PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Harrisburg, PA 17105-3265

Public Meeting held January 19, 2017

Commissioners Present:

Gladys M. Brown, Chairman, Statement

Andrew G. Place, Vice Chairman, Statement

John F. Coleman, Jr.

Robert F. Powelson

David W. Sweet, Statement, dissenting in part

Pennsylvania Public Utility Commission, *et al*. 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

 v.

Metropolitan Edison Company

Pennsylvania Public Utility Commission, et al. 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

 v.

Pennsylvania Electric Company

Pennsylvania Public Utility Commission, et al. 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

 v.

Pennsylvania Power Company

Pennsylvania Public Utility Commission, et al. 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

 v.

West Penn Power Company

**OPINION AND ORDER**

***TABLE OF CONTENTS***

I. Matter Before the Commission 1

II. History of the Proceeding 2

III. Discussion of the Partial Settlements 8

A. Terms and Conditions of the Partial Settlements 8

B. Legal Standards 18

C. Disposition of the Partial Settlement 22

IV. Discussion of the Contested Issue Regarding ADIT 25

A. Burden of Proof 25

B. Positions of the Parties 26

C. ALJ’s Recommended Decision 34

D. Exceptions and Replies 36

E. Disposition 38

V. Conclusion 41

VI. Order 42

**BY THE COMMISSION:**

# I. Matter Before the Commission

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of the Office of Consumer Advocate (OCA) filed on December 1, 2016, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Mary D. Long, issued November 21, 2016, relative to the above-captioned proceedings. Replies to Exceptions were filed on December 8, 2016, by Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power Company (West Penn) (collectively, the FirstEnergy Companies or the Companies). Also before the Commission, are four Joint Petitions for Partial Settlement (Partial Settlements) filed for each of the four Companies on October 14, 2016.

# II. History of the Proceeding

On April 28, 2016, each of the aforementioned FirstEnergy Companies filed a request for a general base rate increase. Met-Ed filed Supplement No. 23 to Met-Ed’s Tariff – Electric Pa. P.U.C. No. 52, proposing an increase in its annual distribution revenues of $140.2 million or 9.53% of its total electric operating revenues. Penelec filed Supplement No. 23 to Penelec’s Tariff – Electric Pa. P.U.C. No. 81, proposing an increase in its annual distribution revenues of $158.8 million or 11.42% of its total electric operating revenues. Penn Power filed Supplement No. 17 to Penn Power’ s Tariff – Electric Pa. P.U.C. No. 36, proposing an increase in its annual distribution revenues of $42 million or 9.57% of its total electric operating revenues. West Penn 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 increase in its annual distribution revenues of $98.2 million or 5.74% of its total electric operating revenues. All four tariff supplements were filed to become effective on June 27, 2016.

 On May 3, 2016, the OCA filed Formal Complaints against the proposed rate increases.[[1]](#footnote-2) Numerous other Parties filed Formal Complaints or Petitions to Intervene against the rate increases, including the following: the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Small Business Advocate (OSBA),[[2]](#footnote-3)

AK Steel Corporation (AK Steel),[[3]](#footnote-4) the Environmental Defense Fund (EDF),[[4]](#footnote-5) the International Brotherhood of Electrical Workers, Local 459 (IBEW),[[5]](#footnote-6) North American Hoganas Holdings, Inc. (NAH),[[6]](#footnote-7) the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Clean Air Council (CAC), Citizens for Pennsylvania’s future (Penn Future), the Pennsylvania State University (PSU), Wal-Mart Stores East and Sam’s Club (Walmart), and West Penn Industrial Intervenors (WPII) at C-2016-2549413; the Met-Ed Industrial Users Group (MEIUG) at C-2016-2549787; and Penelec Industrial Customer Alliance (PICA) at C-2016-2549792 (collectively, the Industrials). Formal Complaints were also filed by the Boroughs of Athens, South Waverly and Sayre,[[7]](#footnote-8) Nicholson Borough at C-2016-2560016,[[8]](#footnote-9) Worthington Borough Street Lights at C-2016-2548424,[[9]](#footnote-10) and numerous individuals.

 By order entered June 9, 2016, the Commission suspended the filings pursuant to Section 1308(d) of the Public Utility Code (Code), 66 Pa. C.S. § 1308(d), for investigation to determine the lawfulness, justness and reasonableness of the rates, until January 27, 2017, unless permitted by Commission Order to become effective at an earlier date. On the same day, the Commission also entered separate orders approving the Petitions of the Companies to establish Distribution System Improvement Charge (DSIC) Riders (Companies’ DSIC Rider Petitions),[[10]](#footnote-11) subject to recoupment and/or refund pending final resolution of certain issues in the Companies’ DSIC Rider Petitions.[[11]](#footnote-12)

 On June 12, 2016, Act 40 was signed into law, effective in sixty days or on August 11, 2016. Act 40 added Section 1301.1 to the Code, which states as follows:

**1301.1. Computation of income tax expense for rate-making purposes.**

(a) Computation. – If an expense or investment is allowed to be included in a public utility’s rates for ratemaking purposes, the related income tax deductions and credits shall also be included in the computation of current or deferred income tax expense to reduce rates. If an expense or investment is not allowed to be included in a public utility’s rates, the related income tax deductions and credits, including tax losses of the public utility’s parent or affiliated companies, shall not be included in the computation of income tax expense to reduce rates. The deferred income taxes used to determine the rate base of a public utility for ratemaking purposes shall be based solely on the tax deductions and credits received by the public utility and shall not include any deductions or credits generated by the expenses or investments of a public utility’s parent or any affiliated entity. The income tax expense shall be computed using the applicable statutory income tax rates.

(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.

On June 17, 2016, the ALJ convened a Prehearing Conference. 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.

 Between July 21, 2016 and August 18, 2016, twelve public input hearings were held at seven different locations throughout the Companies’ service territories. The dates, times and locations of the public input hearings were established in Notices issued by the Commission on July 5 and 12, 2016, in the consolidated docket.

On September 7, 2016, in accordance with the litigation schedule established at the Prehearing Conference, the ALJ convened an evidentiary hearing. 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 testimonies of the Companies,[[12]](#footnote-13) I&E, the OCA, the OSBA, the Industrials, AK Steel, CAUSE-PA, PSU and Walmart were 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.

On September 30, 2016, the Companies and the OCA filed Main Briefs on the treatment of Adjusted Deferred Income Tax (ADIT) in the Companies’ DSIC Rider Petition under Act 40. No other Party took a position or filed a brief on this issue. Reply Briefs were filed on October 14, 2016.

On October 14, 2016, the Partial Settlements were filed. The only issue which was not resolved in the Partial Settlements was the treatment of ADIT in each Company’s DSIC Rider. The Joint Petitioners to the Met-Ed Partial Settlement include I&E, the OCA, the OSBA, MEIUG, CAUSE-PA, and Walmart. EDF, Penn Future, CAC, and PSU do not oppose the Settlement. The Joint Petitioners to the Penelec Partial Settlement include I&E, the OCA, the OSBA, PICA, CAUSE-PA, Walmart and NAH. IBEW, Penn Future, CAC and PSU do not oppose the Settlement. The Joint Petitioners to the Penn Power Partial Settlement include I&E, the OCA, the OSBA, CAUSE-PA and Walmart. Penn Future, CAC and PSU do not oppose the Settlement. The Joint Petitioners to the West Penn Partial Settlement include I&E, the OCA, the OSBA, WPII, CAUSE-PA, Walmart, PSU, and AK Steel. Penn Future and CAC do not oppose the Settlement.

 On October 17, 2016, the Parties who did not actively participate in the litigation were provided an opportunity to join or object to the Partial Settlements. Responses to the Partial Settlements 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 Partial Settlement of Penelec’s base rates. No other complainant responded. The record was closed on October 31, 2016. The record includes a 674-page transcript and the Parties’ testimonies and exhibits. The ALJ’s Recommended Decision was issued on November 21, 2016, wherein she recommended approval of the Partial Settlements without modification.

As noted, Exceptions were filed by the OCA on December 1, 2016, and Replies to Exceptions were filed by the Companies on December 8, 2016.

# III. Discussion of the Partial Settlements

## A. Terms and Conditions of the Partial Settlements

The Joint Petitioners agreed to the Partial Settlements addressing every issue but reserved for litigation one issue raised by the OCA involving how Act 40 of 2016[[13]](#footnote-14) impacts the treatment of ADIT in the calculation of the DSIC and how it should be resolved in the context of the Companies’ DSIC Riders approved by the Commission in the *Companies’ DSIC Orders*.[[14]](#footnote-15) As earlier stated, a separate Joint Petition was filed for each of the four Companies and each Joint Petition contains Exhibits 1 through 6. Although each exhibit provides the data specific to each company, each exhibit contains the same information, including Exhibit 1 – Settlement Rates (Proposed Tariffs), [[15]](#footnote-16) Exhibit 2 – Proof of Revenues, Exhibit 3 – Revenue Allocation, Exhibit 4 – Rate Design, Exhibit 5 – Bill Comparison, and Exhibit 6 – Exhibit LWG-3 (Smart Meter Cost and Savings Data).

Also, although the Partial Settlement for each company was filed separately, the numbered paragraphs describing the Settlement terms track each other for each company. For example, Paragraph No. 12 in each Partial Settlement describes the base rate operating revenue requirement agreed to by the Joint Petitioners. Nonetheless, the numbers and docket number references are unique to each company. Statements in support of each Party joining the Partial Settlements are attached to each Joint Petition, as well as copies of the relevant letters of non-opposition.

 The essential terms and conditions of each Partial Settlement are set forth in Sections II & III of the Settlements. These terms and conditions pertain to the Companies’ revenue requirement (Paragraph Nos. 12-19), distribution base rate stay out (Paragraph Nos. 20-22), application of Act 40 (Paragraph Nos. 23-24),[[16]](#footnote-17) revenue allocation and rate design (Paragraph No. 25), uncollectible accounts expense (Paragraph No. 26), universal service programs (Paragraph Nos. 27-35), smart meters (Paragraph No. 36) and LED street lighting (Paragraph No. 37).

With regard to the revenue requirement, the DSIC Rider, and the application of Act 40 in the Partial Settlement for each of the four Companies, the Joint Petitioners agreed, *inter alia*, to the following terms and conditions:

Met-Ed’s Revenue Requirement, DSIC and Application of Act 40

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.

\* \* \*

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.

\* \* \*

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.

Met-Ed’s Partial Settlement ¶¶ 12, 13, 19, 23 and 24 at 6-10.

Penelec’s Revenue Requirement, DSIC and Application of Act 40

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.

\* \* \*

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.

\* \* \*

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.

Penelec’s Partial Settlement ¶¶ 12, 13, 19, 23 and 24 at 7, 9-10.

Penn Power’s Revenue Requirement, DSIC and Application of Act 40

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.

\* \* \*

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.

\* \* \*

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.

Penn Power’s Partial Settlement ¶¶ 12, 13, 19, 23 and 24 at 6-10.

West Penn’s Revenue Requirement, DSIC and Application of Act 40

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.

\* \* \*

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.

\* \* \*

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.

West Penn’s Partial Settlement ¶¶ 12, 13, 19, 23 and 24 at 7, 9-10.

In addition to the specific terms to which the Joint Petitioners have agreed, the Partial Settlements also contain additional terms and conditions (Paragraph Nos. 40‑45). The Partial Settlements are conditioned upon the Commission’s approval of the terms and conditions without modification. The Partial Settlements establish the procedure by which any of the Joint Petitioners may withdraw from the Settlements and proceed to litigate this case, if the Commission should act to modify the Settlements. In addition, the Partial Settlements do not constitute an admission against, or prejudice to any position which any of the Joint Petitioners might adopt during subsequent litigation of this case, or in any other proceeding, in the event the Settlements are rejected by the Commission.[[17]](#footnote-18)

 The Joint Petitioners requested that the ALJ and the Commission approve the Partial Settlements without modification. The Joint Petitioners further requested that the Commission find the Settlement Rates to be just and reasonable and grant the Companies permission to file their tariff supplements to become effective no later than January 27, 2017, for service rendered on and after that date**.**  Partial Settlements at 17‑18.

The Joint Petitions contain detailed descriptions of all the terms and conditions of the Partial Settlements as well as the positions of the Parties on the various issues as highlighted in the Parties’ Statements in Support of the Settlements.[[18]](#footnote-19) Further, page fifty-three through eighty-nine of the Recommended Decision discusses the positions of the Parties on the issues addressed in the Partial Settlements, including the Companies’ revenue requirement, distribution base rate stay out, application of Act 40, revenue allocation and rate design, uncollectible accounts expense, universal service programs, smart meters and LED street lighting. R.D. at 53-89.

## B. Legal Standards

The purpose of this investigation is to establish distribution rates for the Companies’ customers that are “just and reasonable” pursuant to Section 1301 of the Code, 66 Pa. C.S. § 1301. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia,* 262 U.S. 679 (1923).

In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield, supra,* and *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield* the United States Supreme Court stated:

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

A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

*Bluefield,* 262 U.S. at 692-3.

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

The Partial Settlements, in this case, are “black box” settlements. This means that the Parties were not able to agree on 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.[[19]](#footnote-20)

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.[[20]](#footnote-21)

Rate cases are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a rate case settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No.

R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

With regard to the burden of proof in this matter, Section 315(a) of the Code provides:

**§ 315. Burden of proof**

1. **Reasonableness of rates.—**In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

66 Pa. C.S. § 315(a). Consequently, in this proceeding, the Companies have the burden to prove that the rate increases proposed by the Partial Settlements are just and reasonable. The Joint Petitioners have reached an accord on many of the issues and claims that arose in this proceeding and submitted the Partial Settlements. The Joint Petitioners have the burden to prove that the Partial Settlements are in the public interest.

 The ALJ found that the proposed Partial Settlements are in the public interest and recommended that they be approved without modification. The proposed Partial Settlements were not opposed by any Party. R.D. at 24, 89-91, 97.

## C. Disposition of the Partial Settlement

Based on our review of the Partial Settlements, including the Settlement Rates for each of the four Companies, we find them to be fair, just, reasonable, non-discriminatory, lawful and in the public interest. As indicated by the Companies in their Statements in Support of the Partial Settlements, the Settlements in this case were reached after an extensive and thorough investigation of the Companies’ operation and finances by the Parties through: (1) extensive discoveries; (2) submission of direct, supplemental, rebuttal, and surrebuttal testimony covering several issues; (3) informal discovery; (4) extensive public input hearings; and (5) negotiations among the Parties regarding the appropriate revenue level, rate structure, rate design, and other matters, addressed in the Joint Petitions.[[21]](#footnote-22)

 With limited exceptions under the terms of the Partial Settlements, the Companies have agreed, among other things, that they will not file for distribution base rate increases under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), prior to January 27, 2019. The Companies also agree not to file petitions seeking a waiver of the 5% DSIC cap under Section 1358(a)(1) of the Code, 66 Pa. C.S. § 1308(d), prior to January 27, 2017. Partial Settlements ¶¶ 20-22.

 We note that the Partial Settlements reflect a carefully balanced compromise of the interests of the Parties on the issues, and amicably and expeditiously resolved several important and complex issues in the instant proceeding. Specifically, the Settlements reached on the revenue requirements for the Companies reflect overall increases to base rates that are substantially lower than those originally requested by Companies: [[22]](#footnote-23)

Met-Ed’s Settlement provides for an increase in annual base rate distribution revenues of $90.5 million, or approximately 6.52% (based on total electric operating revenue), in lieu of the $140.2 million, or 9.53% (based on total electric operating revenue), increase in base rate distribution revenues originally requested.

Penelec’s Settlement provides for an increase in annual base rate distribution revenues of $94.6 million, or approximately 7.22% (based on total electric operating revenue), in lieu of the $158.8 million, or 11.42% (based on total electric operating revenue), increase in base rate distribution revenues originally requested.

Penn Power’s Settlement provides for an increase in annual base rate distribution revenues of $27.5 million, or approximately 6.64% (based on total electric operating revenue), in lieu of the $42.0 million, or 9.57% (based on total electric operating revenue), increase in base rate distribution revenues originally requested.

West Penn’s Settlement provides for an increase in annual base rate distribution revenues of $60.6 million, or approximately 3.82% (based on total electric operating revenue), in lieu of the $98.2 million, or 5.74% (based on total electric operating revenue), increase in base rate distribution revenues originally requested.

Partial Settlements ¶¶ 38-39.

More importantly, the revenue requirements agreed to in the Partial Settlements represent a reduction from the original filing in the amount of $49.7 million for Met-Ed customers, $64.2 million for Penelec customers, $14.5 million for Penn Power customers and $37.6 million for West Penn customers. The Partial Settlements also provide ratepayers the opportunity to continue to receive safe and reliable service at just and reasonable rates as well as allowing the Companies sufficient additional revenues to meet their operating and capital expenses and providing the Companies the opportunity to earn a reasonable return on investment. R.D. at 60-61. Therefore, we agree with the Joint Petitioners that the Partial Settlements are in the public interest.

We acknowledge that adoption of the Partial Settlements resolves all the relevant issues in this base rate proceeding and will result in significant savings of time and expense for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings. For the reasons stated herein and in the Joint Petitioners’ Statements in Support, we agree with the ALJ’s conclusion that adoption of the Partial Settlements is in the public interest. Accordingly, we shall adopt the ALJ’s recommendation to approve the Partial Settlements without modification.

# IV. Discussion of the Contested Issue Regarding ADIT

## A. Burden of Proof

 Typically in proceedings before the Commission, the public utility has the burden to establish the justness and reasonableness of every element of its rate increase in all proceedings conducted under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d). The standard of proof which a public utility must meet, as discussed above, is set forth in Section 315(a) of the Code, 66 Pa. C.S. § 315(a), which specifies that, “[i]n any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceeding upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.” The Commonwealth Court has upheld this standard of proof [[23]](#footnote-24) and has applied it in base rate proceedings.

 In this proceeding, the burden of proof lies squarely on the FirstEnergy Companies. The Companies are the public utilities seeking permission from the Commission to increase their base rates and to implement and/or alter programs. The burden of proof does not shift to a statutory party or individual party (whether an entity or an individual) which challenged the requested rate increase. Instead, the utility’s burden, to establish the justness and reasonableness of every component of its rate request, is an affirmative one and remains with the public utility throughout the course of the rate proceeding.[[24]](#footnote-25)

However, a party that raises an issue that is not included in a public utility’s general rate case filing bears the burden of proof. *See Pa. PUC v. Duquesne Light Company*, Docket No. R-2013-2372129, at 20 (Order entered April 23, 2014). As the proponent of a Commission order with respect to its proposal, the OCA bears the burden of proof as to why it believes that under Act 40, ADIT should be included in the DSIC Rider calculation.[[25]](#footnote-26)

As we proceed in our review of the various positions espoused in this proceeding, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania* *v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Moreover, any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

## B. Positions of the Parties

 The OCA submitted that the issue regarding whether the FirstEnergy Companies must include ADIT in their DSIC rate calculations is properly before the ALJ and the Commission in the instant base rate proceeding. The OCA stated that the legal tariffs the Commission will approve at the end of this base rate proceeding include all of the Companies’ proposed and existing rates. According to the OCA, because the Companies’ DSIC Riders became existing rates during the pendency of this case, and since the Companies did not account for ADIT in their DSIC rate calculations, it is necessary to assess the justness and reasonableness of the Companies’ DSIC rates in the instant proceeding, consistent with Section 315(a) of the Code, 66 Pa. C.S. § 315(a). OCA’s M.B. at 6, 7. The OCA argued that the General Assembly enacted Act 40 during the pendency of the instant matter, and Act 40’s terms indicate that it must apply to this case. *Id*. at 7 (citing 66 Pa. C.S. § 1301.1(c)(2)).

 In addressing the merits of its argument, the OCA contended that Act 40 requires that an ADIT offset be included in any DSIC rate charged to customers. OCA’s M.B. at 10. The OCA recounted its position, raised in previous cases in which utilities sought approval of a DSIC under Act 11 that utilities should be required to recognize ADIT tax benefits recovered through the DSIC and generated by the investment in replaced infrastructure. The OCA cited to its appeal of the Commission’s decision in the *Columbia DSIC Opinion and Order*, in which the Commission stated that “in enacting Act 11, the General Assembly envisioned a simple and straightforward process of establishing rates for the DSIC surcharge that would be easy to calculate and audit . . . . ” OCA’s M.B. at 11 (citing *McCloskey* at 867). The OCA averred that, in upholding the Commission’s decision and discretion to determine the components required for calculation of the DSIC rate, the Commonwealth Court stated:

Had the General Assembly wanted to . . . curtail the Commission’s discretion to allow utilities to continue to utilize this practice, the General Assembly could have explicitly incorporated such a prohibition or placed a limit on the Commission’s discretion at the time it enacted Act 11. However, the General Assembly declined to take such action when the statute was drafted or enacted.

OCA’s M.B. at 11 (citing *McCloskey* at 870-871).

 The OCA pointed out that, shortly after the Court’s decision in *McCloskey*, the General Assembly passed Act 40. The OCA observed that, with regard to the computation of utility rates, Act 40 states, in pertinent part:

(A) COMPUTATION – If an expense or investment is allowed to be included in a public utility’s rates for ratemaking purposes, the related income tax deductions and credits shall also be included in the computation of current or deferred income tax expense to reduce rates.

OCA’s M.B. at 11 (citing 66 Pa. C.S. § 1301.1(a)). According to the OCA, Act 40 now requires the inclusion of ADIT in the DSIC rate charged to customers because ADIT represents the tax deductions and credits related to the DSIC-eligible plant being included in the DSIC rate. OCA’s M.B. at 12.

 The OCA offered several definitions and explanations in support of its argument that the DSIC is a rate. First, the OCA cited to the testimony of its witness, Ralph C. Smith, regarding the implication of Act 40, stating as follows:

A utility DSIC is a form of utility rates. That form of utility rates is commonly referred to as a surcharge. A utility DSIC would typically include costs related to investment in infrastructure. Act 40 provides that if an investment is allowed to be included in a utility’s rates, the related income tax deductions and credits shall also be included in the computation of current and deferred income tax expense to reduce rates. Computing the deferred taxes and ADIT impacts of the infrastructure investment-related tax benefits appears to be required by Act 40 to reduce rates. Reflecting the infrastructure investment-related tax benefits to reduce rates would typically take the form of reducing the net plant investment amount by the directly related ADIT. Act 40 appears to modify the Commission’s prior decision on this matter and requires a different treatment of ADIT than that previously approved by the Commission.

OCA’s M.B. at 12 (citing OCA St. 1 at 110).

 The OCA also averred that the Code specifically defines “Rate” as follows: “Every individual, or joint fare, toll, *charge*, rental, or other compensation whatsoever of any public utility . . . made, demanded, or received for any service within this part, offered, rendered, or furnished by such public utility.” OCA M.B. at 12-13 (citing 66 Pa. C.S. § 102). The OCA stated that the Code defines the DSIC as follows: “A charge imposed by a utility to recover the reasonable and prudent costs incurred to repair, improve or replace eligible property that is part of the utility’s distribution system.” OCA M.B. at 13 (citing 66 Pa. C.S. § 1351).

The OCA then argued that the Commission acknowledged that Act 11 was enacted to provide “ratemaking flexibility for utilities.” OCA M.B. at 13 (citing *Final Implementation Order*; *Implementation of Act 11 of 2012: Supplemental Implementation Order*, Docket No. M-2012-2293611 (Order entered September 21, 2016) (*Supplemental Implementation Order*) at 2). The OCA explained that the Commission highlighted the requirements for DSIC during general base rate cases in its *Supplemental Implementation Order*, including resetting the DSIC to zero, the filing of earnings reports during the pendency of general base rate cases, and references to the DSIC in the compliance tariff filed after the conclusion of a general base rate case. OCA M.B. at 13. Thus, the OCA asserted that based on the above definitions and explanations, the DSIC is undeniably a rate and is an existing rate that would be affected by a final order in the instant proceeding. *Id.*

Furthermore, the OCA rejected the Companies’ argument that the legislative history shows that Act 40 does not apply to riders and adjustment clauses.[[26]](#footnote-27) The OCA argued as follows:

Act 40 applies generally to a utility’s “rates for ratemaking purposes” and provides no exceptions to the requirement that “related income tax deductions and credits shall also be included in the computation of current or deferred income tax expense to reduce rates” whenever an expense or investment is permitted to be included in a utility’s rates.

*Id.* at 13-14 (citing 66 Pa. C.S. § 1301.1(a)). Per the OCA, the language of Act 40 above is clear and unambiguous that the DSIC is a rate, and as such, “the letter of it is not to be disregarded under the pretext of pursuing its spirit.” OCA M.B. at 14 (citing 1 Pa. C.S.

§ 1921(b)). According to the OCA, it is only when the words of a statute are not explicit that factors extraneous to the statutory language may be consulted to ascertain the General Assembly’s intent in enacting the statute. OCA M.B. at 14 (citing *Pa. Associated Builders & Contractors, Inc. v. Commonwealth Dep’t of Gen. Servs.*, 593 Pa. 580, 592, 932 A.2d 1271, 1278 (2007)).

Finally, building upon its argument that the DSIC is a “rate” as defined in the Code, the OCA argued that when technical words are defined in a statute, they “shall be construed according to such peculiar and appropriate meaning or definition.” OCA M.B. at 14 (citing 1 Pa. C.S. § 1903(a)). The OCA offered that it is common knowledge that when enacting legislation, there is a presumption that the General Assembly is familiar with existing law. OCA M.B. at 14 (citing *Commonwealth v. Ramos*, 623 Pa. 420, 428, 83 A.3d 86, 91 (2013)). According to the OCA, it must therefore, be presumed that in passing Act 40, the General Assembly was aware of the several court orders requiring the imposition of the consolidated tax adjustment in determining base rates, as well as the recent Commonwealth Court decision finding it unnecessary to account for ADIT in calculating the DSIC. The OCA asserted that the General Assembly did not limit the application of Act 40 to the consolidated tax adjustment or to “base rates.” Therefore, Act 40 should be presumed to apply to all “rates” including the DSIC. OCA M.B. at 6, 14-15.

On the other hand, the Companies argued that the contested issue relates to the terms of an adjustment clause and, as such, should not be addressed in the scope of the instant rate proceeding. The Companies averred that Section 1357(c) of the Code,[[27]](#footnote-28) like Section 1307 of the Code, authorizes an automatic adjustment clause, which is a rate mechanism that is legally separate from and operates differently from base rates. The Companies also averred that adjustment clauses employ a markedly different process for establishing charges billed to customers than the process used in Section 1308 to establish base rates. The Companies stated that they initiated this proceeding by filing proposed increases in their base rates under Section 1308(d) and did not propose any changes to their DSIC Riders that were pending Commission approval. The Companies emphasized that the Commission’s Order initiating the investigation in this base rate proceeding does not mention the DSIC, and the Commission notably approved the DSIC Riders and initiated its investigation of the Companies’ base rate filings at the same public meeting. Companies’ I.B. at 10.

Regarding the merits of the contested issue, the Companies averred that the Commonwealth Court’s decision in *McCloskey* remains the valid and controlling precedent on the issue of whether the Commission, in designing the Model Tariff, properly determined that it may reflect the cumulative impact of ADIT through the “earnings cap” provision of the DSIC. Companies’ I.B. at 11. The Companies contended that the language in Act 40 did not legislatively overrule the decision in *McCloskey* and did not retroactively remove the Commission’s authority and discretion to determine how ADIT may be accounted for in the DSIC. Companies’ I.B. at 18. The Companies stated that Act 40 has one purpose – to eliminate the imposition of CTAs – and its passage did not change the previously approved procedures for implementing the DSIC. *Id*. at 19. The Companies explained that the existing procedures are based on express authority granted by Sections 1353(a)(1) (relating to adoption of a Model Tariff), 1357(a)(3) (defining the elements of the “fixed cost” of eligible property), 1358(b)(3) (imposing the “earnings cap”), and 1358(d) (providing the Commission with broad authority “by regulation or order” to “prescribe the specific procedures to be followed to approve” a DSIC). Companies’ I.B. at 20-21.

The Companies additionally argued that the contemporaneous legislative history of Act 40 leaves no doubt that Section 1301.1(a) of the Code does not apply to adjustment clauses like the DSIC. The Companies averred that two important participants in the legislative process, the Chairman of the House Consumer Affairs Committee and the Chairman of the Commission, who submitted testimony to the Committee, stated that Act 40 would apply only to “base rates.” Companies’ I.B. at 25‑26 (citing House of Representatives Legislative Journal, Feb. 8, 2016, p. 117; Prepared Testimony of Gladys M. Brown, Chairman, Pennsylvania Public Utility Commission, p. 4).

Further, the Companies asserted that Act 40 does not apply to the DSIC because Act 40 only applies to cases where the final order is entered after the effective date of Act 40 – August 11, 2016. Companies’ I.B. at 27 (citing 66 Pa. C.S. § 1301.1(c)(2)). The Companies contended that even if Act 40 applied to more than just base rates, the final order that is relevant in determining whether Section 1301.1(a) applies to the DSIC was entered prior to the effective date of that section. The Companies submitted that the final order establishing the relevant rate is the *Final Implementation Order* approving the Model Tariff. Companies’ I.B. at 30. The Companies also pointed out that the Commission Orders, entered on June 9, 2016, which approved the DSIC Riders for each of the Companies, were also entered prior to Act 40’s effective date. *Id*. at 31.

 Finally, the Companies stated that even if Act 40 applied to the DSIC Model Tariff approved by the *Final Implementation Order*, Act 40 does not retroactively eliminate the Commission’s discretion to determine the manner in which ADIT should be accounted for in the DSIC adjustment mechanism. Companies’ I.B. at 32. The Companies argued that Act 40 does not disturb the Commission’s determination that the General Assembly intended to leave the technical mechanics of the DSIC calculation to the Commission, a proposition that was affirmed by *McCloskey*. Companies’ I.B. at 33. The Companies observed that the Commission concluded that it was not necessary or appropriate to reflect incremental ADIT in the quarterly calculation of charges under the DSIC formula, however, the Commission did not ignore the impact of ADIT in developing the Model Tariff for the DSIC. *Id*. at 34. Rather, the Companies indicated that the DSIC mechanism accounts for ADIT through the earnings cap analysis, which includes cumulative ADIT on all utility property as well as all other costs that impact a utility’s “bottom line.” The Companies averred that the earnings cap requires a utility to stop charging the DSIC if its achieved rate of return exceeds the allowable equity return rate previously approved by the Commission. *Id*. at 38.

## C. ALJ’s Recommended Decision

ALJ Long determined that the application of Section 1301.1 of the Code should be addressed in the DSIC litigation. The ALJ reasoned that DSIC is a revenue collection mechanism separate and unique from base rates and it is also unique among adjustment clauses. R.D. at 94. That ALJ stated that DSIC is specifically provided for by separate statutory provisions that provide for computation direction that is different from the computation of base rates. *Id*. at 94-95 (citing 66 Pa. C.S. §§ 1353-1360). The ALJ explained that DSIC-specific technical issues consistently have been contested under a utility’s DSIC petition. The ALJ also explained that the *Final Implementation Order* includes a Model Tariff that provides the formula for calculating the DSIC, and the Companies’ DSIC Riders were filed consistent with the Model Tariff. R.D. at 95.

 Additionally, the ALJ concluded that the OCA did not present a compelling reason for deciding an issue regarding the calculation of a DSIC in the instant base rate proceeding, rather than in the ongoing DSIC proceeding, where the calculation of the DSIC can be considered in the context of all of the issues directly related to the DSIC. The ALJ reasoned that the OCA did not claim that it would be prejudiced by resolution of the contested issue in the DSIC proceeding or that the DSIC proceeding was not otherwise an adequate forum. The ALJ noted that the OCA stated during the evidentiary hearing that it did not oppose resolution of the contested issue in the DSIC petition cases. The ALJ observed that the OCA may file a complaint that challenges the DSIC calculation in the Model Tariff set forth in the *Final Implementation Order*.

 The ALJ concluded that while the language in Section 1308 of the Code that is used to institute an investigation of a general rate increase request 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. The ALJ found that the OCA’s interpretation was more likely to result in “piecemeal DSIC decision-making by the Commission,” particularly when there is an ongoing proceeding in which the OCA’s proposal can be properly considered. The ALJ stated that ALJ Cheskis has not yet issued a Recommended Decision in the DSIC proceeding. The ALJ observed that approvals of the DSIC Riders were conditioned on the Companies’ refunding ratepayers if the final approval of the DSIC riders resulted in a change to the DSIC rate, and determined that it would not serve ratepayers or administrative economy to possibly require the Companies to recalculate their revenue collections for DSIC twice within a short period of time at two separate dockets. R.D. at 95, 96.

 The ALJ cited to a Prehearing Order dated July 14, 2015 in *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275, in which ALJ Colwell granted a motion in limine to strike testimony in a base rate proceeding, rejecting the argument that any issue impacting rates may be raised in a Section 1308 base rate proceeding. ALJ Long explained that ALJ Colwell struck testimony pertaining to 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. ALJ Long also explained that ALJ Colwell observed that there were other Commission proceedings concerning data transfer and smart meters in which these issues could be more fully addressed in their proper context. R.D. at 95.

 Based on the above analysis, ALJ Long dismissed without prejudice the OCA’s claim regarding the calculation of ADIT in the Companies’ DSIC Riders. The ALJ indicated that this dismissal was not intended to render any decision or recommendation on the substance of the OCA’s argument or the Companies’ arguments in response to OCA’s position.

## D. Exceptions and Replies

 In its first Exception, the OCA avers that the ALJ erred in recommending that the ADIT issue as applied to the existing DSIC rate not be addressed in this proceeding. The OCA argues that the issue regarding whether Act 40 requires that ADIT be accounted for in the Companies’ DSIC charges should be determined in the instant proceeding. The OCA asserts that because the Companies’ DSICs are existing rates currently charged to customers and the DSIC riders will be zeroed out and the new rate will be approved as part of the final order in this proceeding, the justness and reasonableness of the new rate must be decided in this proceeding under 66 Pa. C.S.

§ 315(a). Additionally, the OCA contends that since the final order in this proceeding will be entered after the effective date of Act 40, Section 1301.1(c)(2) of the Code, 66 Pa. C.S. § 1301.1(c)(2) unambiguously applies to this case. OCA’s Exc. at 2. Further, the OCA argues that the record is complete pertaining to the contested issue, and the OCA raised the contested issue in this proceeding in order to protect its due process rights due to the language of Section 1301.1(c)(2). OCA’s Exc. at 2-3. Contrary to the ALJ’s conclusion, the OCA believes that there is no requirement that it must identify compelling reasons for the Commission to address an existing rate as part of a base rate proceeding. *Id*. at 3.

 In the alternative, the OCA proposes that if the Commission concludes that the contested issue should be decided in the Companies’ pending DSIC proceeding, then the Commission should direct that the issue be addressed in those DSIC proceedings at Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931, and P-2015-2508948 in order to avoid confusion. Moreover, the OCA avers that it would serve judicial economy for the Commission to transfer the record in this proceeding regarding the contested issue to the record of the pending DSIC proceeding. OCA’s Exc. at 3.

 In its second Exception, the OCA makes a similar argument – that the ALJ erred by not addressing the substance of the contested issue regarding ADIT. The OCA states that the Commission should find that the issue raised by the OCA is ripe for determination in this consolidated base rate proceeding. The OCA avers that the Commission should adopt the OCA’s position, as set forth in its Main and Reply Briefs and direct the FirstEnergy Companies to account for ADIT in their DSIC rates. OCA’s Exc. at 4.

 In response, the Companies state that the contested issue is not properly within the scope of this base rate proceeding, because it pertains to the terms of an adjustment clause. The Companies aver that the DSIC in its current form was included in the Model Tariff that was approved in the *Final Implementation Order* pursuant to Section 1357(c) of the Code, 66 Pa. C.S. § 1357(c). The Companies explain that Section 1357(c) authorizes an automatic adjustment clause, which is a rate mechanism that is legally separate from, and operates differently from, base rates. Additionally, the Companies assert that the Commission’s decisions implementing the DSIC, adopting the Model Tariff, approving DSIC tariff provisions for individual utilities, and considering revisions to DSIC all occurred outside of base rate proceedings. The Companies argue that the OCA has not made any compelling argument for considering its proposed revision to the DSIC Rider, which would also include revisions to the Model Tariff, in the context of this case. Companies’ R. Exc. at 10.

 However, the Companies do agree with the OCA that if the contested issue is added to the issues assigned to ALJ Cheskis in the Companies’ DSIC proceeding, then it should transfer the relevant parts of the record in this case, including the OCA’s Main and Reply Briefs and the Companies’ Initial and Reply Briefs. In addition, the Companies suggest that the OCA’s request should encompass any other docket to which the contested issue may be assigned, including any new docket initiated by the Commission, such as a generic docket like the one in the *Supplemental Implementation Order*. Companies’ R. Exc. at 11.

## E. Disposition

 Based on our review of the record and the positions of the Parties, we agree with ALJ Long that the application of Section 1301.1 of the Code regarding the inclusion of ADIT in the calculation of the DSIC Riders should be addressed in the DSIC proceeding. Section 1357(c) of the Code authorizes an automatic adjustment clause, which is a rate mechanism that is legally separate from and operates differently from base rates. Section 1357(c) allows for the recovery of the cost of plant investments that are completed and placed in service between base rate proceedings.

 In order to ensure consistency with our previous consideration of ADIT issues, Commission orders and other DSIC issues within the context of DSIC proceedings, [[28]](#footnote-29) we find it appropriate to consider the OCA’s ADIT argument interpreting Act 40 within the active DSIC proceeding at Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931, and P-2015-2508948, to which the Companies and the OCA are also Parties. Because the contested issue involves the DSIC calculation, it should be considered in the context of all of the issues directly related to the DSIC. As of the date of this Opinion and Order, ALJ Cheskis has not yet issued a Recommended Decision in the DSIC proceeding and no evidentiary hearings have been conducted. The Companies have submitted two Formal Status Reports on behalf of the Parties regarding settlement discussions on the issues that were referred to the Office of Administrative Law Judge, but the Parties have not yet filed a Settlement. Given the status of the DSIC proceeding, there is adequate time to resolve the contested issue within the DSIC proceeding. ALJ Cheskis has the authority and discretion under Section 331(d) of the Code to permit further development of the record if it is determined to be necessary to make a decision on the DSIC calculation in light of Act 40.

 Accordingly, noting that neither Party is opposed to considering this issue in the Companies’ DSIC proceeding, we will refer the OCA’s claim regarding the calculation of ADIT in the Companies’ DSIC Riders to the DSIC proceeding at Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931, and P-2015-2508948 for such proceedings as may be necessary and the issuance of a Recommended Decision. We will also transfer the relevant parts of the record in this case, including the OCA’s Exceptions and the Companies’ Replies to Exceptions that pertain to the contested issue; OCA’s Main and Reply Briefs and the Companies’ Initial and Reply Briefs; OCA St. 1; and the Companies’ St. 2-R. Transferring the relevant parts of the record to the DSIC proceeding is consistent with the Commission’s and the ALJ’s ability to take official notice of the documents constituting the record in this proceeding, pursuant to 52 Pa. Code § 5.406 (relating to public documents), 52 Pa. Code § 5.407 (relating to records of other proceedings), and 52 Pa. Code § 5.408 (relating to official and judicial notice of fact).

 Because we are referring the contested issue in this proceeding to the DSIC proceeding, we will not address any portions of the OCA’s Exceptions or the Companies’ Replies to Exceptions that pertain to the merits of the contested issue. Additionally, we shall not make any determination in this proceeding regarding the merits of the OCA’s claim regarding the calculation of ADIT in the Companies’ DSIC Riders or the Companies’ arguments in opposition to the OCA’s position.

 Consistent with the above discussion, we shall grant the OCA’s Exceptions, in part, to the extent that we are referring the contested issue to the DSIC proceeding and transferring the record in this proceeding regarding the contested issue to the record of the DSIC proceeding. We shall also modify the ALJ’s Recommended Decision with respect to the ALJ’s dismissal without prejudice of the OCA’s claim regarding the calculation of ADIT in the Companies’ DSIC Riders.

# V. Conclusion

 Based on our review of the record and the positions of the Parties, we shall: (1) adopt the ALJ’s recommendation to approve the Partial Settlements without modification; (2) grant, in part, the Exceptions filed by the OCA, to the extent that we are referring the contested issue to the DSIC proceeding and transferring the record in this proceeding regarding the contested issue to the record of the DSIC proceeding; and (3) modify the ALJ’s recommendation to dismiss without prejudice the OCA’s claim regarding the calculation of ADIT in the Companies’ DSIC Riders; **THEREFORE,**

# VI. Order

 **IT IS ORDERED:**

1. That the Exceptions filed by the Office of Consumer Advocate on December 1, 2016, are granted, in part, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Mary D. Long, issued on November 21, 2016, is adopted as modified, consistent with this Opinion and Order with respect to the ALJ’s dismissal without prejudice of the Office of Consumer Advocate’s claim regarding the calculation of Accumulated Deferred Income Tax in the First Energy Companies’ DSIC Riders.

3. That the contested issue in this proceeding concerning the Office of Consumer Advocate’s claim with regard to the calculation of Accumulated Deferred Income Tax in the First Energy Companies’ DSIC Riders is referred to the First Energy Companies’ consolidated DSIC proceeding at Docket Nos. P-2015-2508942, P-2015-2508936, P‑2015-2508931, and P-2015-2508948 for such proceedings as may be necessary and the issuance of a Recommended Decision.

4. That the relevant parts of the record in this proceeding concerning the Office of Consumer Advocate’s claim with regard to the calculation of Accumulated Deferred Income Tax in the First Energy Companies’ DSIC Riders case, including the Office of Consumer Advocate’s Exceptions and the First Energy Companies’ Replies to Exceptions that pertain to the contested issue, the Office of Consumer Advocate’s Main and Reply Briefs, the First Energy Companies’ Initial and Reply Briefs; OCA St. 1, and the First Energy Companies’ St. 2-R are transferred to the First Energy Companies’ consolidated DSIC proceeding.

5. 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.

6. 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 this Opinion and Order, 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.

 7. 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., the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and the North American Hoganas Holdings, Inc., is approved without modification.

 8. 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 this Opinion and Order, 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.

 9. 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.

 10. 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 this Opinion and Order, 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.

 11. 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.

 12. 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 this Opinion and Order, 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.

 13. That, aside from the contested issue in this proceeding concerning the Office of Consumer Advocate’s claim regarding the calculation of Accumulated Deferred Income Tax in the Companies’ DSIC Riders, the Formal Complaints filed by the Office of Consumer Advocate at Docket Nos. C-2016-2543247, C-2016-2543266, C‑2016-2543268, and C-2016-2543315 are otherwise satisfied as to all other issues and shall be marked closed.

 14. 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.

 15. That the Formal Complaints filed by Met-Ed Industrial Users Group, at Docket No. C‑2016-2549787; Penelec Industrial Customer Alliance, at Docket No. C-2016-2549792; and West Penn Power Industrial Intervenors, at Docket No. C-2016-2549413, be marked satisfied and closed.

 16. That the Formal Complaints filed by the Boroughs of Athens, at Docket No. C‑2016-2552366; South Waverly, at Docket No. C-2016-2552369; Sayre, at Docket No. C-2016-2553194, and Nicholson, at Docket No. C-2016-2560016, be marked satisfied and closed.

 17. That the Formal Complaints of David Johnson, at Docket No. C‑2016-2565550; Jeanette Lippy, at Docket No. C-2016-2549370; Dennis Miller, at Docket No. C-2016-2551248; and John O’Mara, at Docket No. C-2016-2556970 against Metropolitan Edison Company, are dismissed.

 18. That the Formal Complaints of Larry Cole, at Docket No. C-2016-2551244; Larry Gates, at Docket No. C-2016-2552878; Kenneth Hall, at Docket No. C-2016-2551643; Eric Hetrick, at Docket No. C-2016-2551207; Kim Hillegass, at Docket No. C-2016-2553215; Charles Hoover, at Docket No. C‑2016-2560032; Maureen Hoover, at Docket No. C-2016-2552615; Robert Moore, at Docket No. C-2016-2551236; Janine & Jeff Riblett, at Docket No. C-2016-2550110; Kenneth Springirth, at Docket No. C-2016-2546231; and Rebecca Stiles, at Docket No. C-2016-2551230, against Pennsylvania Electric Company, are dismissed.

 19. That the Formal Complaints of John Catterson, at Docket No. C‑2016-2552384; Richard Collins, at Docket No. C-2016-2547484; Roland Gassman, at Docket No. C-2016-2553461; and John McDowell, at Docket No. C-2016-2551614, against Pennsylvania Power Company, are dismissed.

 20. That the Formal Complaints of Jean Bitner, at Docket No. C-2016-2554871; Mary Ellen McConnell, at Docket No. C-2016-2552601; Troy Mckenzie, at Docket No. C-2016-2553313; Eleanor Pinchok, at Docket No. C-2016-2555095; Robert Redinger, Jr., at Docket No. C-2016-2542278; Kathleen Tretinik, at Docket No. C-2016-2552271; and Worthington Boro Street Lights, at Docket No. C-2016-2548424 against West Penn Power Company, are dismissed.

 21. 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.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 19, 2017

ORDER ENTERED: January 19, 2017

1. The OCA complaints are docketed as follows: C-2016-2543247 (Met-Ed); C-2016-2543266 (Penelec); C-2016-2543268 (Penn Power); and C-2016-2543315 (West Penn). [↑](#footnote-ref-2)
2. The OSBA complaints are docketed as follows: C-2016-2544355 (Met-Ed); C-2016-2544356 (Penelec): C-2016-2544358 (Penn Power); and C-2016-2544359 (West Penn). [↑](#footnote-ref-3)
3. AK Steel only intervened in West Penn’s rate case. [↑](#footnote-ref-4)
4. EDF only intervened in Met-Ed’s rate case. [↑](#footnote-ref-5)
5. IBEW only intervened in Penelec’s rate case. [↑](#footnote-ref-6)
6. NAH only intervened in Penelec’s rate case. [↑](#footnote-ref-7)
7. 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-8)
8. Nicholson Borough is in Penelec’s service territory in Wyoming County. [↑](#footnote-ref-9)
9. Worthington Borough is located in West Penn’s service territory in Armstrong County. [↑](#footnote-ref-10)
10. The Companies’ DSIC Rider Petitions were filed on February 16, 2016. [↑](#footnote-ref-11)
11. *Petition of Metropolitan Edison Company for Approval of a Distribution System Improvement Charge,* Docket No. P-2015-2508942 (Order entered June 9, 2016) *(Met-Ed DSIC Order)*; *Petition of Pennsylvania Electric Company for Approval of a Distribution System Improvement Charge,* Docket No. P-2015-2508936 (Order entered June 9, 2016) *(Penelec DSIC Order)*; *Petition of Pennsylvania Power Company for Approval of a Distribution System Improvement Charge,* Docket No. P-2015-2508931 (Order entered June 9, 2016) *(Penn Power DSIC Order)*; *Petition of West Penn Power Company for Approval of a Distribution System Improvement Charge,* Docket No. P-2015-2508948 (Order entered June 9, 2016) *(West Penn DSIC Order)* (collectively, *Companies’ DSIC Orders or DSIC proceedings*). [↑](#footnote-ref-12)
12. A list of the Companies’ written testimony and associated exhibits and schedules, as well as 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-13)
13. As noted, Section 1301.1(a) of the Code 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. [↑](#footnote-ref-14)
14. In the Companies’ Statement in Support of the Settlements, they noted that this issue does not affect either the Companies’ revenue requirements or Settlement Rates. [↑](#footnote-ref-15)
15. By letter dated October 26, 2016, West Penn notified the Commission that page 16 of its Proposed Tariff Supplement 38, included as Exhibit 1 of the Partial 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-16)
16. Paragraph No. 23 of the Joint Petitions for Met-Ed, Penelec and Penn Power provides that those Companies submitted, in Exhibit RAD-68 (page 1) for each of Met-Ed, Penelec and Penn Power, a calculation of what its CTA would be in this proceeding “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. However, Paragraph Nos. 23 and 24 of West Penn’s Joint Petition explain that West Penn would not have a CTA in this proceeding and that Section 1301.1(a) did not apply to the determination of its revenue requirement. As a result, there are no issues with respect to the application of Section 1301.1 to West Penn in this proceeding, and West Penn has no “differential” as defined in Section 1301.1(b) of Act 40. [↑](#footnote-ref-17)
17. *See,* Met-Ed’s Partial Settlement ¶¶ 42-44 at 15-17; Penelec’s Partial Settlement ¶¶ 42-44 at 16-17; Penn Power’s Partial Settlement ¶¶ 42-44 at 15-17; West Penn’s Partial Settlement ¶¶ 42-44 at 16-17. [↑](#footnote-ref-18)
18. *See,* Met-Ed’s Partial Settlement ¶¶ 12-45 at 6-17; Penelec’s Partial Settlement ¶ ¶ 12-45 at 7-17; Penn Power’s Partial Settlement ¶¶ 12-45 at 6-17; West Penn’s Partial Settlement ¶¶ 12-45 at 7-17. [↑](#footnote-ref-19)
19. *Pa.* *PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013), at 28 (citations omitted). [↑](#footnote-ref-20)
20. *See Pa. PUC v. Pennsylvania Power Co.,* 55 Pa. P.U.C. 552, 579 (1982); *Pa. PUC v. National Fuel Gas Dist. Corp.,* 73 Pa. P.U.C. 552, 603-605 (1990). [↑](#footnote-ref-21)
21. *See,* Companies’ Statements in Support of the Partial Settlements at 3. [↑](#footnote-ref-22)
22. 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. Partial Settlements ¶¶ 12-19. [↑](#footnote-ref-23)
23. *Lower Frederick Twp. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980). *See also*, *Brockway Glass v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981). [↑](#footnote-ref-24)
24. There is no similar burden placed on parties which challenge a proposed rate component. See, *Berner v. Pa. PUC*, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955). [↑](#footnote-ref-25)
25. Prior to the enactment of Act 40, the Commission previously addressed a similar legal issue in its *Final Implementation Order,* in which the Commission declined to adopt the OCA’s proposal to include an adjustment for ADIT in the DSIC calculation. *See, Implementation of Act 11 of 2012,* Docket Number M-2012-2293611 (Order entered August 2, 2012) (*Final Implementation Order*). Subsequently, in *Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge*, Docket No. P-2012-2338282 (Order entered May 20, 2014) (*Columbia DSIC Opinion and Order)*, the Commission maintained the same position regarding this issue, stating that “the inclusion of an ADIT as proposed by the OCA is not required by Act 11, would add unneeded complexity to the DSIC calculation, and is unnecessary to ensure that the DSIC rates will be just and reasonable.” *Columbia DSIC Opinion and Order* at 35-37. The Commission’s decision that ADIT does not need to be included in the calculation of the DSIC was affirmed by the Commonwealth Court. *See, McCloskey v. Pa. PUC*, 127 A.3d 860 (Pa. Cmwlth. 2015) (*McCloskey*). [↑](#footnote-ref-26)
26. The OCA referenced the testimony of the Companies’ witness, Mr. Richard D’Angelo, quoting Representative Godshall’s comment that Act 40 “applies to base rate cases,” to support his conclusion that Act 40 does not apply to riders and adjustment clauses. OCA M.B. at 13 (citing Companies’ St. 2-R at 41-42). [↑](#footnote-ref-27)
27. Section 1357(c) provides the following:

**(c) Recovery of costs.**—Utilities may file tariffs establishing a sliding scale of rates or other method for the automatic adjustment of the rates of the utility to provide for recovery of the depreciation and pretax return fixed costs of eligible property, as approved by the commission, that are completed and placed in service between base rate proceedings. [↑](#footnote-ref-28)
28. *See, e.g., Columbia DSIC Opinion and Order; Petition of PPL Electric Utilities Corporation for Approval of a Distribution System Improvement Charge*, Docket No. P‑2012-2325034 (Order entered April 9, 2015). [↑](#footnote-ref-29)