**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held February 7, 2019

Commissioners Present:

Gladys M. Brown, Chairman

David W. Sweet, Vice Chairman

Norman J. Kennard

Andrew G. Place

John F. Coleman, Jr.

Pennsylvania Public Utility Commission R-2018-3002645

Pennsylvania Office of Consumer Advocate  C-2018-3003165

Pennsylvania Office of Small Business Advocate C-2018-3003388

Pennsylvania-American Water Company C-2018-3003941

James Ferlo C-2018-3004291

Duquesne Light Company C-2018-3005022

v.

Pittsburgh Water and Sewer Authority – Water

Pennsylvania Public Utility Commission R-2018-3002647

Pennsylvania Office of Consumer Advocate C-2018-3003173

Pennsylvania Office of Small Business Advocate C-2018-3003384

Peoples Natural Gas Company LLC C-2018-3004864

James Ferlo C-2018-3004311

Duquesne Light Company C-2018-3005036

v.

Pittsburgh Water and Sewer Authority – Wastewater

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Mark A. Hoyer and Conrad A. Johnson issued on January 25, 2019, in the above-captioned proceedings which involves the consolidated general rate increase filings by the water and wastewater operations of the Pittsburgh Water and Sewer Authority. The Recommended Decision recommends that the Joint Petition for Settlement (Joint Petition)[[1]](#footnote-2) be granted and that the Settlement be approved with certain modifications/corrections to the water and wastewater tariffs that are attached to the Settlement. Upon consideration of the record, we shall modify the Recommended Decision by granting the Joint Petition and approving the Settlement in full, without modification or correction.

**History of the Proceeding**

On July 2, 2018, PWSA filed Tariff Water – Pa. P.U.C. No. 1 (Water Tariff) and Tariff Wastewater – Pa. P.U.C. No. 1 (Wastewater Tariff) to become effective August 31, 2018. Through these filings, PWSA requested that the Commission approve its new tariffs pursuant to Act 65 of 2017, 66 Pa.C.S. § 3201 *et seq*. PWSA proposed increases to water and wastewater total annual operating revenues of approximately $27 million per year or 17.1% on a total revenue basis over the amount of annual revenues at present rates.

PWSA is a municipal water and wastewater authority serving customers in the City of Pittsburgh and surrounding communities. PWSA provides water service to approximately 80,000 residential, commercial and industrial customers in: portions of the City of Pittsburgh; the Borough of Millvale; and portions of Reserve, O’Hara, and Blawnox Townships, Allegheny County. PWSA also provides wastewater conveyance service to customers located in the City of Pittsburgh, Allegheny County, and also conveys sewage for portions of 24 neighboring communities. PWSA’s water and wastewater operations became subject to regulation by the Pennsylvania Public Utility Commission on April 1, 2018, pursuant to Act 65 of 2017, 66 Pa.C.S. § 3201 *et seq*.

Under the Authority’s original proposal, a typical residential water and wastewater conveyance customer using 3,000 gallons of water per month would see his or her total monthly bill increase from $63.62 to $74.23, an increase of $10.61 or 16.7%. For the water portion of the bill, this includes an increase from $42.07 to $49.84, an increase of $7.77 or 18.5%. For the wastewater conveyance portion of the bill, this includes an increase from $21.55 to $24.39, an increase of $2.84 or 13.2%.

On July 2, 2018, PWSA also filed two petitions: a petition for consolidation of proceedings and for authorization to use combined water and wastewater revenue requirements; and a petition for waiver of the statutory definition of fully projected future test year (FPFTY) to permit a FPFTY beginning January 1, 2019. *See*, 66 Pa. C.S. § 315(e).

On July 5, 2018, the Office of Consumer Advocate (OCA) filed a Notice of Appearance and Formal Complaint at Docket No. R-2018-3002645[[2]](#footnote-3) and at Docket No. R-2018-3002647.[[3]](#footnote-4) The Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance on July 6, 2018. On July 13, 2018, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance and Formal Complaint at Docket No. R-2018-3002645[[4]](#footnote-5) and at Docket No. R-2018-3002647.[[5]](#footnote-6)

On July 12, 2018, the Commission issued Suspension Orders at Docket No. R-2018-3002645 (Water) and Docket No. R-2018-3002647 (Wastewater) ordering investigations into the lawfulness, justness and reasonableness of the proposed rate increases. The Tariffs were suspended by operation of law until March 31, 2019, unless permitted by Commission Order to become effective at an earlier date.

On July 13, 2018, Pittsburgh UNITED filed a petition to intervene and answer. Pittsburgh UNITED also filed two motions for admission *pro hac vice* on July 13, 2018.

A prehearing conference was held on Thursday, July 19, 2018, as scheduled. Counsel for PWSA, I&E, OCA, OSBA, and Pittsburgh UNITED attended the conference. On July 20, 2018, a Prehearing Order was issued establishing a litigation schedule for this proceeding and consolidating the formal complaints filed by OCA and OSBA with this proceeding.

On July 26, 2018, PWSA filed a Motion for a Protective Order. The requested Protective Order was issued on August 8, 2018.

On August 13, 2018, Pennsylvania-American Water Company (PAWC) filed a formal complaint at Docket No. C-2018-3003941 against the proposed Water Tariff. On August 24, 2018, James Ferlo filed a formal complaint at Docket No. C-2018-3004291 against the proposed Water Tariff and at Docket No. C-2018-3004311 against the proposed Wastewater Tariff. PWSA did not file an answer to the complaint of PAWC or the complaints of James Ferlo.

Four public input hearings in the City of Pittsburgh. On September 4, 2018, two public input hearings were held. One public input hearing was held on September 5, 2018, and the last one was held on September 6, 2018.

Peoples Natural Gas Company LLC (Peoples) filed a formal complaint at Docket No. C-2018-3004864 in the above-captioned proceedings on September 21, 2018. PWSA filed preliminary objections and an answer to said complaint on October 5, 2018. On October 5, 2018, Peoples filed an amended complaint. On October 15, 2018, PWSA filed preliminary objections and an answer to the amended complaint. On October 24, 2018, Peoples filed a petition to withdraw its complaint. No objections were filed to said Petition.

On September 28, 2018, Duquesne Light filed two formal complaints at Docket Nos. C-2018-3005022 and C-2018-3005036. PWSA filed an answer to Duquesne Light’s complaints on October 11, 2018.

On November 14, 2018, an evidentiary hearing was held. The following formal complaints were consolidated in this proceeding at the outset of the hearing: Pennsylvania-American Water Company against PWSA at Docket No. C-2018-3003941; Peoples Natural Gas Company LLC against PWSA at Docket No. C-2018-3004864; two complaints of James Ferlo against PWSA at Docket No. C-2018-3004291 and Docket No. C-2018-3004311; and two formal complaints filed by Duquesne Light Company against PWSA at Docket No. C-2018-3005022 and Docket No. C-2018-3005036. The parties participating in the hearing waived cross-examination and all verified, pre-served written testimony and exhibits, with the exception of the evidence pre-served by Peoples, were admitted into the hearing record by stipulation. No parties participating in the hearing objected to Peoples’ petition for leave to withdraw its complaint. The presiding officers determined that the petition for leave to withdraw the complaint was in the public interest and granted the Petition at the hearing.[[6]](#footnote-7)

On November 29, 2018, PWSA filed a Joint Petition for Settlement. PWSA, I&E, OCA, OSBA and Pittsburgh UNITED (the Settlement parties or Joint Petitioners) were parties to the Settlement.[[7]](#footnote-8)

On November 30, 2018, Duquesne Light filed a letter with the Commission’s Secretary’s Bureau indicating it did not object to the Settlement.

On November 30, 2018, OCA sent a letter to Complainant James Ferlo regarding the Settlement advising him of his right to comment, object to or join in the Settlement.

On December 5, 2018, OCA filed its Statement in Support of the Settlement.

On December 6, 2018, PAWC filed a letter indicating it did not oppose the Settlement.

PWSA, I&E and Pittsburgh UNITED each filed a Statement in Support of the Settlement on December 7, 2018.

On December 10, 2018, OSBA filed its Statement in Support of the Settlement.

On December 12, 2018, a Second Interim Order was issued requesting that any objections or comments regarding the Settlement be filed by December 21, 2018. On December 26, 2018, a Third Interim Order closing the record was issued.

On January 25, 2019, the Commission issued the ALJs’ Recommended Decision in which the ALJs’ recommended that the Joint Petition be granted and that the Settlement filed in these proceedings be approved on the condition that PWSA file corrections and modifications to its water and waste water tariffs.

On January 31, 2019, PWSA filed a Letter with the Commission identifying how it proposes to address each of the additional modifications and corrections set forth in the Recommended Decision.[[8]](#footnote-9)

**Discussion**

**Legal Standards**

Section 1301 of the Public Utility Code (Code), 66 Pa.C.S. § 1301, provides: “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.” In deciding any general rate increase case brought under Section 1308(d) of the Code, 66 Pa.C.S. § 101 *et seq.*, certain general legal standards always apply.

**Burden of Proof**

The burden of proof to establish the justness and reasonableness of every element of the utility’s rate increase rests solely upon the public utility. 66 Pa.C.S. § 315(a). “It is well-established that the evidence adduced by a utility to meet this burden must be substantial.” *Lower Frederick Twp. v. Pa. Pub. Util. Comm’n*, 409 A.2d 505, 507 (Pa.Cmwlth. 1980).

A public utility need not affirmatively defend every claim it has made in its filing, even those which no other party has questioned absent prior notice that such action is to be challenged. *Allegheny Center Assocs. v. Pa. Pub. Util. Comm’n,* 131 Pa.Cmwlth. 352, 359, 570 A.2d 149, 153 (1990) (citation omitted). *See also, Pa. Pub. Util. Comm’n v. Equitable Gas Co*., 73 Pa. PUC 310, 359-360 (1990).

The Commission is not required to consider expressly and at length each contention and authority brought forth by each party to the proceeding. *University of Pennsylvania v. Pa. Pub. Util. Comm’n*, 86 Pa.Cmwlth. 410, 485 A.2d 1217 (1984). “A voluminous record does not create, by its bulk alone, a multitude of real issues demanding individual attention . . . .” *Application of Midwestern Fidelity Corp.*, 26 Pa.Cmwlth. 211, 230 fn.6, 363 A.2d 892, 902, fn.6 (1976). Further, a Commission decision is adequate where, on each of the issues raised, the Commission was merely presented with a choice of actions, each fully developed in the record, and its choice on each issue amounted to an implicit acceptance of one party’s thesis and rejection of the other party’s contention. *Popowsky v. Pa. Pub. Util. Comm’n*, 550 Pa. 449, 706 A.2d 1197 (1997), 1997 Pa. LEXIS 2756. The Commission is not required to consider expressly and at length each contention and authority brought forth by each party to the proceeding. *University of Pennsylvania v. Pa. Pub. Util. Comm’n*, 86 Pa.Cmwlth. 410, 485 A.2d 1217 (1984). “A voluminous record does not create, by its bulk alone, a multitude of real issues demanding individual attention . . . .” *Application of Midwestern Fidelity Corp.*, 26 Pa.Cmwlth. 211, 230 fn.6, 363 A.2d 892, 902, fn.6 (1976). Further, a Commission decision is adequate where, on each of the issues raised, the Commission was merely presented with a choice of actions, each fully developed in the record, and its choice on each issue amounted to an implicit acceptance of one party’s thesis and rejection of the other party’s contention. *Popowsky v. Pa. Pub. Util. Comm’n*, 550 Pa. 449, 706 A.2d 1197 (1997), 1997 Pa. LEXIS 2756.

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

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

**ALJs’ Recommendation**

As noted, on January 25, 2019, the Commission issued the ALJs’ Recommended Decision wherein the ALJs’ recommended that the Joint Petition be granted and that the Settlement filed in these proceedings be approved on the condition that PWSA file corrections and modifications to its water and waste water tariffs. The ALJs further recommended that PWSA file a corrected tariff to address these issues as soon as possible.

If approved, the Settlement, *inter alia*, provides for a $21 million increase in retail user rates, or $6 million less than the $27 million increase originally proposed by PWSA. The Settlement will increase PWSA’s total annual user charge revenues for water service by approximately $16.639 million, or 17.1%, and increase PWSA’s total annual user charge revenues for wastewater conveyance service by approximately $4.374 million, or 7.2%. A typical residential water and wastewater conveyance customer using 3,000 gallons of water per month will see his or her monthly bill increase from $63.62 to $72.49, for an increase of $8.87 or 13.9%.[[9]](#footnote-10)

**Disposition**

As noted, in addition to approving the Settlement, the Recommended Decision sets forth recommended modifications and corrections to PWSA’s water and wastewater tariffs. The Recommended Decision recommends that PWSA file a corrected tariff to address these issues as soon as possible. In response to the Recommended Decision, on January 31, 2019, PWSA filed a Letter with the Commission identifying how it proposes to address each of the additional modifications and corrections set forth in the Recommended Decision.

We agree with PWSA’s Letter. The typographical, clarifications and language modifications suggested in the Recommended Decision are more appropriately addressed in the filing of a compliance tariff and thus should be incorporated in to PWSA’s compliance tariff filing following the Commission’s final order in this matter. In addition, we agree with PWSA that it would be more appropriate to address the tariff modifications concerning compliance with specific provisions of the Code and the Commission’s Regulations in PWSA’s Compliance Plan proceeding currently pending before the Commission at Docket Nos. M-2018-2640802 (Water) and M-2018-2640803 (Wastewater).

**Conclusion**

Consistent with the foregoing discussion, we shall modify the ALJs’ Recommended Decision and grant the Joint Petition to adopt the Settlement in this proceeding in full, without modification or correction; **THEREFORE**,

**IT IS ORDERED**:

1. That the Recommended Decision of Administrative Law Judges Mark A. Hoyer and Conrad A. Johnson that was issued on January 25, 2019, in the above-captioned proceedings, is adopted, as modified, consistent with this Opinion and Order.

2. That the Joint Petition for Settlement that was filed on November 29, 2018, by the Pittsburgh Water and Sewer Authority, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and Pittsburgh UNITED, is granted, and the Settlement is thereby adopted, in full, without modification or correction.

3. That the typographical, clarification and language modifications set forth in the Recommended Decisions be incorporated into Pittsburgh Water and Sewer Authority’s compliance tariff following the Commission’s final order in this matter.

4. That the water and wastewater tariff modifications and corrections concerning compliance with specific provisions of the Public Utility Code and the Commission’s Regulations be addressed in the Pittsburgh Water and Sewer Authority’s Compliance Plan proceeding now pending at Docket Nos. M-2018-2640802 (Water) and M-2018-2650803 (Wastewater).

5. That the Pittsburgh Water and Sewer Authority is authorized to file tariffs, tariff supplements or tariff revisions containing rates, rules and regulations, consistent with the Joint Petition for Settlement, to produce an increase in annual revenues of $21 million.

6. That the Pittsburgh Water and Sewer Authority tariffs, tariff supplements and/or tariff revisions may be filed on at least one (1) day’s notice to be effective for service rendered on and after the effective date of the tariffs.

7. That the Pittsburgh Water and Sewer Authority, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, the Office of Consumer Advocate, the Office of Small Business Advocate, and Pittsburgh UNITED shall comply with the terms of the Joint Petition for Settlement submitted in this proceeding.

8. That the Formal Complaints of the Office of Consumer Advocate filed at Docket Nos. C-2018-3003165 (Water) and C-2018-3003173 (Wastewater) are satisfied and marked closed.

9. That the Formal Complaints of the Office of Small Business Advocate filed at Docket Nos. C-2018-3003388 (Water) and C-2018-3003384 (Wastewater) are satisfied and marked closed.

10. That the Formal Complaint of the Pennsylvania-American Water Company filed at Docket No. C-2018-3003941 is dismissed and marked closed.

11. That the Formal Complaints of the Duquesne Light Company filed at Docket Nos. C-2018-3005022 (Water) and Docket No. C-2018-3005036 (Wastewater) are dismissed and marked closed.

12. That the Formal Complaints of James Ferlo filed at Docket Nos. C‑2018-3004291 (Water) and Docket No. C-2018-3004311 (Wastewater) are dismissed and marked closed.

13. That the Petition for Leave to Withdraw Complaint filed by Peoples Natural Gas Company LLC at Docket No. C-2018-3004864, is granted.

14. That upon acceptance and approval by the Commission of the tariffs, tariff supplements or tariff revisions filed by Pittsburgh Water and Sewer Authority, consistent with this Order, this proceeding at Docket No. R-2018-3002645 (Water) and Docket No. R-2018-3002647 (Wastewater) shall be marked closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 7, 2019

ORDER ENTERED: February 27, 2019

1. As discussed, *infra*, the Joint Petition for Settlement was filed on November 29, 2018, by the Pittsburgh Water and Sewer Authority (PWSA), the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and Pittsburgh UNITED (UNITED) (hereinafter collectively referred to as the Settlement Parties or Joint Petitioners). The Settlement resolves all of the disputed issues between and among all of the active parties. In addition, Duquesne Light Company (Duquesne) and the Pennsylvania-American Water Company (PAWC), two Complainants in the case, indicated they do not oppose the Settlement. [↑](#footnote-ref-2)
2. Docket No. C-2018-3003165 (Water). [↑](#footnote-ref-3)
3. Docket No. C-2018-3003173 (Wastewater). [↑](#footnote-ref-4)
4. Docket No. C-2018-3003388 (Water). [↑](#footnote-ref-5)
5. Docket No. C-2018-3003384 (Wastewater). [↑](#footnote-ref-6)
6. An ordering paragraph granting the Petition is included in this Recommended Decision. 52 Pa. Code § 1.2. [↑](#footnote-ref-7)
7. In the Settlement, the parties represent that Duquesne Light and PAWC indicated they do not oppose the Settlement. Settlement, p. 1, footnote 1. [↑](#footnote-ref-8)
8. In its Letter, PWSA classifies the modifications and corrections set forth in the Recommended Decision into three categories, as follows: (1) “typographical stylistic or clarifying corrections,” (2) “language modifications,” and (3) “directive” for compliance with the Public Utility Code and Commission Regulations. [↑](#footnote-ref-9)
9. We refer the reader to the Recommended Decision and the Joint Petition for Settlement for further terms and conditions of the Settlement not specifically set forth here. [↑](#footnote-ref-10)