounts representing a “differential” calculated by reference to Section 1301.1(a).

24. The level of revenue requirement included in this Settlement reflects the resolution of the parties’ positions in the dispute regarding 66 Pa.C.S. § 1301.1(a). The Company submitted, in Company Exhibit RAD-68 (page 1), a calculation of what its consolidated tax adjustment would be in this case “resulting from applying the ratemaking methods employed by the commission prior to the effective date of subsection (a) [of Section 1301.1] for ratemaking purposes,” which was not contested by any Party.

Revenue Allocation And Rate Design

25. The revenue allocation to each rate schedule reflected in the Settlement Rates is set forth in Exhibit 3 to this Joint Petition. Rate design for each rate schedule comprising the Settlement Rates is explained in Exhibit 4 to this Joint Petition. The allocations and rates set forth in Exhibits 3 and 4 and incorporated in the Settlement Rates reflect the Joint Petitioners' agreement with regard to rate structure, rate design (including customer charges) and distribution of the increase in revenues in this case. Under the Settlement Rates, the Residential customer charge is $11.25 per month in lieu of the Residential customer charge proposed by the Company of $17.42 per month. Exhibit 5 reflects billing comparisons demonstrating the impact on an average customer’s bill if the Settlement Rates are approved.

Uncollectible Accounts Expense

26. Default service-related uncollectible accounts expense has been increased to recover an additional $5.475 million, beginning on the date the Settlement Rates become effective, through the Company’s Default Service Support Rider for the residential and commercial classes, and through the Hourly Pricing Default Service Rider for industrial class customers. The amounts of these uncollectible accounts expense shall be those set forth in Exhibit 2 to this Settlement, at line 14. The Distribution-related uncollectible account expense has been revised and $8.09 million will be recovered through the Settlement Rates. The amounts of these uncollectible accounts expense shall be those set forth in Met-Ed Exhibit LWG-2.

Universal Service Programs

27. The Company will establish a Universal Service Advisory Committee (“USAC”) comprising representatives from the Company, the OCA, CAUSE-PA, I&E, the Commission’s Bureau of Consumer Service (“BCS”) and the organizations that administer the Company’s universal service and energy conservation program (“USECP”), which will hold meetings at least twice a year with respect to the Company’s USECP. The USAC’s purpose is intended to explore opportunities for enhancements to the Company’s USECP, as well as opportunities for outreach and education, language access, notification to low income customers regarding security deposit waivers and bill clarity. At the Company’s sole discretion, process or program changes raised through the USAC may be filed for approval by the Commission as proposed revisions to the Company’s USECP on a case-by-case basis. The first meeting will be held no later than June 1, 2017.

28. At the same time as reported to BCS, the Company will provide to OCA, I&E, and CAUSE-PA the reporting data required by 52 Pa. Code § 54.75 and 52 Pa. Code § 58.15.

29. The Company will file to increase the maximum credits allowable under its existing customer assistance program (“CAP”) by an amount proportionate to 50% of the average increase to residential rates agreed to in this Settlement. That average increase will be calculated as the increase in total bill for the median-usage CAP customer, rounded to the nearest $10. The Joint Petitioners reserve the right to evaluate further revisions to CAP credits and to recommend additional changes in the Company’s future regularly-filed universal service proceeding as contemplated by 52 Pa. Code § 54.74. 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 USECPs.

30. The Company will modify its Low Income Usage Reduction Program such that funds not expended will roll over and be added to the budget available for expenditure in the following year(s) until the expiration of the Company’s currently-effective USECP. The Company will address the continuation of the roll over in its next regularly-filed USECP.

31. Any recoverable universal service costs incurred by the Company to implement the terms of this Settlement, including costs associated with changes to processes supporting universal service programs under this Settlement, will be recoverable under the Company’s Universal Service Charge (“USC”) Rider (Rider C), without objection by the Joint Petitioners. The Joint Petitioners retain the right to review the prudence and reasonableness of any claimed cost and to object to the amounts associated with these changes.

32. No later than sixty days following the implementation of new rates, the Company will file a revised USECP to implement the terms of this Settlement.

33. The Company agrees to accept identification documents issued by foreign governments as acceptable identification to establish service where they include: the applicant’s full name; a photograph; and an expiration date that has not expired as of the date of application.

34. The Company agrees to review the list of confirmed low income customers with consumption exceeding 12,000 kWh during the prior year and prioritize those customers for weatherization when possible. Once this list has been exhausted, the Company will review confirmed low income customers with lower annual kWh usage as well as eligible customers requesting weatherization.

35. In the event that the average annual CAP participation in the preceding reconciliation year exceeded 16,700 participants, actual costs recovered through Met-Ed’s USC Rider shall reflect CAP credits and actual pre-program arrearage forgiveness credits for all customers up to the 16,700 participation level. The Company shall offset the average annual CAP credits and pre-program arrearage forgiveness credits by 15% per participant for the preceding reconciliation year for any and all CAP customers exceeding the 16,700 participation level.

Smart Meters

36. For purposes of measuring savings achieved from the Company’s deployment of smart meters, a cost baseline will be set as of December 31, 2017 from which savings will be measured for the following categories: (1) meter reading; (2) meter services; (3) back-office; (4) contact center; (5) theft of service; (6) revenue enhancements; (7) distribution operations; (8) load research; and (9) avoided capital costs. The cost savings baselines shall be those set forth in Met-Ed Exhibit LWG-3, which is appended to the Joint Petition as Exhibit 6.

Light Emitting Diode (“LED”) Street Lighting

37. Any effort on the part of the Company to educate its customers regarding conversion of municipal street lighting from traditional sodium vapor or mercury vapor to LED lighting, whether on its own or in conjunction with other public or private entities, shall fully disclose the fact that any projected savings produced by such a conversion will necessarily be reduced over time as the Company seeks new rates, including adjustments to align LED rates with the cost of providing service to such facilities.

B. Pennsylvania Electric Company

The Joint Petitioners to the Penelec Settlement include BIE, OCA, OSBA, PICA, CAUSE-PA, Walmart and NAH. IBEW, Penn Future, CAC and PSU do not oppose the Settlement. The Penelec Settlement consists of the following terms and conditions:

Revenue Requirement

12. Penelec will be permitted to charge, effective for service rendered on and after January 27, 2017, the Settlement Rates set forth in Exhibit 1. The Settlement Rates are designed to produce an increase in distribution base rate operating revenues of $94.6 million for the twelve months ending December 31, 2017, as shown on the proof of revenues provided as Exhibit 2. The Joint Petitioners acknowledge and agree that: (1) the Settlement Rates were designed on the basis of the sales and billing units proposed by the Company in its initial filing; and (2) the Company’s overall revenue requirement to be recovered by the Settlement Rates has been reduced such that the Settlement Rates reflect only the average loss in revenues projected to occur over the five-year period (plan years 2017 through 2021) encompassing the Company’s Commission-approved Phase III Energy Efficiency and Conservation Plan.

13. The Joint Petitioners agree that the baseline for restarting charges under the Company’s DSIC Rider (Rider R) will be based on gross plant balances per Exhibit RAD-46, which includes Commission-approved 2016 and 2017 Long-Term Infrastructure Improvement Plan (“LTIIP”) plant total investment of $22.12 million.

14. The Company’s total revenue requirement includes $33.586 million associated with smart meter deployment. Once the aggregate investment and expense revenue requirements exceed $33.586 million, the Company may begin deferring costs that are eligible for recovery under its Smart Meter Technologies Charge (“SMT-C”) Rider (Rider G). When the $33.586 million threshold is exceeded and the Company begins deferring costs in excess of that amount, the Company will file a smart meter rate under its SMT-C Rider to recover all investment and expense revenue requirements in excess of the $33.586 million included in base distribution rates.

15. The Company will amortize its legacy meter stock, as updated in this case, over the original five-year period which began on May 3, 2015, under the settlement approved by the Commission at Docket No. R-2014-2428743 on April 9, 2015, until fully amortized.

16. The Company will continue to maintain its Storm Reserve Account on the Company’s balance sheet, which began on May 3, 2015, per the settlement approved by the Commission at Docket No. R-2014-2428743 on April 9, 2015. The Company’s total revenue requirement includes $7 million to be recovered for purposes of funding this reserve.

17. For accounting purposes, the Company will continue to depreciate assets using the average service life methodology based upon its depreciation rates as established in the Company’s service life study and annual depreciation report approved by the Commission at M-2015-2501756 until modified by subsequent Commission order. The Company will recognize its cost of removing plant in service through an amortization based on the Company’s five-year average of experienced cost of removal.

18. On or before May 1, 2017, the Company will provide to the statutory advocates an update to Penelec Exhibit RAD-47, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ended December 31, 2016. On or before May 1, 2018, the Company will provide to the statutory advocates an update to Penelec Exhibit RAD-46, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ended December 31, 2017. In the Company’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, 2017 to its projections in this case. However, it is recognized by the Joint Petitioners that this is a black box settlement that is a compromise of Joint Petitioners’ positions on various issues.

19. The Joint Petitioners agree and hereby stipulate that the Company shall use the rate of return on equity as calculated for electric utilities and published in the “Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities” for the most recent quarter for the following purposes:

a. Calculating the Company’s DSIC;

b. Calculating the incremental revenue requirement associated with smart meter deployment that exceeds the smart meter revenue requirement being recovered in the Settlement Rates as described in Paragraph 14 of this Joint Petition and therefore eligible for recovery through the Company’s SMT-C Rider; and

c. Calculating the allowance for funds used during construction.

Distribution Base Rate Stay-Out

20. Penelec will not file for another general increase to its distribution rates under Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), prior to January 27, 2019. However, if a legislative body or administrative agency, including the Commission, orders or enacts fundamental changes in policy or statutes, including changes in federal or other tax rates, which would have an impact on the Company’s rates, this Settlement shall not prevent the Company from filing tariffs or tariff supplements seeking increases in distribution base rates to the extent necessitated by such action. Additionally, the Company will not file a petition seeking a waiver of the five percent DSIC cap under Section 1358(a)(1) of the Public Utility Code, 66 Pa.C.S. § 1358(a)(1) prior to January 27, 2019.

21. Changes to rates charged under riders are not to be subject to the rate stay out contemplated under Paragraph 20, above, except as applied to any proposed waiver of the five-percent cap applicable to the Company’s DSIC Rider.

22. The Company shall not be precluded from seeking extraordinary rate relief under Section 1308(e) of the Public Utility Code, 66 Pa.C.S. § 1308(e).

Act 40 of 2016

23. Section 1301.1(a), 66 Pa.C.S. § 1301.1(a), which was added to the Public Utility Code by Act 40 of 2016, provides in relevant part that a utility’s federal income tax expense shall be calculated on a “stand-alone” basis for ratemaking purposes. As a consequence, consolidated tax adjustments would no longer be reflected in calculating income tax expense for ratemaking purposes. Section 1301.1(b), 66 Pa.C.S. § 1301.1(b) deals with the use of amounts representing a “differential” calculated by reference to Section 1301.1(a).

24. The level of revenue requirement included in this Settlement reflects the resolution of the parties’ positions in the dispute regarding 66 Pa.C.S. § 1301.1(a). The Company submitted, in Company Exhibit RAD-68 (page 1), a calculation of what its consolidated tax adjustment would be in this case “resulting from applying the ratemaking methods employed by the commission prior to the effective date of subsection (a) [of Section 1301.1] for ratemaking purposes,” which was not contested by any party.

Revenue Allocation And Rate Design

25. The revenue allocation to each rate schedule reflected in the Settlement Rates is set forth in Exhibit 3 to this Joint Petition. Rate design for each rate schedule comprising the Settlement Rates is explained in Exhibit 4 to this Joint Petition. The allocations and rates set forth in Exhibits 3 and 4 and incorporated in the Settlement Rates reflect the Joint Petitioners' agreement with regard to rate structure, rate design (including customer charges) and distribution of the increase in revenues in this case. Under the Settlement Rates, the Residential customer charge is $11.25 per month in lieu of the Residential customer charge proposed by the Company of $17.10 per month. Exhibit 5 reflects billing comparisons demonstrating the impact on an average customer’s bill if the Settlement Rates are approved.

Uncollectible Accounts Expense

26. Default service-related uncollectible accounts expense has been increased to recover an additional $5.835 million, beginning on the date the Settlement Rates become effective, through the Company’s Default Service Support Rider for the residential and commercial classes, and through the Hourly Pricing Default Service Rider for industrial class customers. The amounts of uncollectible accounts expense shall be those set forth in Exhibit 2 to this Settlement, at line 14. The Distribution-related uncollectible account expense has been revised and $8.505 million will be recovered through the Settlement Rates. The amounts of these uncollectible accounts expense shall be those set forth in Exhibit LWG-2.

Universal Service Programs

27. The Company will establish a Universal Service Advisory Committee (“USAC”) comprising representatives from the Company, the OCA, CAUSE-PA, I&E, the Commission’s Bureau of Consumer Service (“BCS”) and the organizations that administer the Company’s universal service and energy conservation program (“USECP”), which will hold meetings at least twice a year with respect to the Company’s USECP. The USAC’s purpose is intended to explore opportunities for enhancements to the Company’s USECP, as well as opportunities for outreach and education, language access, notification to low income customers regarding security deposit waivers and bill clarity. At the Company’s sole discretion, process or program changes raised through the USAC may be filed for approval by the Commission as proposed revisions to the Company’s USECP on a case-by-case basis. The first meeting will be held no later than June 1, 2017.

28. At the same time as reported to BCS, the Company will provide to OCA, I&E, and CAUSE-PA the reporting data required by 52 Pa. Code § 54.75 and 52 Pa. Code § 58.15.

29. The Company will file to increase the maximum credits allowable under its existing customer assistance program (“CAP”) by an amount proportionate to 50% of the average increase to residential rates agreed to in this Settlement. That average increase will be calculated as the increase in total bill for the median-usage CAP customer, rounded to the nearest $10. The Joint Petitioners reserve the right to evaluate further revisions to CAP credits and to recommend additional changes in the Company’s future regularly-filed universal service proceeding as contemplated by 52 Pa. Code § 54.74. 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 USECPs.

30. The Company will modify its Low Income Usage Reduction Program such that funds not expended will roll over and be added to the budget available for expenditure in the following year(s) until the expiration of the Company’s currently-effective USECP. The Company will address the continuation of the roll over in its next regularly-filed USECP.

31. Any recoverable universal service costs incurred by the Company to implement the terms of this Settlement, including costs associated with changes to processes supporting universal service programs under this Settlement, will be recoverable under the Company’s Universal Service Charge (“USC”) Rider (Rider C), without objection by the Joint Petitioners. The Joint Petitioners retain the right to review the prudence and reasonableness of any claimed cost and to object to the amounts associated with these changes.

32. No later than sixty days following the implementation of new rates, the Company will file a revised USECP to implement the terms of this Settlement.

33. The Company agrees to accept identification documents issued by foreign governments as acceptable identification to establish service where they include: the applicant’s full name; a photograph; and an expiration date that has not expired as of the date of application.

34. The Company agrees to review the list of confirmed low income customers with consumption exceeding 12,000 kWh during the prior year and prioritize those customers for weatherization when possible. Once this list has been exhausted, the Company will review confirmed low income customers with lower annual kWh usage as well as eligible customers requesting weatherization.

35. In the event that the average annual CAP participation in the preceding reconciliation year exceeded 23,200 participants, actual costs recovered through Penelec’s USC Rider shall reflect CAP credits and actual pre-program arrearage forgiveness credits for all customers up to the 23,200 participation level. The Company shall offset the average annual CAP credits and pre-program arrearage forgiveness credits by 14.7% per participant for the preceding reconciliation year for any and all CAP customers exceeding the 23,200 participation level.

Smart Meters

36. For purposes of measuring savings achieved from the Company’s deployment of smart meters, a cost baseline will be set as of December 31, 2017 from which savings will be measured for the following categories: (1) meter reading; (2) meter services; (3) back-office; (4) contact center; (5) theft of service; (6) revenue enhancements; (7) distribution operations; (8) load research; and (9) avoided capital costs. The cost savings baselines shall be those set forth in Penelec Exhibit LWG-3, which is appended to the Joint Petition as Exhibit 6.

Light Emitting Diode (“LED”) Street Lighting

37. Any effort on the part of the Company to educate its customers regarding conversion of municipal street lighting from traditional sodium vapor or mercury vapor to LED lighting, whether on its own or in conjunction with other public or private entities, shall fully disclose the fact that any projected savings produced by such a conversion will necessarily be reduced over time as the Company seeks new rates, including adjustments to align LED rates with the cost of providing service to such facilities.

C. Pennsylvania Power Company

The Joint Petitioners to the Penn Power Settlement include BIE, OCA, OSBA, CAUSE-PA and Walmart. Penn Future, CAC and PSU do not oppose the Settlement. The Penn Power Settlement consists of the following terms and conditions:

Revenue Requirement

12. Penn Power will be permitted to charge, effective for service rendered on and after January 27, 2017, the Settlement Rates set forth in Exhibit 1. The Settlement Rates are designed to produce an increase in distribution base rate operating revenues of $27.5 million for the twelve months ending December 31, 2017, as shown on the proof of revenues provided as Exhibit 2. The Joint Petitioners acknowledge and agree that: (1) the Settlement Rates were designed on the basis of the sales and billing units proposed by the Company in its initial filing; and (2) the Company’s overall revenue requirement to be recovered by the Settlement Rates has been reduced such that the Settlement Rates reflect only the average loss in revenues projected to occur over the five-year period (plan years 2017 through 2021) encompassing the Company’s Commission-approved Phase III Energy Efficiency and Conservation Plan.

13. The Joint Petitioners agree that the baseline for restarting charges under the Company’s DSIC Rider (Rider O) will be based on gross plant balances per Exhibit RAD-46, which includes Commission-approved 2016 and 2017 Long-Term Infrastructure Improvement Plan (“LTIIP”) plant total investment of $30.49 million.

14. The Company’s total revenue requirement includes $11.798 million associated with smart meter deployment. Once the aggregate investment and expense revenue requirements exceed $11.798 million, the Company may begin deferring costs that are eligible for recovery under its Smart Meter Technologies Charge (“SMT-C”) Rider (Rider G). When the $11.798 million threshold is exceeded and the Company begins deferring costs in excess of that amount, the Company will file a smart meter rate under its SMT-C Rider to recover all investment and expense revenue requirements in excess of the $11.798 million included in base distribution rates.

15. The Company will amortize its legacy meter stock, as updated in this case, over the original five-year period which began on May 3, 2015, under the settlement approved by the Commission at Docket No. R-2014-2428744 on April 9, 2015, until fully amortized.

16. The Company will continue to maintain its Storm Reserve Account on the Company’s balance sheet, which began on May 3, 2015, per the settlement approved by the Commission at Docket No. R-2014-2428744 on April 9, 2015. The Company’s total revenue requirement includes $1 million to be recovered for purposes of funding this reserve.

17. For accounting purposes, the Company will continue to depreciate assets using the average service life methodology based upon its depreciation rates as established in the Company’s service life study and annual depreciation report approved by the Commission at M-2015-2501746 until modified by subsequent Commission order. The Company will recognize its cost of removing plant in service through an amortization based on the Company’s five-year average of experienced cost of removal.

18. On or before May 1, 2017, the Company will provide to the statutory advocates an update to Penn Power Exhibit RAD-47, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ended December 31, 2016. On or before May 1, 2018, the Company will provide to the statutory advocates an update to Penn Power Exhibit RAD-46, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ended December 31, 2017. In the Company’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, 2017 to its projections in this case. However, it is recognized by the Joint Petitioners that this is a black box settlement that is a compromise of Joint Petitioners’ positions on various issues.

19. The Joint Petitioners agree and hereby stipulate that the Company shall use the rate of return on equity as calculated for electric utilities and published in the “Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities” for the most recent quarter for the following purposes:

a. Calculating the Company’s DSIC;

b. Calculating the incremental revenue requirement associated with smart meter deployment that exceeds the smart meter revenue requirement being recovered in the Settlement Rates as described in Paragraph 14 of this Joint Petition and therefore eligible for recovery through the Company’s SMT-C Rider; and

c. Calculating the allowance for funds used during construction.

Distribution Base Rate Stay-Out

20. Penn Power will not file for another general increase to its distribution rates under Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), prior to January 27, 2019. However, if a legislative body or administrative agency, including the Commission, orders or enacts fundamental changes in policy or statutes, including changes in federal or other tax rates, which would have an impact on the Company’s rates, this Settlement shall not prevent the Company from filing tariffs or tariff supplements seeking increases in distribution base rates to the extent necessitated by such action. Additionally, the Company will not file a petition seeking a waiver of the five percent DSIC cap under Section 1358(a)(1) of the Public Utility Code, 66 Pa.C.S. § 1358(a)(1) prior to January 27, 2019.

21. Changes to rates charged under riders are not to be subject to the rate stay out contemplated under Paragraph 20, above, except as applied to any proposed waiver of the five-percent cap applicable to the Company’s DSIC Rider.

22. The Company shall not be precluded from seeking extraordinary rate relief under Section 1308(e) of the Public Utility Code, 66 Pa.C.S. § 1308(e).

Act 40 of 2016

23. Section 1301.1(a), 66 Pa.C.S. § 1301.1(a), which was added to the Public Utility Code by Act 40 of 2016, provides in relevant part that a utility’s federal income tax expense shall be calculated on a “stand-alone” basis for ratemaking purposes. As a consequence, consolidated tax adjustments would no longer be reflected in calculating income tax expense for ratemaking purposes. Section 1301.1(b), 66 Pa.C.S. § 1301.1(b) deals with the use of amounts representing a “differential” calculated by reference to Section 1301.1(a).

24. The level of revenue requirement included in this Settlement reflects the resolution of the parties’ positions in the dispute regarding 66 Pa.C.S. § 1301.1(a). The Company submitted, in Company Exhibit RAD-68 (page 1), a calculation of what its consolidated tax adjustment would be in this case “resulting from applying the ratemaking methods employed by the commission prior to the effective date of subsection (a) [of Section 1301.1] for ratemaking purposes,” which was not contested by any party.

Revenue Allocation And Rate Design

25. The revenue allocation to each rate schedule reflected in the Settlement Rates is set forth in Exhibit 3 to this Joint Petition. Rate design for each rate schedule comprising the Settlement Rates is explained in Exhibit 4 to this Joint Petition. The allocations and rates set forth in Exhibits 3 and 4 and incorporated in the Settlement Rates reflect the Joint Petitioners' agreement with regard to rate structure, rate design (including customer charges) and distribution of the increase in revenues in this case. Under the Settlement Rates, the Residential customer charge is $11.00 per month in lieu of the Residential customer charge proposed by the Company of $13.41 per month. Exhibit 5 reflects billing comparisons demonstrating the impact on an average customer’s bill if the Settlement Rates are approved.

Uncollectible Accounts Expense

26. Default service-related uncollectible accounts expense has been increased to recover an additional $1.676 million, beginning on the date the Settlement Rates become effective, through the Company’s Default Service Support Rider for the residential and commercial classes, and through the Hourly Pricing Default Service Rider for industrial class customers. The amounts of these uncollectible accounts expense shall be those set forth in Exhibit 2 to this Settlement, at line 14. The Distribution-related uncollectible account expense has been revised and $1.220 million will be recovered through the Settlement Rates. The amounts of these uncollectible accounts expense shall be those set forth in Penn Power Exhibit LWG-2.

Universal Service Programs

27. The Company will establish a Universal Service Advisory Committee (“USAC”) comprising representatives from the Company, the OCA, CAUSE-PA, I&E, the Commission’s Bureau of Consumer Service (“BCS”) and the organizations that administer the Company’s universal service and energy conservation program (“USECP”), which will hold meetings at least twice a year with respect to the Company’s USECP. The USAC’s purpose is intended to explore opportunities for enhancements to the Company’s USECP, as well as opportunities for outreach and education, language access, notification to low income customers regarding security deposit waivers and bill clarity. At the Company’s sole discretion, process or program changes raised through the USAC may be filed for approval by the Commission as proposed revisions to the Company’s USECP on a case-by-case basis. The first meeting will be held no later than June 1, 2017.

28. At the same time as reported to BCS, the Company will provide to OCA, I&E, and CAUSE-PA the reporting data required by 52 Pa. Code § 54.75 and 52 Pa. Code § 58.15.

29. The Company will file to increase the maximum credits allowable under its existing customer assistance program (“CAP”) by an amount proportionate to 50% of the average increase to residential rates agreed to in this Settlement. That average increase will be calculated as the increase in total bill for the median-usage CAP customer, rounded to the nearest $10. The Joint Petitioners reserve the right to evaluate further revisions to CAP credits and to recommend additional changes in the Company’s future regularly-filed universal service proceeding as contemplated by 52 Pa. Code § 54.74. 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 USECPs.

30. The Company will modify its Low Income Usage Reduction Program such that funds not expended will roll over and be added to the budget available for expenditure in the following year(s) until the expiration of the Company’s currently-effective USECP. The Company will address the continuation of the roll over in its next regularly-filed USECP.

31. Any recoverable universal service costs incurred by the Company to implement the terms of this Settlement, including costs associated with changes to processes supporting universal service programs under this Settlement, will be recoverable under the Company’s Universal Service Charge (“USC”) Rider (Rider C), without objection by the Joint Petitioners. The Joint Petitioners retain the right to review the prudence and reasonableness of any claimed cost and to object to the amounts associated with these changes.

32. No later than sixty days following the implementation of new rates, the Company will file a revised USECP to implement the terms of this Settlement.

33. The Company agrees to accept identification documents issued by foreign governments as acceptable identification to establish service where they include: the applicant’s full name; a photograph; and an expiration date that has not expired as of the date of application.

34. The Company agrees to review the list of confirmed low income customers with consumption exceeding 12,000 kWh during the prior year and prioritize those customers for weatherization when possible. Once this list has been exhausted, the Company will review confirmed low income customers with lower annual kWh usage as well as eligible customers requesting weatherization.

35. In the event that the average annual CAP participation in the preceding reconciliation year exceeded 5,000 participants, actual costs recovered through Penn Power’s USC Rider shall reflect CAP credits and actual pre-program arrearage forgiveness credits for all customers up to the 5,000 participation level. The Company shall offset the average annual CAP credits and pre-program arrearage forgiveness credits by 14.3% per participant for the preceding reconciliation year for any and all CAP customers exceeding the 5,000 participation level.

Smart Meters

36. For purposes of measuring savings achieved from the Company’s deployment of smart meters, a cost baseline will be set as of December 31, 2017 from which savings will be measured for the following categories: (1) meter reading; (2) meter services; (3) back-office; (4) contact center; (5) theft of service; (6) revenue enhancements; (7) distribution operations; (8) load research; and (9) avoided capital costs. The cost savings baselines shall be those set forth in Penn Power Exhibit LWG-3, which is appended to the Joint Petition as Exhibit 6.

Light Emitting Diode (“LED”) Street Lighting

37. Any effort on the part of the Company to educate its customers regarding conversion of municipal street lighting from traditional sodium vapor or mercury vapor to LED lighting, whether on its own or in conjunction with other public or private entities, shall fully disclose the fact that any projected savings produced by such a conversion will necessarily be reduced over time as the Company seeks new rates, including adjustments to align LED rates with the cost of providing service to such facilities.

D. West Penn Power Company

The Joint Petitioners to the West Penn Power Settlement include BIE, OCA, OSBA, WPPII, CAUSE-PA, Walmart, PSU, and AK Steel. Penn Future and CAC do not oppose the Settlement. The West Penn Power Settlement consists of the following terms and conditions:

Revenue Requirement

12. West Penn will be permitted to charge, effective for service rendered on and after January 27, 2017, the Settlement Rates set forth in Exhibit 1. The Settlement Rates are designed to produce an increase in distribution base rate operating revenues of $60.6 million for the twelve months ending December 31, 2017, as shown on the proof of revenues provided as Exhibit 2. The Joint Petitioners acknowledge and agree that: (1) the Settlement Rates were designed on the basis of the sales and billing units proposed by the Company in its initial filing; and (2) the Company’s overall revenue requirement to be recovered by the Settlement Rates has been reduced such that the Settlement Rates reflect only the average loss in revenues projected to occur over the five-year period (plan years 2017 through 2021) encompassing the Company’s Commission-approved Phase III Energy Efficiency and Conservation Plan.

13. The Joint Petitioners agree that the baseline for restarting charges under the Company’s DSIC Rider (Rider N) will be based on gross plant balances per Exhibit RAD-46, which includes Commission-approved 2016 and 2017 Long-Term Infrastructure Improvement Plan (“LTIIP”) plant total investment of $38.21 million.

14. The Company’s total revenue requirement includes $38.28 million associated with smart meter deployment. Once the aggregate investment and expense revenue requirements exceed $38.28 million, the Company may begin deferring costs that are eligible for recovery under its Smart Meter Technologies Charge (“SMT-C”) Rider (Rider G). When the $38.28 million threshold is exceeded and the Company begins deferring costs in excess of that amount, the Company will file a smart meter rate under its SMT-C Rider to recover all investment and expense revenue requirements in excess of the $38.28 million included in base distribution rates.

15. The Company will amortize its legacy meter stock, as updated in this case, over the original five-year period which began on May 3, 2015, under the settlement approved by the Commission at Docket No. R-2014-2428742 on April 9, 2015, until fully amortized.

16. The Company will continue to maintain its Storm Reserve Account on the Company’s balance sheet, which began on May 3, 2015, per the settlement approved by the Commission at Docket No. R-2014-2428742 on April 9, 2015. The Company’s total revenue requirement includes $9 million to be recovered for purposes of funding this reserve.

17. For accounting purposes, the Company will continue to depreciate assets using the average service life methodology based upon its depreciation rates as established in the Company’s service life study and annual depreciation report approved by the Commission at M-2015-2501762 until modified by subsequent Commission order. The Company will recognize its cost of removing plant in service through an amortization based on the Company’s five-year average of experienced cost of removal.

18. On or before May 1, 2017, the Company will provide to the statutory advocates an update to West Penn Exhibit RAD-47, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ended December 31, 2016. On or before May 1, 2018, the Company will provide to the statutory advocates an update to West Penn Exhibit RAD-46, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ended December 31, 2017. In the Company’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, 2017 to its projections in this case. However, it is recognized by the Joint Petitioners that this is a black box settlement that is a compromise of Joint Petitioners’ positions on various issues.

19. The Joint Petitioners agree and hereby stipulate that the Company shall use the rate of return on equity as calculated for electric utilities and published in the “Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities” for the most recent quarter for the following purposes:

a. Calculating the Company’s DSIC;

b. Calculating the incremental revenue requirement associated with smart meter deployment that exceeds the smart meter revenue requirement being recovered in the Settlement Rates as described in Paragraph 14 of this Joint Petition and therefore eligible for recovery through the Company’s SMT-C Rider; and

c. Calculating the allowance for funds used during construction.

Distribution Base Rate Stay-Out

20. West Penn will not file for another general increase to its distribution rates under Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), prior to January 27, 2019. However, if a legislative body or administrative agency, including the Commission, orders or enacts fundamental changes in policy or statutes, including changes in federal or other tax rates, which would have an impact on the Company's rates, this Settlement shall not prevent the Company from filing tariffs or tariff supplements seeking increases in distribution base rates to the extent necessitated by such action. Additionally, the Company will not file a petition seeking a waiver of the five percent DSIC cap under Section 1358(a)(1) of the Public Utility Code, 66 Pa.C.S. § 1358(a)(1) prior to January 27, 2019.

21. Changes to rates charged under riders are not to be subject to the rate stay out contemplated under Paragraph 20, above, except as applied to any proposed waiver of the five-percent cap applicable to the Company’s DSIC Rider.

22. The Company shall not be precluded from seeking extraordinary rate relief under Section 1308(e) of the Public Utility Code, 66 Pa.C.S. § 1308(e).

Act 40 of 2016

23. Section 1301.1(a), 66 Pa.C.S. § 1301.1(a), which was added to the Public Utility Code by Act 40 of 2016, provides in relevant part that a utility’s federal income tax expense shall be calculated on a “stand-alone” basis for ratemaking purpose. As a consequence, consolidated tax adjustments would no longer be reflected in calculating income tax expense for ratemaking purposes.

24. West Penn, which joins with its parent and affiliates in filing a consolidated federal income tax return, submitted evidence showing that, even without the application of Section 1301.1, it would not have a consolidated tax adjustment in this case. No party proposed a consolidated tax adjustment for West Penn in this case. As a consequence, there are no issues with respect to Section 1301.1, 66 Pa.C.S. § 1301.1, concerning West Penn in this case.

Revenue Allocation And Rate Design

25. The revenue allocation to each rate schedule reflected in the Settlement Rates is set forth in Exhibit 3 to this Joint Petition. Rate design for each rate schedule comprising the Settlement Rates is explained in Exhibit 4 to this Joint Petition. The allocations and rates set forth in Exhibits 3 and 4 and incorporated in the Settlement Rates reflect the Joint Petitioners' agreement with regard to rate structure, rate design (including customer charges) and distribution of the increase in revenues in this case. Under the Settlement Rates, the Residential customer charge is $7.44 per month in lieu of the Residential customer charge proposed by the Company of $13.98 per month. Exhibit 5 reflects billing comparisons demonstrating the impact on an average customer’s bill if the Settlement Rates are approved.

Uncollectible Accounts Expense

26. Default service-related uncollectible accounts expense has been increased to recover an additional $4.958 million, beginning on the date the Settlement Rates become effective, through the Company’s Default Service Support Rider for the residential and commercial classes, and through the Hourly Pricing Default Service Rider for industrial class customers. The amounts of these uncollectible accounts expense shall be those set forth in Exhibit 2 to this Settlement, at line 14. The Distribution-related uncollectible account expense has been revised and $5.625 million will be recovered through the Settlement Rates. The amounts of these uncollectible accounts expense shall be those set forth in West Penn Exhibit LWG-2.

Universal Service Programs

27. The Company will establish a Universal Service Advisory Committee (“USAC”) comprising representatives from the Company, the OCA, CAUSE-PA, I&E, the Commission’s Bureau of Consumer Service (“BCS”) and the organizations that administer the Company’s universal service and energy conservation program (“USECP”), which will hold meetings at least twice a year with respect to the Company’s USECP. The USAC’s purpose is intended to explore opportunities for enhancements to the Company’s USECP, as well as opportunities for outreach and education, language access, notification to low income customers regarding security deposit waivers and bill clarity. At the Company’s sole discretion, process or program changes raised through the USAC may be filed for approval by the Commission as proposed revisions to the Company’s USECP on a case-by-case basis. The first meeting will be held no later than June 1, 2017.

28. At the same time as reported to BCS, the Company will provide to OCA, I&E, and CAUSE-PA the reporting data required by 52 Pa. Code § 54.75 and 52 Pa. Code § 58.15.

29. The Company will file to increase the maximum credits allowable under its existing customer assistance program (“CAP”) by an amount proportionate to 50% of the average increase to residential rates agreed to in this Settlement. That average increase will be calculated as the increase in total bill for the median-usage CAP customer, rounded to the nearest $10. The Joint Petitioners reserve the right to evaluate further revisions to CAP credits and to recommend additional changes in the Company’s future regularly-filed universal service proceeding as contemplated by 52 Pa. Code § 54.74. 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 USECPs.

30. The Company will modify its Low Income Usage Reduction Program such that funds not expended will roll over and be added to the budget available for expenditure in the following year(s) until the expiration of the Company’s currently-effective USECP. The Company will address the continuation of the roll over in its next regularly-filed USECP.

31. Any recoverable universal service costs incurred by the Company to implement the terms of this Settlement, including costs associated with changes to processes supporting universal service programs under this Settlement, will be recoverable under the Company’s Universal Service Charge (“USC”) Rider (Rider C), without objection by the Joint Petitioners. The Joint Petitioners retain the right to review the prudence and reasonableness of any claimed cost and to object to the amounts associated with these changes.

32. No later than sixty days following the implementation of new rates, the Company will file a revised USECP to implement the terms of this Settlement.

33. The Company agrees to accept identification documents issued by foreign governments as acceptable identification to establish service where they include: the applicant’s full name; a photograph; and an expiration date that has not expired as of the date of application.

34. The Company agrees to review the list of confirmed low income customers with consumption exceeding 12,000 kWh during the prior year and prioritize those customers for weatherization when possible. Once this list has been exhausted, the Company will review confirmed low income customers with lower annual kWh usage as well as eligible customers requesting weatherization.

35. In the event that the average annual CAP participation in the preceding reconciliation year exceeded 23,300 participants, actual costs recovered through Penelec’s USC Rider shall reflect CAP credits and actual pre-program arrearage forgiveness credits for all customers up to the 23,300 participation level. The Company shall offset the average annual CAP credits and pre-program arrearage forgiveness credits by 13.5% per participant for the preceding reconciliation year for any and all CAP customers exceeding the 23,300 participation level.

Smart Meters

36. For purposes of measuring savings achieved from the Company’s deployment of smart meters, a cost baseline will be set as of December 31, 2017 from which savings will be measured for the following categories: (1) meter reading; (2) meter services; (3) back-office; (4) contact center; (5) theft of service; (6) revenue enhancements; (7) distribution operations; (8) load research; and (9) avoided capital costs. The cost savings baselines shall be those set forth in West Penn Exhibit LWG-3, which is appended to the Joint Petition as Exhibit 6.

Light Emitting Diode (“LED”) Street Lighting

37. Any effort on the part of the Company to educate its customers regarding conversion of municipal street lighting from traditional sodium vapor or mercury vapor to LED lighting, whether on its own or in conjunction with other public or private entities, shall fully disclose the fact that any projected savings produced by such a conversion will necessarily be reduced over time as the Company seeks new rates, including adjustments to align LED rates with the cost of providing service to such facilities.

VI. LEGAL STANDARDS

The purpose of this investigation is to establish rates for the Companies’ customers that are just and reasonable pursuant to Section 1301 of the Public Utility Code.[[85]](#footnote-85)

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.[[86]](#footnote-86) In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*,[[87]](#footnote-87) and *Federal Power Commission v. Hope Natural Gas Co*.[[88]](#footnote-88) 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.[[89]](#footnote-89)

The Commission encourages parties in contested on-the-record proceedings to settle cases.[[90]](#footnote-90) 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 positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.[[91]](#footnote-91) In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Settlement resolves most of the contested issues in this case, fairly balances the interests of the company and its ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

The Joint Petitioners note that with only a few select exceptions further explained below, the Settlement revenue requirement is a “black box” amount. Under a “black box” settlement, parties do not specifically identify revenues and expenses that are allowed or disallowed. The Joint Petitioners believe that “black box” settlements facilitate agreements as parties are not required to identify specific determinations of each matter at issue.

Not every issue was of equal concern to every party. Accordingly, each of the Joint Petitioners’ statements in support did not necessarily address each and every aspect of the Settlement.

After a full consideration of the terms of the Settlements and the statements in support, I recommend that the Commission adopt these Settlements without modification.

VII. DISCUSSION OF THE SETTLEMENTS

A. Revenue Requirements

1. Companies

Under the terms of the Settlements, the Companies will be entitled to charge electric distribution base rates designed to produce the increases in electric operating revenues set forth below, based on the Companies’ proposed billing units for the twelve months ended December 31, 2017, to become effective for service rendered on and after January 27, 2017 (Settlement Rates):

|  |  |  |
| --- | --- | --- |
|  | **Increase In Base Rates** | **Increase In DSS and HP Riders**[[92]](#footnote-92) |
| Met-Ed | $90.5 million | $5.5 million |
| Penelec | $94.6 million | $5.8 million |
| Penn Power | $27.5 million | $1.7 million |
| West Penn | $60.6 million | $5.0 million |

The table below shows the monthly bill of a typical residential customer of each of the Companies using 1,000 kW calculated on the basis of: (1) the distribution rates in effect on April 28, 2016 and default service rates in effect on April 28, 2016; (2) the initially proposed distribution rates and default service rates in these rate filings; (3) the percentage increases at the proposed rates; (4) the Settlement Rates and the consistent application of default service rates in effect as of April 28, 2016; and (5) the percentage increases at the Settlement Rates:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Distribution Rates (April 28, 2016)** | **Proposed Rates** | **Percentage Increase** | **Settlement Rates** | **Percentage Increase** |
| Met-Ed | $129.82 | $147.34 | 13.5% | $143.73 | 10.7% |
| Penelec | $137.89 | $161.50 | 17.1% | $155.541 | 12.8% |
| Penn Power | $130.06 | $148.51 | 14.2% | $143.57 | 10.4% |
| West Penn | $112.99 | $123.88 | 9.6% | $121.08 | 7.2% |

Since filing their last electric base rate cases in August 2014, the Companies state that they have successfully managed and contained the increases in their operating expenses. Notwithstanding those efforts, however, three principal factors have been major contributors to the Companies’ need to increase their distribution rates:

**Growth in the Companies’ Distribution Rate Base.**  The rate base of each of the Companies grew by 12% (Met-Ed), 11% (Penelec), 20% (Penn Power) and 12.5% (West Penn) as a result of the Companies’ ongoing investment in distribution plant, including smart meters and DSIC-eligible investment being rolled-in to base rates.[[93]](#footnote-93)

As a result of the Companies’ investments reflected in the rate base increases shown above and non-capital expenditures to maintain and enhance reliability, the Companies have performed very well relative to the SAIFI,[[94]](#footnote-94) SAIDI[[95]](#footnote-95) and CAIDI[[96]](#footnote-96) indices the Commission employs.[[97]](#footnote-97) Met-Ed, Penn Power and West Penn have performed better than the twelve-month and three-year standards for SAIFI, CAIDI and SAIDI. Penelec has performed better than the twelve-month standard for SAIFI and SAIDI, while achieving performance only slightly below the twelve-month standard for CAIDI. Additionally, Penelec has improved its performance and is on a clear path toward achieving its goal of meeting the three-year standard for all indices. The performance of all the Companies through March 31, 2016, fully satisfies the reliability performance goals to which they committed in the settlements of their 2014 base rate cases.[[98]](#footnote-98) No party took issue with the Companies’ demonstrated reliability in delivering distribution service.

**Reduction in Sales**. While the Companies have been making substantial investments in new and replacement electric plant to maintain and enhance service to customers, their sales have declined.[[99]](#footnote-99) Each Company’s projected revenue at current rates is less than the revenue requirement agreed to in the settlements approved by the Commission in the prior 2014 base rate cases.

The decline in average residential usage in each Company’s service area is primarily due to the implementation of Pennsylvania’s state-mandated energy efficiency programs under Act 129 of 2008 (Act 129) as well as federally-mandated energy efficiency lighting standards.[[100]](#footnote-100) As the Companies’ witness, Kevin M. Siedt, explained, Act 129 added Section 2806.1 to the Public Utility Code,[[101]](#footnote-101) which requires major Pennsylvania electric distribution companies to achieve specific, targeted reductions of retail electricity consumption and peak demand and imposes significant monetary penalties for failing to meet those targets.[[102]](#footnote-102) In its Phase III Energy Efficiency and Conservation Implementation Order entered on June 9, 2015, the Commission established usage reduction targets of 4.2% each for Met-Ed and Penelec, 3.6% for Penn Power and 2.8% for West Penn.[[103]](#footnote-103) Thus, it is clear that reductions in sales will continue for all the Companies.

**Increase in Operation and Maintenance (O&M) Expenses**. While the Companies have worked diligently to contain operating expenses, they have experienced increases in non-capitalized operating and maintenance expenditures in connection with their efforts to maintain and enhance reliability, such as vegetation management, facility repairs, and substation maintenance, which had the beneficial effects on reliability discussed above. In addition, the implementation of the Companies’ Long-Term Infrastructure Improvement Plans (LTIIPs) is driving increases in O&M expenses because a number of projects included in the Companies’ LTIIPs have ongoing O&M components in addition to their capital costs. Finally, the Companies continue to experience increased uncollectible accounts expense.[[104]](#footnote-104)

Due in large part to the factors discussed above, the Companies’ projected overall rates of return for the fully projected future test year, at present rates, and, more importantly, their indicated rates of return on common equity during that same period, are anticipated to fall to very low levels.[[105]](#footnote-105) According to the Companies’ rate of return witness, Ms. Pauline M. Ahern, returns at those levels will not support the investments required to ensure that the Companies can maintain and enhance reliability and replace aging infrastructure while continuing to provide safe and reliable electric service to their customers.[[106]](#footnote-106) In that regard, the Companies project that they will need to make significant investments in plant and equipment that is not eligible for DSIC recovery during the period 2018 through 2020 as follows: $239.7 million (Met-Ed), $329.2 million (Penelec), $54 million (Penn Power) and $163.8 million (West Penn).[[107]](#footnote-107) Accordingly, it is critically important that the Companies be granted the rate relief the Settlements will provide.

In further support for the Settlements, the Companies point to specific provisions within the Settlements which impact the necessity for the agreed upon revenue requirements. The Settlements provide for baselines for restarting charges under the DSIC provisions[[108]](#footnote-108) and smart meter revenue requirement baselines.[[109]](#footnote-109) The Settlements also carry on programs from earlier base rate proceedings, including the amortization of legacy meter stock[[110]](#footnote-110) and the storm reserve accounts.[[111]](#footnote-111) As the Companies point out, these were not areas of significant disagreement among the parties.

Other issues were contested by other parties and resulted in compromise and settlement. The Companies’ proposed annual depreciation accrual rates were developed by John J. Spanos.[[112]](#footnote-112) The annual depreciation rates calculated by Mr. Spanos were based on service lives derived from detailed service life studies performed by Mr. Spanos for each of the Companies using utility plant retirement and survival data through December 14, 2014.[[113]](#footnote-113) In calculating the Companies’ proposed depreciation rates, Mr. Spanos used the Equal Life Group (ELG) procedure in place of the Average Service Life (ASL) procedure that the Companies had employed in the past.[[114]](#footnote-114) As Mr. Spanos explained, the ELG procedure has been the predominant grouping procedure used by utilities in Pennsylvania for many years with the approval of the Commission because it more accurately depicts the accrued depreciation associated with each vintage group and, therefore, enables a more accurate calculation of the undepreciated cost of plant that remains to be recovered through future depreciation accruals.[[115]](#footnote-115) For the Companies, the change to the ELG procedure resulted in somewhat higher depreciation rates and, therefore, higher annual depreciation expense than continued use of the ASL procedure would produce.

The OCA, through its witness, James S. Garren,[[116]](#footnote-116) was the only party that contested the Companies’ proposed depreciation rates. While Mr. Garren accepted the results of Mr. Spanos’ service life study, he opposed the use of the ELG procedure to calculate depreciation rates based on the service lives determined by that study. Mr. Garren, therefore, proposed that the Companies continue to use the ASL procedure in this case and recommended that, if a change to the ELG procedure were to occur, it should be done in the future and phased-in over more than one rate case.[[117]](#footnote-117) Mr. Spanos responded to, and rebutted, all of the substantive objections Mr. Garren postulated to the use of the ELG procedure.[[118]](#footnote-118)

While the Companies believe, and the evidence clearly shows, that the ELG procedure is well-established as the predominant grouping procedure employed by companies in every segment of the utility industry in Pennsylvania and has been approved by the Commission many times, they also recognized that, in this case, the change from the ASL to the ELG procedure produces somewhat higher depreciation rates and correspondingly higher depreciation expense. Therefore, as part of the inter-related compromises that resulted in the Settlements, the Companies have agreed to continue to depreciate their assets using the ASL procedure based upon the depreciation rates established in each Company’s service life study and Annual Depreciation Reports approved by the Commission at Docket Nos. M-2015-2501728 (Met-Ed), M-2015-2501756 (Penelec), M-2015-2501746 (Penn Power) and M-2015-2501762 (West Penn), until modified by Commission order. Additionally, the Companies will recognize their cost of removing plant in service through an amortization based on each Company’s five-year average of experienced cost of removal.[[119]](#footnote-119)

Finally, the parties have agreed to explicitly resolve, as part of the Settlement, the rate of return on equity that Joint Petitioners agree should be used by the Company in computing: (1) incremental revenue requirements associated with smart meter deployment that exceed the smart meter revenue requirements being recovered in the Settlement Rates (as previously explained in Paragraph 14, such excess revenue requirements would be eligible for recovery under the Company’s SMT-C); (2) the Companies’ Commission-approved DSIC Riders; and (3) the equity component of the cost of capital used to calculate the Companies’ AFUDC.[[120]](#footnote-120) To that end, the Joint Petitioners have agreed and stipulated in Paragraph 19 of the Joint Petitions that the Companies shall use for such purposes the rate of return on equity as calculated for electric utilities and published in the “Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities” (“TUS Quarterly Earnings Report”) for the most recent period prior to the time that a charge is calculated under the DSIC or SMT-C. The Bureau of Technical Utility Services’ (“TUS”) calculation is a recognized and accepted benchmark return on equity for use in calculating revenue requirement under the DSIC and other similar riders. Moreover, TUS regularly updates its calculation to reflect changes in market-determined equity costs based on a clearly stated methodology and data base.

In consideration of all of these elements of the Settlement related to revenue and costs, the Companies contend that the revenue requirement provisions of the Settlement are reasonable and in the public interest. As long-standing Commission precedent establishes, one important way to identify an outcome that is within the acceptable range of outcomes is through the settlement process. In that way, parties with differing interests engage in an adversarial process to scrutinize the evidence supporting a rate request and, based on robust negotiations, agree to a reasonable overall result.

The Companies posit that the revenue levels agreed upon by the Joint Petitioners are reasonable and should be approved. The significant increase in the Companies’ plant in service combined with declining sales, among other factors detailed in the testimony of the Companies’ witnesses, present a compelling case for significant rate relief. That assessment is supported by the litigation positions of BIE and OCA, which concluded that the Companies are entitled to increases in their operating revenues.

2. BIE

BIE concurs that the revenue requirement achieved in settlement is in the public interest. BIE analyzed the ratemaking claims contained in the base rate filings including operating and maintenance expenses, rate base, taxes, cash working capital, rate structure, capital structure, and the cost of common equity and long-term debt. The agreed upon revenue increases in the Settlement are not significantly higher, and in some instances are lower, than BIE’s litigation position.[[121]](#footnote-121) The Settlement represents a reduction from the original filing in the amount of $49.7 million for Met-Ed customers, $64.2 million for Penelec customers, $37.6 million for West Penn customers and $14.5 million for Penn Power customers.

BIE acknowledges that there is no agreement upon certain individual issues; rather, the parties have agreed to an overall increase to base rates that is substantially less than what was requested by the Companies. Line-by-line identification and ultimate resolution of every issue raised in the proceeding is not necessary to find that the Settlement satisfies the public interest nor could such a result be achieved as part of a settlement.

BIE’s comfort with the revenue increases for each company is bolstered by the Fully Projected Future Test Year (FPFTY) reporting requirements agreed to in the Settlement. Section 315 of the Public Utility Code[[122]](#footnote-122) traditionally required that utility investment be used and useful in the provision of service before the investment was reflected in rates, although it permitted some use of a FPFTY. However, as amended under Act 11 of 2012, Section 315 now allows a utility to project investment and include it in the claimed revenue requirement through the twelve-month period beginning with the first month that the new rates will be placed in effect. By allowing this extended projection, the FPFTY essentially allows a utility to require ratepayers to pay a return on its projected investment in future facilities that are not in place and providing service at the time the new rates take effect and that are not subject to any guarantee of being completed and placed into service.

While Section 315 of the Public Utility Code authorizes the use of such projections, BIE sought to have the Companies provide interim reports until the filing of the next base rate cases in order to be able to timely review and verify the status of its rate base projections. The Settlement specifies the exhibits included with the Companies’ written testimony, that will be updated for the twelve months ended December 31, 2016 and December 31, 2017. In addition, the Companies agreed to provide, as a part of the next base rate case, a comparison of its actual expenses and rate base additions for the twelve months ended December 31, 2017 to the projections in this case. Accordingly, BIE supports the Settlement because this condition achieves BIE’s goal of timely receiving data sufficient to allow for the evaluation and confirmation of the accuracy of the projections in its next base rate filing.

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. BIE takes the position that the increases proposed in the Settlements respect this principle. Ratepayers will continue to receive safe and reliable service at just and reasonable rates while allowing the Companies sufficient additional revenues to meet their operating and capital expenses and providing them the opportunity to earn a reasonable return on investment. Accordingly, BIE submits that the proposed Settlement is in the public interest and requests that it be approved by the Commission without modification.

3. OCA

OCA also supports the revenue increases for each company, noting that the Settlement Rates also reflect the average loss in revenues related to the Phase III Energy Efficiency and Conservation (EE&C) Plan over the Plan’s five-year period, and a continuation of the five-year amortization period for legacy meter expenses as approved in the 2014 base rate cases.[[123]](#footnote-123) The increases also include revenue related to distribution, smart meters, and uncollectible accounts expenses, as well as the continuation of Storm Reserve Accounts for each Company which were created as a result of the 2014 FirstEnergy base rate case settlements.[[124]](#footnote-124)

Like the Companies, OCA points out that the settlement terms address a key concern raised by OCA witness Garren regarding the Companies’ proposed switch in accounting methods from the Average Service Life (ASL) methodology to the Equal Life Group (ELG) methodology to determine service life depreciation expense rates for both current and future vintage groups. The OCA opposed the switch from ASL to ELG because the switch would have resulted in ratepayers incurring higher rates in order to offset the change in the depreciation reserve.[[125]](#footnote-125) As a result of the Settlements, for accounting purposes, the Companies will continue to depreciate assets for all present and future depreciable property using the ASL methodology based upon its depreciation rates as established in the Companies’ 2015 service life study and annual depreciation report approved by the Commission at Dockets M-2015-2501728 (Met-Ed); M-2015-2501756 (Penelec); M-2015-2501746 (Penn Power); and M-2015-2501762 (West Penn Power), until modified by subsequent Commission order. The Companies will recognize their cost of removing plant in service through an amortization based on the Companies’ five-year average of experienced cost of removal.[[126]](#footnote-126) The OCA submits that this adequately addresses Mr. Garren’s concerns regarding depreciation methodology and its effect on current and future vintages for purposes of the Settlements, and is therefore reasonable and in the public interest.

In general, the Settlements represent a “black box” approach to all individual revenue requirement and return on equity issues, with the limited exceptions contained in the Settlements relating to specific items discussed above, including depreciation methods, smart meter expenses, storm reserve accounts, and EE&C programs. OCA favors “black box” settlements in order to avoid the need for protracted disputes over the merits of individual revenue adjustments and avoid the need for a diverse, large group of stakeholders to attempt to reach consensus on a variety of financial numbers. The OCA submits that it is unlikely that the parties would have been able to reach a consensus on each of the disputed accounting and ratemaking issues raised in these matters, as policy and legal positions can differ widely. As such, the Joint Petitioners have not specified a dollar amount for each issue or adjustment raised in this case. Attempting to reach an agreement regarding each adjustment in this proceeding would have likely prevented any settlement from being reached.

Based upon OCA’s analysis of the Companies’ filings, discovery responses received, and testimony by all parties, the revenue increases under the Settlements represent results that would be within the range of likely outcomes in the event of full litigation of the cases. The increases are reasonable and yield results that are in the public interest, particularly when accompanied by other important conditions contained in the Settlements such as the stay-out provision, limited increases to fixed monthly customer charges, and improvements to universal service and customer assistance programs which are described below. The revenue increases agreed to provide adequate funding to allow the Companies to maintain the safety and adequacy of their distribution systems. As such, the OCA submits that the increases agreed to in the Settlements are in the public interest and in the interest of the Companies’ ratepayers, and should be approved by the Commission.

4. OSBA

The OSBA agrees that the revenue requirements agreed upon in the Settlements are in the public interest. The reduction in the Companies’ requested distribution revenue increases provided by the Settlements will benefit all the Companies’ small business customers.

5. PSU, Walmart, AK Steel and the Industrials

PSU joined the West Penn Power Settlement and did not object to the Settlements reached in the other three cases. In its statement in support, PSU describes itself as a major generation, transmission and distribution service customer of West Penn Power at its University Park campus, receiving service pursuant to West Penn Power’s Tariff 38. PSU is the only customer taking service under Tariff 38. PSU also receives generation, transmission and distribution service from West Penn under rate schedules other than Tariff 38 for approximately 100 additional accounts at the University Park campus including the airport and campuses at New Kensington, Fayette and Mont Alto.

PSU supports the West Penn Power Settlement because the Joint Petitioners have proposed that rates be designed to produce an increase in distribution base rate operating revenues which is less than the revenue increase requested in West Penn Power’s original filing. PSU also supports the Settlement because it moves the rate of return paid by PSU toward the reduction of illegal cross-subsidization, consistent with *Lloyd v. Pa. Pub. Util. Comm’n*, 904 A.2d 1010 (Pa.Cmwlth. 2006), *alloc. denied*, 916 A.2d 1104 (Pa. 2007) (“*Lloyd*”).

AK Steel, an intervenor in the West Penn Power case, states that it supports the West Penn Power Settlement and believes it is in the public interest.

Walmart supports the Settlements because the overall rate increases are less than the increases originally requested by the Companies, which will benefit Walmart. Although the Settlements do not specify a return on equity for the Companies, Walmart believes that the overall reduced revenue requirement increases will result in functional ROEs that are reasonable and generally in line with the recommendation set forth by Walmart witness, Steve W. Chriss.[[127]](#footnote-127)

The Industrials also support the Settlements, in part, because agreed upon revenue requirements are less than the original requests by the Companies. While the Settlements reflect “black box” settlements, which often are the means used to achieve settlements among parties with respect to rate of return and return on equity issues in a rate proceeding, the Settlements address concerns about the absence of stated rates of return on equity by affirmatively establishing a reasonable approach to determine rates of return on equity for each of the four companies with regard to (i) the Companies’ respective DSICs; (ii) smart meter deployment that exceeds the smart meter revenue requirement; and (iii) the allowance for funds used during construction.

B. Distribution Base Rate Stay-Out

1. Companies

The Companies have agreed that they will not file for distribution base rate increases under Section 1308(d)[[128]](#footnote-128) prior to January 27, 2019. However, if a legislative body or administrative agency, including the Commission, orders or enacts fundamental changes in policy or statutes, including changes in federal or other tax rates, which would have an effect on the Companies’ rates, the Settlements shall not prevent the Companies from filing tariffs or tariff supplements seeking increases in distribution base rates to the extent necessitated by such action. The Companies also agreed that they will not file petitions seeking a waiver of the five-percent cap on DSIC revenues under Section 1358(a)(1),[[129]](#footnote-129) prior to January 27, 2019.[[130]](#footnote-130)

The stay-out provisions do not apply to rates charged under any riders (except for the restriction on seeking a waiver of the DSIC five-percent cap) and do not preclude the Companies from seeking extraordinary rate relief pursuant to Section 1308(e).[[131]](#footnote-131)

The distribution base rate stay-out provisions will help assure the stability of base rates, subject to reasonable exceptions for the contingencies described above, for a period of at least two years and nine months.

2. BIE

Given that the Companies recently increased rates in April 2015 and will do so again at the conclusion of this proceeding, BIE supports the stay-out provisions. The lengthy stay-out provision contained in the Settlements provides customers some financial respite before another rate increase proposal is filed.

3. OCA

The stay-out provisions were also important to OCA. In OCA’s view, this will provide a measure of rate stability for consumers and will prevent additional rate increases in quick succession.

4. The Industrials

The Industrials also support the stay-out provisions and state that the Settlements specifically satisfy concerns raised by their complaints.

C. Act 40 of 2016

1. Companies

Section 1301.1(a),[[132]](#footnote-132) which was added to the Public Utility Code by Act 40 of 2016, provides, in relevant part, that a utility’s federal income tax expense shall be calculated on a “stand-alone” basis for ratemaking purposes. As a consequence, consolidated tax adjustments (CTAs) can no longer be reflected in calculating income tax expense for ratemaking purposes. Section 1301.1(b)[[133]](#footnote-133) deals with the investment of amounts representing the “differential” calculated by reference to Section 1301.1(a):

(b) Revenue use - If a differential accrues to a public utility resulting from applying the ratemaking methods employed by the commission prior to the effective date of subsection (a) for ratemaking purposes, the differential shall be used as follows:

(1) Fifty percent to support reliability or infrastructure related to the rate-base eligible capital investment as determined by the commission; and

(2) Fifty percent for general corporate purposes.

For Met-Ed, Penelec and Penn Power, the level of revenue requirement included in their respective Settlements reflects the resolution of the parties’ positions regarding the impact of Section 1301.1(a) on the revenue requirement in these consolidated cases.[[134]](#footnote-134) The issue reserved for briefing pertains to the OCA’s contention that Section 1301.1(a) requires the Commission to alter the way charges under the DSIC are calculated; it does not affect either the Companies’ revenue requirements or the Settlement Rates. Paragraph No 23 of the Settlements for Met-Ed, Penelec and Penn Power provides that those Companies submitted, in Exhibit RAD-68 (page 1) a calculation of what their CTAs would be in each respective case “resulting from applying the ratemaking methods employed by the commission prior to the effective date of subsection (a) [of Section 1301.1] for ratemaking purposes.”[[135]](#footnote-135) These calculations were not contested by any party.

Paragraph Nos. 23 and 24 of the West Penn Power Settlement explain that West Penn Power would not have a CTA in this case even if Section 1301.1(a) did not apply to the determination of its revenue requirement. As a consequence, there are no issues with respect to the application of Section 1301.1 to West Penn Power in its case, and West Penn Power has no “differential” as defined in Section 1301.1(b).

2. OCA

The OCA raised a number of issues in this case related to the implementation of Act 40 of 2016, which was passed into law on June 12, 2016 and became effective on August 11, 2016. *See* 66 Pa.C.S. § 1301.1. Consolidated tax savings adjustments will no longer be reflected in calculating income tax expense for ratemaking purposes. In Settlements, the parties have agreed that the revenue amounts in each case include the revenue use provisions of Act 40.

D. Revenue Allocation and Rate Design

1. Companies

Every rate proceeding consists of two parts. First, the overall revenues to which a utility is entitled must be determined. The second part of the process must determine how much of the total revenue requirement each rate class should bear. The allocation of revenue responsibility can be one of the more contentious parts of a rate proceeding because it is a “zero sum” exercise among the non-utility parties – any revenue responsibility not borne by a particular rate class must be borne by one or more other rate classes. While cost of service studies are the touchstone for reasonable allocations of revenue responsibility among rate classes,[[136]](#footnote-136) the Commission has often stated that cost of service analyses must reflect the exercise of judgment and are as much a matter of art as of science.[[137]](#footnote-137) For that reason, Pennsylvania appellate courts have repeatedly held that the Commission, in crafting a reasonable rate structure, is “invested with a flexible limit of judgment” and may establish just, reasonable and non-discriminatory rates within a “range of reasonableness.”[[138]](#footnote-138)

The Companies explain that establishing a reasonable revenue allocation requires a careful balancing of the countervailing interests of the non-utility parties representing the various customer classes as well as a utility’s interest in having a rate structure that recovers its cost of service, can be billed and administered efficiently and is understandable to customers. Accordingly, this aspect of a rate proceeding is particularly well suited to achieving a reasonable overall outcome based on the give-and-take of the settlement process. That is precisely what occurred in this case, which resulted in complete settlements of all contested issues involving revenue allocation and rate design among a wide array of parties representing the interests of residential, commercial, industrial and lighting customers.

The Companies’ initial filings included cost of service (COS) studies sponsored by the Companies’ cost of service witness, Thomas J. Dolezal.[[139]](#footnote-139) The Companies’ COS studies followed the basic steps prescribed by the Electric Utility Cost Allocation Manual published by the National Association of Regulatory Utility Commissioners (“NARUC”) (“NARUC Manual”) for arranging accounting data into a format that facilitates allocating or assigning the total cost of service to individual rate schedules or service classifications within an electric utility’s rate structure.[[140]](#footnote-140) A number of parties took issue with one or more subsidiary elements of the Companies’ COS studies.[[141]](#footnote-141) As Mr. Dolezal explained,[[142]](#footnote-142) none of the revisions and refinements other Joint Petitioners proposed had a material impact on the results of the COS studies for purposes of determining a reasonable revenue allocation, with the exception of OCA witness Clarence Johnson’s proposal not to employ the results of the minimum system study and, instead, to allocate all costs of poles, conduit and conductors in proportion to class demands.[[143]](#footnote-143) Although complete agreement could not be reached among all the Joint Petitioners with respect to either the Companies’ COS studies or the revisions and refinements to those studies proposed by other parties, they all acknowledged that COS studies should be used as a guide, that rates should be designed to move all classes closer to their indicated cost of service. The Commission has long recognized that the movement toward cost of service should be tempered by the concept of gradualism in order to avoid large, disruptive, one-time increases to any particular customer class.

The allocation of the revenue increase under the Settlement Rates was subject to careful consideration and detailed negotiations among the Joint Petitioners. As a result, the Joint Petitioners were able to reach agreement on the allocation among customer classes of the revenue increase under the Settlement Rates that are depicted in Exhibit 3 to the Settlements. Those allocations are within the range proposed by the Joint Petitioners. In the Companies’ view, it provides for reasonable movement toward the system average rate of return by the various customer classes as measured by the Companies’ COS studies. Accordingly, the revenue allocation effected by the Settlements is consistent with the Commonwealth Court’s decision in *Lloyd v. Pa. Pub. Util. Comm’n.*[[144]](#footnote-144) Indeed, as the Commonwealth Court recognized in pre-*Lloyd* decisions, which were not disturbed by its holding in *Lloyd*, “there is no single cost of service study or methodology that can be used to answer all questions pertaining to costs,”[[145]](#footnote-145) nor is there any “set formula for determining proper ratios among rates of different customer classes.”[[146]](#footnote-146)

The principal area of disagreement was related to the level of the Companies’ customer charges and, in particular, the customer charges for the residential class. As part of the Settlements, the Joint Petitioners have agreed that the residential customer charges should be those set forth below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Current**  **Customer Charges** | **Proposed Customer Charges** | **Customer Costs Recoverable In Customer Charges** | **Customer Charges Under Settlement Rates** |
| Met-Ed | $10.25 | $17.42 | $17.42 | $11.25 |
| Penelec | $ 9.99 | $17.10 | $17.10 | $11.25 |
| Penn Power | $10.85 | $13.41 | $13.41 | $11.00 |
| West Penn Power | $ 5.81 | $13.98 | $13.98 | $ 7.44 |

As previously explained, although some parties proposed revisions and refinements to the Companies’ COS studies, the Joint Petitioners are in general agreement that the Settlement Rates make appropriate progress in moving all classes closer to the Companies’ cost of service and are consistent with the principle of gradualism. With respect to rate design, the Settlement Rates reflect the need to recover the customer component of total cost of service in the customer charge, while recognizing that increases in the customer charges can impact low-usage customers. The Settlement Rates have been developed with those considerations in mind.

For all the foregoing reasons, the Companies take the position that the proposed revenue allocations and rate designs are reasonable, appropriately balance the interests of all parties, and are in the public interest.

2. BIE

One of the considerations BIE uses in appropriately allocating rate increases is the resulting rate of return by customer class and the corresponding relative rate of return by class, *i.e.,* how the rate of return for each class compares to the system average rate of return. The optimum goal should be to establish proposed rates so that the revenue received from a particular class is equal to the corresponding costs of providing service to that class. A relative rate of return above 1.00 for a class indicates that the cost of providing service is less than the revenue received from that class. A relative rate of return below 1.00 for a class indicates that the cost of providing service is more than the revenue received from that class. Based on the results of BIE’s analysis of the cost of service studies, BIE made recommendations to move the relative rate of return for each class towards 1.00, which it considers to be the ultimate goal. After a full analysis of the Companies’ base rate filings and extensive settlement negotiations among the parties, BIE fully supports the revenue allocations as set forth in Exhibit 3 of the Joint Petitions.

With respect to rate design, customer charges should be designed to recover the direct and indirect fixed costs incurred to serve that class. BIE testified that the Companies’ residential customer cost analysis was overly-inclusive and performed its own analysis to determine the appropriate residential customer charges. The residential customer charges contained in the Settlements are close to or below what BIE recommended in testimony.[[147]](#footnote-147) Therefore, BIE is satisfied that the agreed upon residential customer charges do not include any unwarranted direct or indirect costs.

Therefore, BIE fully supports the settled upon revenue allocations and rates designs as set forth in the Settlements. BIE believes that the settled upon revenue allocations and rate designs are in the public interest as they are consistent with prior Commission decisions, provide stability to the Companies and represent a fair and reasonable rate increase to customers.

3. OCA

As discussed above, there was no consensus regarding the COS studies. OCA witness Clarence L. Johnson reviewed the Companies’ revenue allocation proposals and the Companies’ class cost of service study upon which the proposed allocations were based. Mr. Johnson submitted a modified COS study, which he relied upon to develop recommended allocations of any proposed increase for the Companies among their customer classes.[[148]](#footnote-148) In addition to the Companies and the OCA, BIE, OSBA, AK Steel, MEIUG, and Walmart Stores East and Sam’s East also submitted allocation recommendations in their direct testimonies based on the results of either their own cost of service studies or their analysis of the Companies’ COS. The allocation proposals varied significantly.

Based on the OCA’s review of the several cost of service studies presented in this proceeding and the varying allocation proposals presented by other parties, the OCA views the revenue allocations in the Settlements to be within the range of reasonable outcomes that would result had this case been fully litigated. The Settlements are consistent with the objective of moving rate classes toward the cost of service and are, therefore, in the public interest. The Settlement allocations represent a compromise among the parties that moves all but one rate class closer to the system average. Further, the allocations do so without imposing on any one class an allocation that would cause rate shock. The Settlements are therefore reasonable, and when considered along with the other important provisions contained in the proposed Settlements, yield results that are just and reasonable, in the public interest, and should be approved.

OCA also opposed the Companies’ proposed customer charge increases. In his Direct Testimony, OCA witness Johnson recommended that the Companies’ customer charges be maintained at their current amounts.[[149]](#footnote-149) The OCA submits that eliminating most of the proposed customer charge increase will benefit residential customers. By providing customer charges lower than the Companies’ proposed charges and recovering the remaining revenue through volumetric energy charges, those energy charges can provide necessary signals to customers with regard to energy conservation.[[150]](#footnote-150)

The OCA submits that the residential rate designs established by the Settlements are reasonable and consistent with sound ratemaking principles. Combined with lower revenue increases than proposed, these rate design changes result in rates that are significantly below the rates originally proposed by the Companies and within the range of likely outcomes in the event this case had been fully litigated.

4. OSBA

OSBA secured the expertise of two witnesses. The rate filings of Met-Ed and Penelec were reviewed by Brian Kalcic. Robert Knecht reviewed the rate filings of Penn Power and West Penn Power. Neither Mr. Kalcic nor Mr. Knecht agreed with the Companies’ COS studies.

As noted by Mr. Kalcic in his direct testimony, Met-Ed’s proposed revenue allocation was problematic, since it failed to provide adequate movement toward cost of service. In particular, Met-Ed’s proposal would move rate classes RS, GSV, GSS, BORD, TP and STLT away from cost of service.

As Mr. Kalcic testified, Met-Ed Rate GSM is available to non-residential customers that take service at secondary voltage, use more than 1,500 kilowatt hours (kWh) per month and exhibit a registered monthly demand that is less than or equal to 400 kW. Presently, Rate GSM contains a customer charge, a demand (kW) charge applicable to all billing kW, and a flat reactive billing demand (rkVA) charge. Similarly, Penelec Rate GSS is available to non-residential customers without demand meters that take service at secondary voltage and use no more than 1,500 kWh per month. Presently, Rate GSS contains a customer charge and a flat rate energy charge.

While Met-Ed and Penelec proposed to maintain their current rate structures for these tariffs, the Companies’ proposed increases to the customer charge were significantly greater than the proposed increase to the energy charge. However, such relative increases were in line with the Companies’ cost-of-service benchmarks. As a result, Mr. Kalcic recommended that Penelec apply a proportionate scaleback (reduction) to the proposed customer and energy charges at the conclusion of this case, should the final class revenue level be reduced from the Companies’ filed revenue level.

In an effort to move all classes closer to cost and to avoid excessive rate increases, Mr. Kalcic proposed an alternative allocation of the distribution rate increases at Met-Ed’s and Penelec’s requested revenue requirement levels. The settlement increases for the small business classes reflect a compromise among the parties, particularly with respect to the litigation positions of the OSBA and OCA. As a result, the OSBA concludes that the Settlement revenue allocations provide a meaningful benefit to small business customers of Met-Ed and Penelec.

Mr. Knecht also disagreed with the COS studies for Penn Power and West Penn Power. Rather than rely on this model, OSBA witness Mr. Knecht developed a simpler and more computationally accurate version of the cost allocation study for revenue allocation and rate design analysis. Mr. Knecht identified a set of conceptual and computational errors in the COS study.

Penn Power Rate GS is available to non-residential customers that take service at secondary voltage and use less than 1,500 kWh per month. Distribution rates consist of a customer charge and an energy charge. Because the Penn Power customer charge was generally above that of the other FirstEnergy companies, Mr. Knecht recommended that any scaleback of the Rate GS revenue allocation be applied more than proportionately to the customer charge. Instead, the Settlement applies a proportional scaleback to the originally proposed customer and energy charges. Because this rate design is not inconsistent with the OSBA’s COS analysis, OSBA takes no exception to the Settlement tariff design for Rate GS.

Penn Power Rate GM consists of non-residential customers taking service at secondary voltage, consuming at least 1,500 kWh per month, and with maximum demand of 400 kW. The current tariff design for Rate GS30 contains a customer charge, a demand (kW) charge applicable to all billing kW, and a flat reactive billing demand (rkVA) charge.

For Penn Power, Mr. Knecht recommended that any reduction in the GM revenue requirement be applied to both the proposed customer charge and the proposed demand charge. Consistent with that recommendation, the Settlements scale back both the customer charge and the demand charge proportionately.

West Penn Power Rate GS20 is available to non-residential customers that take service at secondary voltage and use less than 1,500 kWh per month. Distribution rates consist of a customer charge and an energy charge. Because the West Penn Power customer charge was well below that of the other FirstEnergy companies, Mr. Knecht recommended that any scaleback of the Rate GS20 revenue allocation be applied more than proportionately to the energy charge. Consistent with that recommendation, the Settlement applies almost the entire reduction in the GS20 revenue requirement to the Company’s originally proposed energy charge.

West Penn Power Rate GS30 consists of non-residential customers taking service at secondary voltage, consuming at least 1,500 kWh per month, and with maximum demand of 400 kW. The current tariff design for Rate GS30 contains a customer charge, a demand (kW) charge applicable to all billing kW, a flat reactive billing demand (rkVA) charge, and a flat per-kWh energy charge.

Because there are no distribution costs that are causally related to energy consumption, and because the other FirstEnergy companies have no energy charge for GS Medium customers (which are equivalent to GS30 at West Penn Power), Mr. Knecht recommended that any reduction in the class revenue requirement be focused on reducing the energy charge. The Settlement does not adopt this recommendation, but rather assigns the reduction primarily to the demand charge. Recognizing that there is likely to be only a modest customer impact between decreasing the demand charge and decreasing the energy charge, and further recognizing that differential rate design for the GS30 rate class will simply shift the revenue requirement among small business customers, the OSBA takes no exception to the Settlement rate design for the GS30 rate class.

In sum, OSBA supports the Settlements. The Settlements take no position on cost allocation methodology. Because the Joint Petitioners were able to agree to reasonable revenue allocations and rate design provisions, the OSBA determined that there was no need to litigate the cost of service methodology. The settlement of this proceeding avoids the litigation of many of the complex, competing proposals and saves the possibly significant costs of further and more extended administrative proceedings. Such costs are borne not only by the Joint Petitioners, but ultimately by the Companies’ customers as well. Avoiding extended litigation of this matter has served judicial efficiency, and allows the OSBA to more efficiently employ its resources in other areas.

5. CAUSE-PA

CAUSE-PA supports the reduced customer charges which are part of the Settlements. A reduced increase in the fixed customer charge is critical to ensure that the burden of a rate increase does not disproportionately fall on low-income residents, who use less energy on average than their non-low income counterparts.[[151]](#footnote-151) It also ensures that the rate structure does not undermine ratepayer investments in energy efficiency and weatherization through the Low Income Usage Reduction Program (LIURP), which is designed to reduce low-income household usage and, in turn, reduce the energy burden for low-income customers. Mitchell Miller, expert for CAUSE-PA, explained in his direct testimony:

Increasing fixed charges are exceptionally harmful to low-income customers, and should not be approved. Increasing the costs recovered through a fixed charge – as opposed to a volumetric charge – undermines the ability for customers to reduce bills through conservation and consumption reduction. . . . If a larger portion of a customer bill is fixed each month, the opportunity to adopt cost-effective energy efficiency measures to reduce the household energy burden dwindles, thus contributing to greater inequity in access to electric service across the service territory.[[152]](#footnote-152)

In light of this testimony, CAUSE-PA asserts that the reductions in the customer charges from the levels sought by the Companies are in the public interest.

6. PSU and the Industrials

PSU also joins the West Penn Power Settlement. PSU explains that it supports the Settlement. Even though PSU will still be contributing at a return greater than certain other customers or customer classes, the Settlement results in movement of the rates paid by PSU toward the elimination of cross-subsidies.

The Industrials also support the revenue allocation and rate design aspects of the Settlements. In their view, the Settlements provide a just and reasonable means by which to allocate the resulting increase among the Companies’ customer classes in a manner that generally moves the customer classes closer to their cost to serve while also recognizing the need for gradualism. No class received a rate increase that is more than 1.5 times the system average.

The Settlements also provide a just and reasonable rate design for the large commercial and industrial customer classes by recognizing the need to move the various components of the distribution rate design closer to their respective cost to serve. Therefore, the Industrials advocate the approval of the Settlements.

E. Uncollectible Accounts Expense

1. Companies

The Companies have fully “unbundled” uncollectible accounts expense associated with default service for residential, commercial and industrial customers.[[153]](#footnote-153) Specifically, in 2011, the unbundled uncollectible accounts expense associated with default service and service provided by EGSs[[154]](#footnote-154) was removed from distribution base rates and, thereafter, was recovered through each Company’s DSS (Default Service Support) Rider on a non-bypassable, non‑reconcilable basis.[[155]](#footnote-155) Additionally, consistent with the Commission’s approval of the settlements of the Companies’ last base rate cases, uncollectible accounts expense associated with default service for industrial customers is recovered through the HP (Hourly Pricing Default Service) Rider.[[156]](#footnote-156) In their respective filings, the Companies proposed to increase the charges under their respective DSS and HP Riders to reflect updated data on default service-related uncollectible accounts expense to assure that the correct amounts were reflected on an unbundled basis in those riders rather than in distribution base rates.[[157]](#footnote-157)

Paragraph No. 26 of the Settlements specifies the increase in default-service related uncollectible accounts expense to be included in each Company’s DSS Rider for the residential and commercial classes and in the HP Rider for industrial customers. In addition, Paragraph No. 26 identifies the amount of distribution-related uncollectible accounts expenses to be recovered under the Settlement Rates.[[158]](#footnote-158)

F. Universal Service and Customer Assistance Program

1. Companies

OCA witness Roger D. Colton[[159]](#footnote-159) and CAUSE-PA witnesses, Mitchell Miller,[[160]](#footnote-160) Marielle Macher[[161]](#footnote-161) and Minta Livengood,[[162]](#footnote-162) proposed various enhancements to the Companies’ Universal Service Programs and to other programs and practices designed to assist low-income residential customers. The Companies responded to those recommendations in the rebuttal testimony of Gary W. Grant, Jr., Vice President of Customer Service for FirstEnergy Service Company.[[163]](#footnote-163) As a result of discussions among all the parties concerning the subjects addressed in the OCA and CAUSE-PA direct testimony and the Companies’ responses in Mr. Grant’s rebuttal testimony, the Joint Petitioners agreed to the terms set forth in Paragraphs 27-35 of the Settlements. The Companies explain that the provisions of Paragraphs 27-35 provide a reasonable resolution of issues related to various parties’ recommendations to enhance the Companies’ Universal Service and Energy Conservation Programs (USECPs). These provisions will provide beneficial assistance to confirmed low-income customers, provide the Companies the opportunity for full and current cost recovery, and properly balance the enhanced assistance to low-income residential customers with due consideration of the impact of the associated costs that will be borne by the Companies’ other residential customers.

2. BIE

BIE also supports the provisions of the Settlements which address universal service programs. In its statement in support, BIE drew particular attention to the creation of a Universal Service Advisory Committee and the modifications to the Companies’ CAP programs.

The Joint Petitioners agree to establish a Universal Service Advisory Committee (USAC) that will be comprised of representatives from the Companies, BIE, OCA, CAUSE-PA, the Commission’s Bureau of Consumer Services, and the organizations that administer the Companies’ universal service and energy conservation programs (USECPs). The USAC will meet at least twice each year and its purpose is to explore opportunities for enhancements to the Companies’ USECPs, as well as opportunities for outreach and education, language access, notification to low-income customers regarding security deposit waivers and bill clarity. BIE appreciates the opportunity to participate in the USAC, and avers that furthering outreach and education for low-income electric customers increases program accessibility for those customers by making them more aware of opportunities for payment assistance.

The Joint Petitioners also agree that the Companies will file to increase their maximum credits allowable under their existing customer assistance programs by an amount proportionate to 50% of the average increase to residential rates agreed to in the Settlements. At the same time, the Joint Petitioners have reserved their right to evaluate further revisions to CAP credits in the Companies’ future universal service proceedings, providing the opportunity to assess the impact of the increase. BIE disagreed with the proposal to increase the Companies’ maximum CAP credits by the same percentage and dollar amount as the residential rate class’s overall bill increase.[[164]](#footnote-164) But, BIE opines that the Settlements provide a more reasonable resolution. The maximum CAP credit increase has been limited to 50% of the average increase to residential rates, mitigating BIE’s concern about the impact upon non-CAP residential customers who will bear the associated costs.[[165]](#footnote-165) Additionally, BIE acknowledges CAUSE-PA’s point that the Companies’ CAP customers are impacted more adversely by rate increases than those of other utilities because of the unique structure of the Companies’ CAP programs, warranting an increase of maximum CAP credits in this proceeding.

3. OCA

The Settlements address some of the key concerns raised by OCA witness Colton regarding the Companies’ Customer Assistance Programs (CAP) and calculation of the Universal Service Charge. First, Mr. Colton recommended that for purposes of calculating the Universal Service Charge, the CAP base participation levels should be lowered in order to reflect current CAP participation levels. Except for West Penn Power, which experienced a slight increase in CAP participation, the Companies have experienced decreased CAP participation rates since the current base participation rates were last set in the Companies’ 2014 base rate cases.[[166]](#footnote-166) The base participation levels are used to determine the Companies’ CAP cost offset in the Universal Service Charge, so the use of an accurate base participation level is important to prevent over-recovery of bad debt expenses.[[167]](#footnote-167) A comparison of the current base participation levels, Mr. Colton’s recommended levels, and the levels agreed to in the Settlements are included in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Current** | **OCA Recommended** | **Settlement** |
| **Met-Ed** | 18,000 | 15,700 | 16,700 |
| **Penelec** | 25,000 | 22,000 | 23,200 |
| **Penn Power** | 5,700 | 4,700 | 5,000 |
| **West Penn** | 22,500 | 23,300 | 23,300 |

See OCA St. No. 4 at 7-8; Settlements ¶ 35. The base participation levels agreed to in the Settlements represent a reasonable compromise that more accurately reflect the current CAP participation levels for each Company.

OCA witness Colton also raised concerns about the impact of any rate increase on low-income customers, and recommended that “the maximum non-heating CAP credit ceiling for each company be increased by a dollar amount equal to the annual dollar rate increase approved for the residential customer class in this proceeding, using the median CAP consumption, rounded to the nearest $10.00.”[[168]](#footnote-168) Increasing the CAP credit ceiling will help address the impact of a rate increase on low-income customers and will make it less likely that CAP customers will reach the CAP credit ceiling as a result of the increased rates.[[169]](#footnote-169) The Settlements address this concern by increasing the maximum CAP credits by an amount proportionate to 50% of the average increase to residential rates, calculated as the increase in the total bill for the median-usage CAP customer rounded to the nearest $10.00.

Regarding the Companies’ Low-Income Usage Reduction Programs (LIURP), OCA witness Colton observed that, except for West Penn Power, the Companies have significantly under-spent their LIURP budgets since 2012.[[170]](#footnote-170) Mr. Colton recommended a number of improvements to the LIURP program to ensure that low-income customers are receiving adequate assistance, including rolling-over unused LIURP funds into future years, working with Community-Based Organizations (CBOs) to deliver LIURP services, and providing a one-time influx of funds to reflect previous under-spending.[[171]](#footnote-171) Paragraph 30 of the Settlements address these issues by providing for a roll-over of unused LIURP funds to the budget available for expenditure in the following years, for the duration of the Companies’ current USECPs. This provision will help to ensure that the Companies’ low-income customers are receiving adequate LIURP treatment to help reduce energy usage and thus energy bills.

OCA witness Colton also testified that the Companies’ high CAP credit expenditures demonstrate that “there is substantial room for savings through the proper targeting of energy efficiency investments.”[[172]](#footnote-172) As such, Mr. Colton recommended that the Companies target LIURP spending toward a segment of high use, high CAP credit customers for LIURP treatment on an annual basis.[[173]](#footnote-173) The Settlements address this issue by providing that the Companies will identify confirmed low-income customers exceeding 12,000 kWh usage during the prior year and prioritize those customers for weatherization when possible. Once this list has been exhausted, the Companies will target confirmed low-income customers with lower annual usage, as well as eligible customers that have requested weatherization treatment. *Id*. This provision addresses the OCA’s concern and encourages the greatest reduction in energy usage for high usage low-income customers.

The Settlements also provide for the creation of a Universal Service Advisory Committee (USAC) which will allow interested parties and other stakeholders to meet twice per year to discuss possible improvements to the Companies’ USECPs. Additional issues that were raised by the OCA or other parties but not specifically addressed in the Settlements can be discussed as part of the USAC meetings, where they can be given appropriate consideration.

For these reasons, the OCA submits that the provisions in the Settlements regarding universal service and Customer Assistance Programs are reasonable compromises that should be approved by the Commission.

4. CAUSE-PA

CAUSE-PA also supports the enhancements to the Companies’ universal service programs achieved through the Settlements. Improving the Companies’ universal service program portfolios will help mitigate the impact of the rate increase, and is intended to help stave off further increases in the already high rate of involuntary service disconnections and correspondingly low rate of service reconnections.

**Universal Service Advisory Committee.**  As discussed by CAUSE-PA Witness Miller in his Direct Testimony, such a forum will allow for a collaborative discussion of best practices for all of the Companies’ Universal Service programs, including the Companies’ CARES program, outreach and recertification for CAP, and coordination of LIURP with other weatherization providers.

In addition to specific USECP issues, the USAC will also be a forum to discuss a number of other issues of concern to the Companies’ low-income consumers, including continued dialogue around language access for Limited English Proficiency (LEP) individuals, security deposit waiver procedures, and bill clarity.

As CAUSE-PA witness Macher noted in her Direct Testimony, “[o]n average, LEP individuals earn lower wages than their English proficient counterparts . . . [and] any rate increase would have the tendency to disproportionately impact immigrant communities.” (CAUSE-PA St. 2, Macher, at 3). A continuing discussion around language access for these individuals could greatly improve their ability to access service and assistance.

Similarly, CAUSE-PA’s testimony in this case addressed the issue of security deposit waivers for individuals who are eligible for CAP. As of the beginning of 2015, Pennsylvania law requires that “no public utility may require a customer or applicant that is confirmed to be eligible for a customer assistance program to provide a cash deposit.” Addressing this issue in the context of a USAC will allow for collaborative discussions between the parties to address the best mechanisms to assure the Companies’ low-income customers can access this critically important protection.

Finally, CAUSE-PA witnesses Livengood and Miller both addressed the lack of clarity in the Companies’ bills – particularly for low-income CAP customers.[[174]](#footnote-174) This issue, too, will be well served by a collaborative, problem-solving USAC.

**LIURP Funding**. Paragraph 30 of the Settlements require the Companies to modify their LIURPs such that any unspent funds not expended in one year will roll over and be added to the available budget for the following year. CAUSE-PA had initially proposed an increase in LIURP funding for each of the Companies. In Surrebuttal Testimony, CAUSE-PA supported OCA’s recommendation to roll-over unused LIURP funds because it “would incentivize the Companies to seek out more interested and willing participants and prevent the problem of under-spending.”[[175]](#footnote-175) The Companies’ commitment to roll forward unused LIURP funds marks a significant step to incentivize the Companies to seek out more interested and willing LIURP participants.

In addition, Paragraph 28 of the Settlements require the Companies to provide OCA, BIE, and CAUSE-PA the reporting data they already provide to the Commission’s Bureau of Consumer Services (BCS) as required by 52 Pa.Code § 54.75 and 52 Pa.Code § 58.15. This data, which covers collections, terminations, LIURP performance, and universal service programs generally, will allow the parties to analyze and discuss, in the context of the USAC and outside of a litigated proceeding, additional issues and potential within LIURP and the other Universal Service Programs.

**Increase in Maximum CAP Credits.** The Companies have agreed to file to increase the maximum credits allowable under the existing customer assistance programs by an amount proportionate to 50% of the average increase to residential rates agreed to in the Settlements. As explained by CAUSE-PA witness Miller, the Companies’ fixed CAP credits used to off-set low-income bills:

are calculated for each CAP customer based on a targeted energy burden (3% of income for non-8 heating and 9% for heating customers), gross income, and that customer’s previous twelve months of bills. These credits are also subject to a maximum credit allowance of $80 a month for non- heat customers and $200 a month for heating customers. For any billed amount over this monthly CAP credit, the CAP customer must pay their bill at full tariff rate. . . .

[B]ecause CAP works as a fixed credit, any rate increase will have a direct and immediate impact on CAP customer bills, particularly for those customers who are receiving maximum CAP credits. While First Energy recalculates a households’ monthly PCAP credits every three months to account for more or less usage based on the previous rolling-12 months, this recalculation is always subject to a maximum credit. Because of the formula, as rates increase, more customers will receive the maximum credits, not because of increased usage, but simply because of increased costs in their previous twelve months due to the rate increase. . . .

Therefore, as a direct result of the proposed rate increase, more CAP participants will have unaffordable bills.[[176]](#footnote-176)

Thus increasing the Maximum CAP Credits as set out in Paragraph 29 of the Settlements will work to ameliorate the impact of the agreed upon rate increases for some of these customers.

**Acceptance of Identification from Foreign Governments to Start Service.** Paragraph 33 of the Settlements provide that, to establish new service, the Companies will accept identification documents issued by foreign governments as acceptable identification to establish service where those documents include: full name; a photograph; and an expiration date that has not expired as of the date of application. This provision explicitly defines a government issued photo identification to include photo identification issued by a foreign government. This provision is designed to remedy the Companies’ current policy, which currently acts as a barrier for non-US citizens who reside in Pennsylvania and who seek to establish electric service within each Company’s service territory.

G. Smart Meters

1. Companies

The deployment of smart meters has the potential to reduce costs. Paragraph 36 of the Settlements provide the appropriate cost categories for measuring such savings, if any, and identifies (by reference to the exhibit submitted by each Company in this case,) the “baseline” for determining whether such savings have accrued and determining the amount of such savings, if any.

H. LED Street Lighting

1. Companies

The Companies’ tariffs contain service offerings for LED street lighting service to municipal street lighting customers. LED lighting uses less electricity to provide the same level of illumination as sodium vapor or mercury vapor lighting. In response to expressions of interest in the Companies’ LED lighting service offerings, the Companies have provided customer education to municipalities about LED service. Paragraph 37 of the Settlements memorializes the Companies’ commitments to explain, in all future educational sessions dealing with LED lighting service, that cost savings from lower electricity usage could change based on Commission-approved increases in the Companies’ distribution rates.

2. OCA

OCA expressed concern that the Companies proposed a disproportionately higher rate increase for LED street lighting as opposed to other types of street lighting.[[177]](#footnote-177) In his testimony OCA witness Johnson presented the proposed increases for LED street lighting, and the proposed increases for the street lighting class overall:[[178]](#footnote-178)

|  |  |  |
| --- | --- | --- |
| **Company** | **Revenue Percentage increase in LED Lighting** | **Revenue Percentage Increase in Overall Street Lighting** |
| Met-Ed | 66.6% | 29.3% |
| Penelec | 49.6% | 32.0% |
| Penn Power | 37.0% | 32.8% |
| West Penn Power | 62.1% | 13.6% |

Mr. Johnson recommended that the increase for LED street lighting be limited to the same percentage as the overall street light class. As a policy matter, LED street lights are consistent with energy efficiency goals and help reduce municipalities’ energy costs, which “results in both lower energy costs for the user and societal benefits associated with more efficient use of scarce resources.” [[179]](#footnote-179) An extreme increase in LED street light rates would be unfair to municipalities that have recently switched to LEDs and may prevent other municipalities from making this beneficial upgrade in the future. Many municipalities filed informal complaints about the proposed LED street lighting rate increases, and significant testimony was presented at public input hearings by municipalities opposing these increases.[[180]](#footnote-180)

As a result of the Settlements, the increases are:[[181]](#footnote-181)

|  |  |  |
| --- | --- | --- |
| **Company** | **Revenue Percentage increase in LED Lighting** | **Revenue Percentage Increase in Overall Street Lighting** |
| Met-Ed | 41% | 27% |
| Penelec | 39% | 25% |
| Penn Power | 33-40%[[182]](#footnote-182) | 37% |
| West Penn Power | 25.74% | 13.6% |

The OCA submits that these increases for LED lighting are greater than the increases for street lighting as a whole, but the increases are nevertheless significantly less than the increases originally proposed by the Companies. Additionally, the Settlements include the Companies’ commitments to provide customer education. Paragraph 37 of the Settlements will help municipalities understand that, while there may be significant savings or other benefits to switching to LED street lighting, rates will likely increase in the future so the savings may not be constant over time. This is in response to an outcry from municipalities that have switched or are in the process of switching to LED street lighting. The limited increase to LED street lighting rates achieved in the Settlements are a reasonable compromise and within the range of likely outcomes if the case had been fully litigated.

I. Recommendation

The proposed Settlements are reasonable and in the public interest. I therefore recommend approval without modifications. These Settlements represent just and fair compromises of the serious issues raised in this proceeding. After substantial investigation and discovery the parties have achieved a reasoned accord on a broad array of issues resulting in just and reasonable rates for service rendered by the Companies.

These Settlements are “black box” settlements. This means that the parties could not agree as to each and every element of the revenue requirement calculations. The Commission has recognized that “black box”settlements can serve an important purpose in reaching consensus in rate cases:

We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. 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.[[183]](#footnote-183)

Yet, it is also the Commission’s duty to ensure that the public interest is protected. Therefore, there must be sufficient information provided in a settlement in order for the Commission to determine that a revenue requirement calculation and accompanying tariffs are in the public interest and properly balance the interests of ratepayers and utility stockholders.[[184]](#footnote-184)

In reviewing the settlement terms and the accompanying statements in support, the Settlements provide sufficient information to support the conclusion that the revenue requirements and other settlement terms are in the public interest. The reduction in proposed revenue requirement increases, the revenue allocations, the reduction in the proposed residential customer charges, along with all of the other terms and conditions of the Settlements together represent fair and reasonable settlements. These reductions are particularly important to residential ratepayers who testified in great numbers concerning the hardship that would be caused to many of them by the Companies’ proposed increases in rates. Similarly, the agreements regarding the Companies’ CAP programs and other universal service program improvements are important. The reduction in the proposed rates for street lighting are also significant and responsive to concerns raised by both the municipal complainants as well as the concerns raised by PSAB and several township, city and municipal witnesses who testified at the public input hearings.

Also of note, the Settlements find support from a broad range of parties with diverse interests. Each party represents a variety of interests. The Companies advocate on behalf of their corporate interests and shareholders. The Office of Consumer Advocate is tasked with advocacy on behalf of consumers in matters before the Commission.[[185]](#footnote-185) The Small Business Advocate represents the interests of the Commonwealth’s small businesses.[[186]](#footnote-186) The Bureau of Investigation and Enforcement is tasked with balancing these various interests and concerns on behalf of the general public interest. Each of these public advocates maintain that the interests of their respective constituencies have been adequately protected and they further represent that the terms of the Settlements are in the public interest. Other interests were also represented and support the Settlements. These interests include, public interest groups representing low-income customers (CAUSE-PA), and large electricity users (PSU, the Industrials, AK Steel and NAH). These parties in a collaborative effort have reached agreement on a broad array of issues, demonstrating that the Settlements are in the public interest and should be approved.

Resolution of this proceeding by negotiated settlements remove the uncertainties of litigation. In addition, all parties obviously benefit by the reduction in rate case expense and the conservation of resources made possible by adoption of the proposed Settlements in lieu of litigation. The acceptance of the Settlements will negate the need for the filing of additional testimony by all parties, participation at in-person hearings, the filing of main and reply briefs, exceptions and reply exceptions, and potential appeals. These savings in rate case expense serve the interests of Companies and their ratepayers, as well as the parties themselves.

The individual complainants were served with a copies of the Settlements and offered an opportunity to comment or object to the terms and demonstrate why the case should be litigated rather than settled. No objections were filed. Therefore, their due process rights have been fully protected and formal complaints must be dismissed for lack of prosecution.[[187]](#footnote-187)

For all of the foregoing reasons, I find the Settlements embodied in the Joint Petitions for Partial Settlement are both just and reasonable and their approval is in the public interest. I recommend the Commission approve the Settlements without modification.

VIII. LITIGATED ISSUE: THE TREATMENT OF ADIT IN THE DSIC TARIFF

On June 12, 2016, Act 40, which adds Section 1301.1 to Title 66 of the Public Utility Code, was signed into law and became effective on August 11, 2016. Section 1301.1 provides for the computation of income tax expense for ratemaking purposes. OCA contends that Section 1301.1 requires the Companies to recalculate the DSIC riders to account for accumulated deferred income tax (ADIT). The Companies contend that a base rate proceeding is not the appropriate venue in which to advocate a recalculation of the DSIC riders. The Companies also disagree with OCA on the substance of the argument and argue that Section 1301.1 does not apply to DSIC. As explained more fully below, I agree with the Companies that this proceeding is not the appropriate venue for deciding the issue and that it is more appropriately considered in the context of the ongoing DSIC proceedings.

A. Procedural Background

On February 16, 2016, each of the Companies filed a petition to establish and implement a DSIC Rider with an effective date of July 1, 2016.[[188]](#footnote-188) The filings were made pursuant to Section 66 Pa.C.S. § 1353, and the Commission’s Final Implementation Order of Act 11.[[189]](#footnote-189) The OCA filed formal complaints. OSBA filed notices of intervention. Petitions to intervene were filed by the Industrials, PSU and AK Steel.

As explained in the procedural history for this case, the Companies filed their base rate requests on April 28, 2016. The Commission suspended those base rate proceedings and instituted an investigation of the requests at the June 9, 2016 public meeting.

At the same public meeting, the Commission also approved the Companies’ DSIC Riders, but concluded that some issues required a hearing. Accordingly, the Companies were permitted to file a DSIC tariff and collect revenue subject to refund or recoupment consistent with the final determinations made on the matters referred to the Office of Administrative Law Judge. On June 20, 2016, the Companies filed the tariff supplements implementing their DSIC

Riders. The OALJ assigned ALJ Joel H. Cheskis to preside over the DSIC proceedings. As of this writing, no recommended decision has been issued.[[190]](#footnote-190)

Meanwhile, Section 1301.1[[191]](#footnote-191) was signed into law as Act 40 of 2016. This section became effective on August 11, 2016. On July 7, 2016, the Companies served supplement direct testimony of Richard A. D’Angelo regarding the impact of Section 1301.1 on the computation of income tax expense for ratemaking purposes on each Company’s base rate proposal.[[192]](#footnote-192) On July 22, 2016, OCA submitted the testimony of Ralph C. Smith, contending that the formula of the DSIC Riders should be modified by inserting a term that deducts from the original cost of DSIC-eligible property ADIT that may accrue with respect to that property.[[193]](#footnote-193) The Companies rebutted OCA’s testimony, contending that Section 1301.1 does not apply to DSIC.

The parties achieved an agreement which resolved the issues related to the issues originally raised by the parties regarding base rates, but reserved the issue of the application of Section 1301.1 to the DSIC Riders for litigation. An evidentiary hearing was held on September 7, 2016. The parties were notified before the hearing that they should be prepared for oral argument regarding the propriety of addressing the question of the calculation of the DSIC Riders in the base rate proceeding rather than seeking leave to address it in the proceedings dedicated to the DSIC Riders presently before ALJ Cheskis. OCA presented its position that a base rate proceeding may address all of the Companies’ tariffs and riders, including the DSIC. Although OCA did not oppose the notion of addressing the application of Section 1301.1 in the DSIC proceedings, the timing of the legislation, in OCA’s view, made the base rates an appropriate venue. [[194]](#footnote-194)

The Companies represented that they did not move to strike the testimony regarding the application of Section 1301.1 as part of the ongoing settlement negotiations, but that they had reserved the right to brief the issue.

At the conclusion of the argument, the parties were permitted to develop their arguments in more detail in their briefs. Both OCA and the Companies filed main briefs and reply briefs. No other party has taken a position.

B. The Application of Section 1301.1 to the DSIC Calculation is More Properly Addressed in a DSIC Proceeding

The OCA contends in its main brief that the Commission’s approval of the base rate proceedings, include approval of all the Companies’ proposed and existing rates. Because of the timing of the passage of Section 1301.1, it is therefore appropriate to resolve the issue of the proper calculation of the ADIT in the Companies’ DSIC Riders as part of the resolution of this proceeding.

The Companies counter that as an adjustment clause a DSIC rider is a rate mechanism that is legally separate from, and operates differently from, base rates. The process for establishing charges and billing customers for a DSIC are significantly different than the process used to establish base rates pursuant to Section 1308 of the Public Utility Code.[[195]](#footnote-195)

In reply, OCA repeats its position that the DSIC riders are an “existing rate” within the meaning of Section 1308 and points the Commission’s Final Implementation Order of Act 11, which references the treatment of DSIC during base rate proceedings, including resetting the DSIC rate to zero and the filing of earnings reports.

The application of Section 1301.1 should be addressed in DSIC litigation. Not only is DSIC a revenue collection mechanism separate and unique from base rates, but it is also unique among adjustment clauses. It is specifically provided for by separate statutory provisions which provide for computation direction which is different from the computation of base rates.[[196]](#footnote-196) The Commission in the Final Implementation Order of Act 11 provides a Model Tariff which includes the formula for the calculation of DSIC. The Companies’ DSIC Riders were filed in conformance with this model tariff. Accordingly, DSIC-specific technical issues have always been contested under a utility’s DSIC petition.

OCA has not presented a compelling reason for resolving an issue regarding the calculation of a DSIC in this base rate proceeding. Although the language used to institute an investigation of a request for a general rate increase filed pursuant to Section 1308 broadly includes “consideration of the lawfulness, justness, and reasonableness” of the Companies’ “existing rates, rules and regulations,” OCA’s interpretation does not serve judicial or administrative economy. Rather it is more likely to result in piecemeal DSIC decision-making by the Commission. This is particularly true when there is an ongoing proceeding in which the OCA’s arguments can be considered in the proper context.

Former Administrative Law Judge Susan Colwell recently granted a motion in limine to strike testimony in a base rate proceeding, rejecting the notion that *any* issue impacting rates can be raised in a 1308 base rate proceeding. In *Pa. Pub. Util. Comm’n v. PPL Electric Utilities Corporation*,[[197]](#footnote-197) ALJ Colwell struck testimony regarding proposals to undertake a cost-benefit analysis of providing usage data to customers, requiring performance metrics to ensure that distribution facilities are performing adequately and providing maximum benefits of grid modernization investments and reporting on integrated Volt/VAR Control projects. She pointed to other Commission proceedings related to data transfer, smart meters and others in which these issues could be more fully explored in their proper context. She also pointed out that the challenges raised could also be effectively pursued in complaint proceedings. Therefore, evidence on the proposals was excluded from the rate proceeding.[[198]](#footnote-198)

Similar testimony was also stricken from these proceedings for the same reason. EDF submitted written testimony on the subjects of access to energy usage data, voltage optimization and integrated resource planning. Not only were those matters more directly related to other types of Commission proceedings where they could be more fully explored in the proper context, but EDF did not explain why those other types of proceedings were inadequate to address the issues raised.[[199]](#footnote-199)

OCA has not articulated a compelling reason why the DSIC issue must be resolved in this base rate proceeding rather than in the ongoing DSIC proceedings, where the calculation of the DSIC can be considered in the context of all of the issues related specifically to the DSIC. At no point does OCA claim that it will be prejudiced in some way or that the DSIC proceeding is otherwise an inadequate forum. At oral argument, OCA stated that it did not oppose resolution of the issue in the DSIC petition cases. OCA is free to file a complaint which challenges the DSIC calculation in the model tariff included in the Final Implementation Order.

Further, rendering a decision regarding DSIC in the context of this base rate proceeding would result in the Commission rendering piecemeal decisions on an important question regarding the treatment of ADIT following the promulgation of Section 1301.1. The Commission has not yet received a recommended decision from ALJ Cheskis. The approvals of the DSIC Riders was conditioned upon the Companies’ refunding ratepayers if the final approval of the DSIC Riders changed the DSIC rate. It does not serve administrative economy to potentially require the Companies to recalculate their revenue collections for DSIC twice within a short period of time under two different dockets. Nor does it serve ratepayers.

Therefore, OCA’s claim regarding the calculation of ADIT in the Companies’ DSIC Riders is dismissed without prejudice. This dismissal is not intended to make any decision or recommendation regarding the substance of OCA’s argument or the Companies’ arguments in opposition to OCA’s position.

IX. 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. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assoc.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm’n v. Philadelphia Electric Co*., 60 Pa. PUC 1 (1985).

3. The Joint Petitions for Partial Settlement are in the public interest and are consistent with the requirements contained in *Lloyd v. Pa. Pub. Util. Comm’n*, 904 A.2d 1010 (Pa.Cmwlth. 2006).

X. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Partial Settlement of Docket No. R-2016-2537349 filed October 14, 2016, by Metropolitan Edison Company, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Met-Ed Industrial Users Group, Wal-mart Stores East, LP, Sam’s East, Inc. and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, is approved without modification.

2. That Metropolitan Edison Company shall be permitted to file a tariff supplement incorporating the terms of the Joint Petition for Partial Settlement and changes to rates, rules and regulations as set forth in Exhibit 1 of the Joint Petition for Partial Settlement, to become effective upon at least one (1) days’ notice after entry of the Commission’s Order approving the Joint Petition for Partial Settlement, for service rendered on and after January 27, 2017, which tariff supplement increases Metropolitan Edison Company’s rates so as to produce an annual increase in base rate operating revenues of not more than $90.5 million.

3. That the Joint Petition for Partial Settlement of Docket No. R-2016-2537352 filed October 14, 2016, by Pennsylvania Electric Company, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Penelec Industrial Customer Alliance, Wal-mart Stores East, LP, Sam’s East, Inc. and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and North American Honagas Holdings, Inc. is approved without modification.

4. That Pennsylvania Electric Company shall be permitted to file a tariff supplement incorporating the terms of the Joint Petition for Partial Settlement and changes to rates, rules and regulations as set forth in Exhibit 1 of the Joint Petition for Partial Settlement, to become effective upon at least one (1) days’ notice after entry of the Commission’s Order approving the Joint Petition for Partial Settlement, for service rendered on and after January 27, 2017, which tariff supplement increases Pennsylvania Electric Company’s rates so as to produce an annual increase in base rate operating revenues of not more than $94.6 million.

5. That the Joint Petition for Partial Settlement of Docket No. R-2016-2537355 filed October 14, 2016, by Pennsylvania Power Company, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Wal-mart Stores East, LP, Sam’s East, Inc. and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, is approved without modification.

6. That Pennsylvania Power Company shall be permitted to file a tariff supplement incorporating the terms of the Joint Petition for Partial Settlement and changes to rates, rules and regulations as set forth in Exhibit 1 of the Joint Petition for Partial Settlement, to become effective upon at least one (1) days’ notice after entry of the Commission’s Order approving the Joint Petition for Partial Settlement, for service rendered on and after January 27, 2017, which tariff supplement increases Pennsylvania Power Company’s rates so as to produce an annual increase in base rate operating revenues of not more than $27.5 million.

7. That the Joint Petition for Partial Settlement of Docket No. R-2016-2537359 filed October 14, 2016, by West Penn Power Company, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, West Penn Power Industrial Intervenors, Wal-mart Stores East, LP, Sam’s East, Inc., the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, AK Steel Corporation and the Pennsylvania State University is approved without modification.

8. That West Penn Power Company shall be permitted to file a tariff supplement incorporating the terms of the Joint Petition for Partial Settlement and changes to rates, rules and regulations as set forth in Exhibit 1 of the Joint Petition for Partial Settlement, to become effective upon at least one (1) days’ notice after entry of the Commission’s Order approving the Joint Petition for Partial Settlement, for service rendered on and after January 27, 2017, which tariff supplement increases West Penn Power Company’s rates so as to produce an annual increase in base rate operating revenues of not more than $60.6 million.

9. That the Formal Complaints filed by the Office of Consumer Advocate at Dockets C-2016-2543247, C-2016-2543266, C-2016-2543268, and C-2016-2543315, are dismissed without prejudice regarding the calculation of adjusted deferred income tax in the DSIC riders. The formal complaints are otherwise satisfied as to all other issues and shall be marked closed.

10. That the Formal Complaints filed by the Office of Small Business Advocate at Dockets C-2016-2544355, C-2016-2544356, C-2016-2544358, and C-2016-2544359, be marked satisfied and closed.

11. That the Formal Complaints filed by Met-Ed Industrial Users Group, C‑2016-2549787; Penelec Industrial Customer Alliance, C-2016-2549792; and West Penn Power Industrial Intervenors, C-2016-2549413, be marked satisfied and closed.

12. That the Formal Complaints filed by the Boroughs of Athens, Docket C‑2016-2552366; South Waverly, Docket C-2016-2552369; Sayre, Docket C-2016-2553194, and Nicholson, Docket C-2016-2560016, be marked satisfied and closed.

13. That the Formal Complaints of David Johnson, Docket C-2016-2565550; Jeanette Lippy, Docket C-2016-2549370; Dennis Miller, Docket C-2016-2551248; and John O’Mara, Docket C-2016-2556970 against Metropolitan Edison Company are dismissed.

14. That the Formal Complaints of Larry Cole, Docket C-2016-2551244; Larry Gates, Docket C-2016-2552878; Kenneth Hall, Docket C-2016-2551643; Eric Hetrick, Docket C-2016-2551207; Kim Hillegass, Docket C-2016-2553215; Charles Hoover, Docket C‑2016-2560032; Maureen Hoover, Docket C-2016-2552615; Robert Moore, Docket C-2016-2551236; Janine & Jeff Riblett, Docket C-2016-2550110; Kenneth Springirth, Docket C-2016-2546231; and Rebecca Stiles, Docket C-2016-2551230, against Pennsylvania Electric Company are dismissed.

15. That the Formal Complaints of John Catterson, Docket C-2016-2552384; Richard Collins, Docket C-2016-2547484; Roland Gassman, Docket C-2016-2553461; and John McDowell, Docket C-2016-2551614, against Pennsylvania Power Company are dismissed.

16. That the Formal Complaints of Jean Bitner, Docket C-2016-2554871; Mary Ellen McConnell, Docket C-2016-2552601; Troy Mckenzie, Docket C-2016-2553313; Eleanor Pinchok, Docket C-2016-2555095; Robert Redinger, Jr., Docket C-2016-2542278; Kathleen Tretinik, Docket C-2016-2552271; and Worthington Boro Street Lights, Docket C-2016-2548424 against West Penn Power Company are dismissed.

17. That, upon Commission approval of the tariff supplements filed by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company

and West Penn Power Company in compliance with the Commission’s Order, the investigation

at Dockets, R-2016-2537349; R-2016-2537352; R-2016-2537355 and R-2016-2537359, shall be marked closed.

Date: November 7, 2016 /s/

Mary D. Long

Administrative Law Judge

1. The customer class rate impacts for all the Companies are based on the distribution and default service rates in effect on April 28, 2016. [↑](#footnote-ref-1)
2. Hereafter, where appropriate, Met-Ed, Penelec, Penn Power and WPP are referred to collectively as the “Companies.” [↑](#footnote-ref-2)
3. OCA complaints are docketed as: C-2016-2543247 (Met-Ed); C-2016-2543266 (Penelec); C-2016-2543268 (Penn Power); C-2016-2543315 (WPP). [↑](#footnote-ref-3)
4. OSBA complaints are docketed as: C-2016-2544355 (Met-Ed); C-2016-2544356 (Penelec): C-2016-2544358 (Penn Power); C-2016-2544359 (WPP). [↑](#footnote-ref-4)
5. Athens, C-2016-2552366; Sayre, C-2016-2553194; South Waverly, C-2016-2552369. These Boroughs are all in Penelec’s service territory in Bradford County. [↑](#footnote-ref-5)
6. C-2016-2560016. Nicholson Borough is in Penelec’s service territory in Wyoming County. [↑](#footnote-ref-6)
7. C-2016-2548424. Worthington Borough is located in WPP’s service territory in Armstrong County. [↑](#footnote-ref-7)
8. AK Steel only intervened in WPP’s rate case. [↑](#footnote-ref-8)
9. EDF only intervened in Met-Ed’s rate case. [↑](#footnote-ref-9)
10. IBEW only intervened in Penelec’s rate case. [↑](#footnote-ref-10)
11. NHA only intervened in Penelec’s rate case. [↑](#footnote-ref-11)
12. A list of the Companies’ written testimony and associated exhibits and schedules as well as an errata which corrected typographical errors in the written testimony are set forth in Hearing Exhibits 1 and 2, which were admitted into the record. [↑](#footnote-ref-12)
13. N.T. 47-620. [↑](#footnote-ref-13)
14. N.T. 573-77. [↑](#footnote-ref-14)
15. N.T. 143-49. [↑](#footnote-ref-15)
16. N.T. 106-13. [↑](#footnote-ref-16)
17. Richard Kauffman, N.T. 97-102; David Johnson, N.T. 559-70; Gail Weber, N.T. 610-12. [↑](#footnote-ref-17)
18. Mary Ann McDonald, N.T. 141-42; Pat Murray, N.T. 607-09; Gail Weber, N.T. 610-12. [↑](#footnote-ref-18)
19. David Johnson, N.T. 559-70. [↑](#footnote-ref-19)
20. Linda Hammond, N.T. 149-54. [↑](#footnote-ref-20)
21. N.T. 607-609. [↑](#footnote-ref-21)
22. N.T. 143-49. [↑](#footnote-ref-22)
23. N.T. 64-73. [↑](#footnote-ref-23)
24. N.T. 610-12. [↑](#footnote-ref-24)
25. N.T. 149-54. [↑](#footnote-ref-25)
26. N.T. 64-73. [↑](#footnote-ref-26)
27. N.T. 73-93. [↑](#footnote-ref-27)
28. N.T. 73-93. [↑](#footnote-ref-28)
29. N.T. 93-97. [↑](#footnote-ref-29)
30. N.T. 97-102. [↑](#footnote-ref-30)
31. N.T. 252-54. [↑](#footnote-ref-31)
32. E.g., John Hornaman, Larry Roesch, N.T. 255; Raymond Willis, N.T. 320; Ann Marie Gardner, N.T. 358 (laid off by GE). [↑](#footnote-ref-32)
33. N.T. 324. [↑](#footnote-ref-33)
34. Robert Whaling, N.T. 252; David Uglow, N.T. 329. [↑](#footnote-ref-34)
35. N.T. 324. [↑](#footnote-ref-35)
36. N.T. 438. [↑](#footnote-ref-36)
37. N.T. 583-93. The Borough of Sayre filed a formal complaint at C-2016-2553194. [↑](#footnote-ref-37)
38. N.T. 200. [↑](#footnote-ref-38)
39. Lee Green, N.T. 269-73; Steve Scieford, N.T. 214-19; Paul Chernicky, N.T. 364-66; Regina Jaworski, N.T. 347-50; Jennifer Luczak, N.T. 352-56; Elizabeth Rose Way, N.T. 340-43; Brittany Prischak, N.T. 323-26. [↑](#footnote-ref-39)
40. N.T. 343-47. [↑](#footnote-ref-40)
41. N.T. 248-50. [↑](#footnote-ref-41)
42. N.T. 273-75. [↑](#footnote-ref-42)
43. Mr. Springirth filed a formal complaint opposing the increase at Docket No. C-2016- 2546231. His testimony begins at N.T. 177. [↑](#footnote-ref-43)
44. Vicki Roberts, N.T. 313-15. [↑](#footnote-ref-44)
45. Frank Sovec, N.T. 305-309; Robert Stewart, Jr., N.T. 227-28. [↑](#footnote-ref-45)
46. E. McCauley, N.T. 130-41; Karen Bean, N.T. 316-18; Vincent Esposito, N.T. 360-63; Wilbur Nass, N.T. 210-13; Steve Scieford, N.T. 214-19. [↑](#footnote-ref-46)
47. N.T. 183. [↑](#footnote-ref-47)
48. Robert Fedderson, N.T. 302-304; Mary Glance, N.T. 275-78; Regina Jaworski, N.T. 347-50; Jennifer Luczak, N.T. 352-56; Wilbur Nass, N.T. 210-13; John Whipple, N.T. 256-59. [↑](#footnote-ref-48)
49. N.T. 214-19. [↑](#footnote-ref-49)
50. N.T. 368-70. [↑](#footnote-ref-50)
51. N.T. 230. [↑](#footnote-ref-51)
52. N.T. 327-30. [↑](#footnote-ref-52)
53. N.T. 222-27. [↑](#footnote-ref-53)
54. N.T. 177-95. [↑](#footnote-ref-54)
55. N.T. 130-40. [↑](#footnote-ref-55)
56. N.T. 352-56. [↑](#footnote-ref-56)
57. N.T. 316-18. [↑](#footnote-ref-57)
58. N.T. 360-63. [↑](#footnote-ref-58)
59. N.T. 210-13. [↑](#footnote-ref-59)
60. N.T. 261-65. [↑](#footnote-ref-60)
61. N.T. 337-39. [↑](#footnote-ref-61)
62. N.T. 427-27. [↑](#footnote-ref-62)
63. N.T. 503-505. [↑](#footnote-ref-63)
64. N.T. 518-21. [↑](#footnote-ref-64)
65. N.T. 522-29. [↑](#footnote-ref-65)
66. N.T. 395-400. [↑](#footnote-ref-66)
67. N.T. 518-21. [↑](#footnote-ref-67)
68. Don Marco, N.T. 536-45; Paul Gaebel, N.T. 452-55. [↑](#footnote-ref-68)
69. Marge Davis, N.T. 386-95; Paul Gaebel, N.T. 452-55; Barbara Vinkler, N.T. 522-29; Ruth Graff, N.T. 395-400. [↑](#footnote-ref-69)
70. Dianna Brozich, N.T. 488-92; Patricia Brozich, N.T. 503-505; Paul Gaebel, N.T. 452-55; Ruth Graff, N.T. 395-400; Barbara Vinkler, N.T. 522-29. [↑](#footnote-ref-70)
71. N.T. 386-95. [↑](#footnote-ref-71)
72. Paul Gaebel, N.T. 452-55. [↑](#footnote-ref-72)
73. Clay Stover, N.T. 532-35; Ruth Graff, N.T. 395-400. [↑](#footnote-ref-73)
74. N.T. 386-95. [↑](#footnote-ref-74)
75. N.T. 594-606. [↑](#footnote-ref-75)
76. N.T. 102-106. [↑](#footnote-ref-76)
77. N.T. 204-207. [↑](#footnote-ref-77)
78. N.T. 439-46. [↑](#footnote-ref-78)
79. N.T. 449. [↑](#footnote-ref-79)
80. N.T. 446-51. [↑](#footnote-ref-80)
81. N.T. 492-98. [↑](#footnote-ref-81)
82. N.T. 499. [↑](#footnote-ref-82)
83. N.T. 499-503. [↑](#footnote-ref-83)
84. By letter dated October 26, 2016, West Penn Power notified the Commission that page 16 of the Proposed Tariff Supplement 38 included as Ex. 1 of the Settlement, inadvertently included page 16. That page of Tariff No. 38 is not proposed to be revised under the terms of the Settlement. [↑](#footnote-ref-84)
85. 66 Pa.C.S. § 1301. [↑](#footnote-ref-85)
86. *Pennsylvania Gas & Water Co. v. Pa. Pub. Util. Comm’n*, 341 A.2d 239 (Pa.Cmwlth. 1975). [↑](#footnote-ref-86)
87. 262 U.S. at 679 (1923). [↑](#footnote-ref-87)
88. 320 U.S. at 591 (1944). [↑](#footnote-ref-88)
89. 262 U.S. at 692-93. [↑](#footnote-ref-89)
90. *See* 52 Pa.Code § 5.231. [↑](#footnote-ref-90)
91. *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991). *See also Pa. Pub. Util. Comm’n v. York Water Co*., Docket No. R-00049165 (Order entered October 4, 2004); *Pa.* *Pub. Util. Comm’n v. Philadelphia Electric Company*, 60 Pa. PUC 1 (1985). [↑](#footnote-ref-91)
92. The increases in the DSS (Default Service Support) Rider and the HP (Hourly Pricing Default Service) Rider are necessary because uncollectible accounts expense associated with default service and service furnished by electric generation suppliers (“EGSs”) has been fully “unbundled” from the Companies’ distribution base rates pursuant to the Commission’s prior approvals, as explained in St. 6, pp. 3-5, for each of the Companies. [↑](#footnote-ref-92)
93. See Charles V. Fullem, the Director, Rates and Regulatory Affairs – Pennsylvania, for FirstEnergy Service Company in St. 1, pp. 12-13, for each of the Companies. [↑](#footnote-ref-93)
94. System Average Interruption Frequency Index, or “SAIFI,” represents the average frequency of sustained interruptions per customer during an analysis period. [↑](#footnote-ref-94)
95. System Average Interruption Duration Index, or “SAIDI,” represents the average duration of sustained interruptions per customer during an analysis period. [↑](#footnote-ref-95)
96. Customer Average Interruption Duration Index, or “CAIDI,” represents the average interruption duration of sustained interruptions for those customers who experience interruptions during an analysis period. [↑](#footnote-ref-96)
97. The data set forth in the tables were provided by Mr. Fullem in St. 1, p. 6, for each of the Companies. [↑](#footnote-ref-97)
98. Met-Ed, R-2014-2428745 (Order entered April 9, 2015); Penelec, R-2014-2428743 (Order entered April 9, 2015); Penn Power, R-2014-2428744 (Order entered April 9, 2015); WPP, R-2014-2428742 (Order entered April 9, 2015). *See* St. 1, pp. 5-6 for each of the Companies. [↑](#footnote-ref-98)
99. *See* St. 1, p. 13, for each of Met-Ed, Penelec and West Penn, and pp. 12-13 for Penn Power. [↑](#footnote-ref-99)
100. *See* Companies’ St. 3-R, pp. 2-3. [↑](#footnote-ref-100)
101. 66 Pa.C.S. § 2806.1. [↑](#footnote-ref-101)
102. *Id*. at 3. [↑](#footnote-ref-102)
103. *Id*. at 3-4. [↑](#footnote-ref-103)
104. *See* Companies’ St. 1, p. 14, for each of Met-Ed, Penelec and West Penn, and page 13 for Penn Power. [↑](#footnote-ref-104)
105. *See* Exhibit RAD-2, p. 6, for each of the Companies. [↑](#footnote-ref-105)
106. *See* St. 8 for each of the Companies. [↑](#footnote-ref-106)
107. Companies’ St. 3-R, p. 7. [↑](#footnote-ref-107)
108. Settlements at ¶ 13. [↑](#footnote-ref-108)
109. Settlements at ¶ 14. [↑](#footnote-ref-109)
110. Settlements at ¶ 15. [↑](#footnote-ref-110)
111. Settlements at ¶ 16. [↑](#footnote-ref-111)
112. Mr. Spanos is Senior Vice President of Gannett Fleming Valuation and Rate Consultants, LLC. Mr. Spanos has testified extensively on depreciation for regulated utilities in Pennsylvania, before the Federal Energy Regulatory Commission and before regulatory bodies and courts in many other states. *See* St. 7, pp. 1-5 and Appendices A and B, for each of the Companies. [↑](#footnote-ref-112)
113. *See* St. 7, p. 8, for each of the Companies. [↑](#footnote-ref-113)
114. *See* Companies’ St. 7-R, pp. 8-10. [↑](#footnote-ref-114)
115. *Id*. at 9-16. [↑](#footnote-ref-115)
116. OCA St. 5. [↑](#footnote-ref-116)
117. *Id*. at 14. [↑](#footnote-ref-117)
118. Companies’ St. 7-R. [↑](#footnote-ref-118)
119. Settlements ¶ 17. [↑](#footnote-ref-119)
120. Allowance for Funds Used During Construction. [↑](#footnote-ref-120)
121. See BIE St. 2-SR at pp. 25-27. [↑](#footnote-ref-121)
122. 66 Pa.C.S. § 315. [↑](#footnote-ref-122)
123. Settlements ¶¶ 12, 15. [↑](#footnote-ref-123)
124. Settlements ¶¶ 12-19. [↑](#footnote-ref-124)
125. OCA St. No. 5 at 2-3. [↑](#footnote-ref-125)
126. Settlements ¶ 17. [↑](#footnote-ref-126)
127. Walmart St. 1. [↑](#footnote-ref-127)
128. 66 Pa.C.S. § 1308(d). [↑](#footnote-ref-128)
129. 66 Pa.C.S. § 1358(a)(1). [↑](#footnote-ref-129)
130. Settlements ¶¶ 21-22. [↑](#footnote-ref-130)
131. 66 Pa.C.S. § 1308(e). [↑](#footnote-ref-131)
132. 66 Pa.C.S. § 1301.1(a). [↑](#footnote-ref-132)
133. 66 Pa.C.S. § 1301.1(b). [↑](#footnote-ref-133)
134. *See* Companies’ St., 2-R, pp. 40-43, which both summarizes OCA witness Smith’s recommendations and provides the Companies’ rebuttal to all of the arguments Mr. Smith advanced. [↑](#footnote-ref-134)
135. The quoted language is from 66 Pa.C.S. § 1301.1(b). [↑](#footnote-ref-135)
136. *See* *Lloyd v. Pa. Pub. Util. Comm’n*, supra. [↑](#footnote-ref-136)
137. *See Pa. Pub. Util. Comm’n v. Philadelphia Suburban Water Co*., 75 Pa. PUC 391, 440 (1991). [↑](#footnote-ref-137)
138. *U.S. Steel Corp. v. Pa. Pub. Util. Comm’n*, 37 Pa.Cmwlth. 173, 187, 390 A.2d 865, 872 (1978). [↑](#footnote-ref-138)
139. *See* St. 4 for each of the Companies and accompanying exhibits. [↑](#footnote-ref-139)
140. *See* St. 4, pp. 3-4, for each of the Companies. [↑](#footnote-ref-140)
141. *See* OSBA St. 2-R, p. 2, Table IEc-R1 (summarizing intervening witnesses’ cost allocation positions). [↑](#footnote-ref-141)
142. Companies’ Statement Nos. 4-R and 4-SR. [↑](#footnote-ref-142)
143. *See* OCA St. 3, pp. 9-27. [↑](#footnote-ref-143)
144. 904 A.2d 1010 (Pa.Cmwlth. 2006). [↑](#footnote-ref-144)
145. *Executone of Philadelphia, Inc. v. Pa. Pub. Util. Comm’n*, 415 A.2d 445, 448 (Pa.Cmwlth. 1980). [↑](#footnote-ref-145)
146. *Peoples Natural Gas Co. v. Pa. Pub. Util. Comm’n*, 409 A.2d 446, 456 (Pa.Cmwlth. 1979). [↑](#footnote-ref-146)
147. BIE St. 3-R at p. 16. [↑](#footnote-ref-147)
148. *See* OCA St. No. 3, Schedule CJ-4 ME (showing the results of the OCA’s COS studies at current rates with the elimination of the minimum system method used by the Companies and Schedule CJ-3 (summarizing the results of the Companies’ COS study at current rates if the customer classification percentages are adjusted based on Mr. Johnson’s alternative recommendation which reduces such percentages to coincide with the percentage of labor costs associated with the components of the minimum system, *See also*, Schedule CJ-2). [↑](#footnote-ref-148)
149. OCA St. 3 at 44. [↑](#footnote-ref-149)
150. OCA St. No. 3 at 42-43. [↑](#footnote-ref-150)
151. CAUSE-PA St. 1 at 19-23. [↑](#footnote-ref-151)
152. CAUSE-PA St. 1 at 19. [↑](#footnote-ref-152)
153. *See* Companies’ St. 6 at p. 3. [↑](#footnote-ref-153)
154. Each of the Companies has in place a Commission-approved EGS purchase of receivable (POR) program for residential and small commercial customers. *Id*. [↑](#footnote-ref-154)
155. Companies St. 6, p. 3. [↑](#footnote-ref-155)
156. *Id*. [↑](#footnote-ref-156)
157. *Id*. at 4. [↑](#footnote-ref-157)
158. *Id*. at 11. [↑](#footnote-ref-158)
159. OCA St. 4. [↑](#footnote-ref-159)
160. CAUSE-PA St. 1. [↑](#footnote-ref-160)
161. CAUSE-PA St. 2. [↑](#footnote-ref-161)
162. CAUSE-PA St. 3. [↑](#footnote-ref-162)
163. Companies’ St. 12. [↑](#footnote-ref-163)
164. BIE St. 5-R at pp. 4-8. [↑](#footnote-ref-164)
165. BIE St. 5-R at p. 7. [↑](#footnote-ref-165)
166. OCA St. 4 at 7-8. [↑](#footnote-ref-166)
167. *Id*. at 9-11. [↑](#footnote-ref-167)
168. OCA St. 4 at 21-22. [↑](#footnote-ref-168)
169. See OCA St. 4 at 15-21. [↑](#footnote-ref-169)
170. OCA St. 4 at 33. [↑](#footnote-ref-170)
171. *Id*. at 38-39. [↑](#footnote-ref-171)
172. OCA St. 4 at 28. [↑](#footnote-ref-172)
173. *Id*. at 31. [↑](#footnote-ref-173)
174. CAUSE-PA St. 3 at 5; CAUSE-PA St. 1SR at 23-24. [↑](#footnote-ref-174)
175. CAUSE-PA St. 1SR at 21. [↑](#footnote-ref-175)
176. CAUSE-PA St. 1 at 18) (internal citations omitted). [↑](#footnote-ref-176)
177. OCA St. 3 at 45-46. [↑](#footnote-ref-177)
178. OCA St. 3 at 46. [↑](#footnote-ref-178)
179. OCA St. 3 at 47. [↑](#footnote-ref-179)
180. See, e.g., N.T. 102-104 (Cumru Township); N.T. 204-206 (City of Erie); N.T. 440-442 (City of Altoona); N.T. 447-450 (Ferguson Township); N.T. 493-497 (South Fayette Township); N.T. 499-502 (West Middletown); N.T. 597-605 (Pa. State Association of Boroughs). [↑](#footnote-ref-180)
181. Settlements, Ex. 4. [↑](#footnote-ref-181)
182. There are multiple sub-classes of LED street lighting in the Penn Power tariff. The percentage increase varies among these sub-divisions. [↑](#footnote-ref-182)
183. *Pa.* *Pub. Util. Comm’n v. Peoples TWP LLC*, PUC Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013), at p. 27 (citations omitted). [↑](#footnote-ref-183)
184. *See Pa. Pub. Util. Comm’n v. Pennsylvania Power Co.*, 55 Pa. PUC 552, 579 (1982); *Pa. Pub.Util. Comm’n v. National Fuel Gas Dist. Corp*., 73 Pa. PUC 552, 603-605 (1990). [↑](#footnote-ref-184)
185. Section 904-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended,* 71 P.S. § 309-4. [↑](#footnote-ref-185)
186. Section 399.45 of the Small Business Advocate Act, Act of December 21, 1988, P.L. 1871, 73 P.S. § 399.45. [↑](#footnote-ref-186)
187. *See*  *Schneider v. Pa. Pub. Util. Comm’n*, 479 A.2d 10 (Pa.Cmwlth. 1984) (Commission is required to provide due process to the parties; when parties are afforded notice and an opportunity to be heard, Commission requirement to provide due process is satisfied). [↑](#footnote-ref-187)
188. Met-Ed, Docket P-2015-2508942; Penelec, P-2015-2508936; Penn Power, P-2015-2508931; West Penn Power, P-2015-2508948. [↑](#footnote-ref-188)
189. Docket M-2012-2293611 (Order entered August 2, 2012). [↑](#footnote-ref-189)
190. ALJ Cheskis held a prehearing conference on August 10, 2016. By order dated August 11, 2016, the DSIC petitions were consolidated. By order dated August 12, 2016, ALJ Cheskis also issued a scheduling order which directed the parties to engage in settlement conferences. As of this writing, no evidentiary hearing has been scheduled. [↑](#footnote-ref-190)
191. 66 Pa.C.S. § 1301.1. [↑](#footnote-ref-191)
192. Supplemental Direct Testimony of Richard A. D’Angelo and Ex. RAD-68. [↑](#footnote-ref-192)
193. OCA St. 1 at pp. 108-110. [↑](#footnote-ref-193)
194. N.T. 663-71. [↑](#footnote-ref-194)
195. 66 Pa.C.S. § 1308. [↑](#footnote-ref-195)
196. 66 Pa.C.S. § 1353-1360. [↑](#footnote-ref-196)
197. Docket R-2015-2469276. [↑](#footnote-ref-197)
198. Sixth Prehearing Order dated July 14, 2015. [↑](#footnote-ref-198)
199. Interim Order on Motion to Strike and Motion to Compel issued August 25, 2016 (striking EDF written testimony of Michael Murray and Paul Alvarez). [↑](#footnote-ref-199)