

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2019-3009016
Bureau of Investigation and Enforcement	:	C-2019-3009266
Office of Small Business Advocate	:	C-2019-3009471
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

RECOMMENDED DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Recommended Decision recommends the approval of the Joint Petition for Settlement offered by the parties in this matter to resolve all issues related to Philadelphia Gas Works' (PGW or Company) Negotiated Liquefied Natural Gas (LNG-N) Rate filing pursuant to 66 Pa. C.S. § 1308(b). The Decision recommends the approval of the LNG-N Rate as indicated in Exhibit 1 of the Joint Petition for Settlement. The LNG-N rate is negotiable at the discretion of the Company and may be fixed or interruptible.

The Decision also recommends the approval of the provisions which require that PGW will provide updates and information on the revenues and costs of the new LNG-N rate in future base rate and Gas Costs Rate (GCR) cases. Further, the Decision also recommends the Settlement provision which requires that PGW will allow the Bureau of Investigation and Enforcement's Safety Division to inspect records related to transport vehicles used under the new LNG-N rate.

Lastly, the Decision recommends that the Public Utility Commission (Commission) approve the Settlement provisions related to the Passyunk P3 Project, regarding jurisdiction, notification requirements, operations and maintenance, regulatory impact analysis, and site remediation. The Decision also recommends the approval of the Settlement provision regarding the notification of the rate change to current LNG customers.

The suspension period for this matter ends on December 4, 2019.

HISTORY OF THE PROCEEDING

On April 5, 2019, Philadelphia Gas Works filed Supplement No. 120 to PA PUC No. 2; effective June 4, 2019, proposing to cancel all provisions for Liquefied Natural Gas Service - Rate LNG and establish the availability, rates, and terms of service for new rate for eligible customers under a proposed Negotiated Liquefied Natural Gas Service - Rate LNG. At the time of the filing, PGW submitted the Direct Testimony of Raymond M. Snyder.

On April 18, 2019, the Bureau of Investigation and Enforcement (I&E) filed a Formal Complaint and entered the appearance of Gina L. Miller, Esquire. The Complaint was docketed at Docket No. C-2019-3009266.

On April 25, 2019, the Office of Small Business Advocate (OSBA) filed a Formal Complainant and entered the appearance of Shelby Linton-Keddie, Esquire. The Complaint was docketed at Docket No. C-2019-3009471.

On May 9, 2019, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Public Statement. It also entered the appearances of Harrison Breitman, Esquire and Lauren Burge, Esquire on its behalf.

Pursuant to the Public Utility Code, 66 Pa. C.S. § 1308(b), by Opinion and Order dated May 9, 2019, the Commission suspended the proceedings until December 4, 2019 and sent

the matter to the Office of Administrative Law Judge for evidentiary hearings and a Recommended Decision. The matter was assigned to Administrative Law Judge Marta Guhl.

On May 16, 2019, the Philadelphia Industrial and Commercial Gas Users Group (PICGUG) filed a Petition to Intervene in this matter.

By Notice dated May 15, 2019, a Call-In Telephonic Prehearing Conference Notice was scheduled for Wednesday, June 5, 2019 at 10:00 a.m. I issued a Prehearing Conference Order dated May 23, 2019, which laid out the procedures for the prehearing conference.

OSBA filed its Prehearing Conference Memorandum on June 3, 2019. On June 4, 2019, PGW, I&E, OCA, and PICGUG filed Prehearing Conference Memorandum in accordance with the May 23, 2019, Prehearing Conference Order.

A prehearing conference in this matter was held on June 5, 2019. Counsel for PGW, I&E, OCA, OSBA, and PICGUG participated. On June 6, 2019, I issued Prehearing Order #1 which laid out the procedural schedule in this proceeding. It also granted PICGUG's Petition to Intervene.

Consistent with the procedural schedule, I&E and OCA served direct testimony on June 26, 2019. I&E served I&E St. 1, Direct Testimony of Ethan Cline and I&E St. 2, Direct Testimony of Christopher Whiteash. OCA served OCA St. 1, Direct Testimony of Jerome D. Mierzwa. No other party elected to serve direct testimony.

On July 10, 2019, PGW served the rebuttal testimony of Raymond M. Snyder.

On July 18, 2019, OCA served the surrebuttal testimony of Jerome D. Mierzwa. I&E served the surrebuttal testimony of Ethan H. Cline and Christopher Whiteash.

On July 22, 2019, counsel for PGW contacted my office via electronic mail to inform me that the parties had reached a settlement in the above matter. The parties indicated that they wished to cancel the hearing date on July 24, 2019. I granted this request via electronic mail and followed up with Prehearing Order #2 which was issued on July 24, 2019.

On August 15, 2019, PGW, I&E and OCA (collectively the “Settling Parties”) filed a Joint Petition for Settlement of Philadelphia Gas Works’ LNG Rate Proceeding (Joint Petition or Settlement) with the attached Exhibit No. 1 and Statements in Support of the Settlement. Although PICGUG and OSBA did not sign the Settlement, the Settling Parties indicated in the Settlement that both PICGUG and OSBA authorized them to state their non-opposition to the Settlement. Separately, both OSBA and PICGUG filed letters indicating their non-opposition to the Settlement. The Settlement included a Stipulated Record:

- 1) PGW St. 1, Direct Testimony of Raymond M. Snyder, dated April 5, 2019;
- 2) PGW St. 1-R, Rebuttal Testimony of Raymond M. Snyder and accompanying Exhibits RMS-1 and RMS-2, dated July 10, 2019;
- 3) PGW St. 1-RJ, Rejoinder Testimony of Raymond M. Snyder and accompanying Exhibit RMS-3, dated July 23, 2019;
- 4) I&E St. 1, Direct Testimony of Ethan Cline and accompanying Exhibit I&E Exhibit 1, dated June 26, 2019;
- 5) I&E St. 1-SR, Surrebuttal Testimony of Ethan Cline, dated July 18, 2019;
- 6) I&E St. 2, Direct Testimony of Christopher Whiteash and accompanying Exhibit I&E Exhibit 2, dated June 26, 2019;
- 7) I&E St. 2-SR, Surrebuttal Testimony of Christopher Whiteash, dated July 18, 2019;
- 8) OCA St. 1, Direct Testimony of Jerome D. Mierzwa and accompanying Appendix A, dated June 26, 2019;
- 9) OCA St. 1-SR, Surrebuttal Testimony of Jerome D. Mierzwa, dated July 18, 2019.

The parties also agreed to stipulate to the identification and admission of Supplement No. 120 and the materials supporting said Supplement as “PGW Exhibit 1.” The Stipulated Record is recommended for adoption through this Recommended Decision.

The record consists of a 17-page transcript from the prehearing conference, the Company’s filings, the testimony and exhibits submitted by PGW, I&E and OCA, the Joint Petition for Settlement and attachments, and the parties’ Statements in Support of the Settlement.

The record closed on August 15, 2019, the date that the parties filed the Joint Settlement Petition and Statements in Support. The suspension period for this matter ends on December 4, 2019.

FINDINGS OF FACT

1. PGW is a municipally-owned gas utility.
2. PGW’s gas distribution system is located in Southeastern Pennsylvania in the City and County of Philadelphia. PGW St. 1 at 2.
3. Since this area is not gas-producing, PGW and its customers are dependent on the interstate natural gas pipeline system to provide natural gas into the PGW distribution system. PGW St. 1 at 2.
4. PGW relies on interstate pipeline for all of its natural gas supply, storage and transportation services that are not otherwise provided by PGW’s on system peak shaving facilities. PGW St. 1 at 2.
5. PGW owns and operates two LNG facilities which are primarily used to meet intraday, daily and seasonal supply needs as well as meeting peak day requirements. PGW St. 1 at 2.

6. PGW operates its own LNG peak shaving liquefaction, vaporization and storage facilities. PGW St. 1 at 2.

7. PGW's LNG rate currently is limited to PGW-supplied gas for liquefaction and transport to customers on an interruptible basis. PGW St. 1 at 4.

8. Under Rate LNG-N, PGW will have a mechanism to offer LNG-related gas sales, transportation, liquefaction, storage, vaporization, delivery methods, and exchange services in response to market demands for LNG and LNG Services. *See* PGW St. 1 at 7.

9. Rate LNG-N would only be available to customers that have negotiated an agreement with PGW regarding LNG sales and services. PGW St. 1 at 4.

10. Depending upon the needs of the LNG customer, these LNG-related sales and services could include: 1) the provision of the commodity; 2) transportation of natural gas from the Company's City Gate to the Company's Liquefied Natural Gas facilities; 3) the liquefaction of the natural gas by the Company's Liquefied Natural Gas facilities; 4) the injection of the Customer's liquefied natural gas into the Company's Liquefied Natural Gas facilities; 5) the storage of liquefied natural gas; 6) the vaporization of liquefied natural gas; 7) the withdrawal of the liquefied natural gas via transport vehicle; and 8) the delivery of commodity from the Company's Liquefied Natural Gas facilities via pipeline, exchange services, or other delivery mechanism. PGW St. 1 at 4-5.

11. PGW will be able to provide for the sale of LNG in ways other than by truck and also to provide a full range of LNG-related services. PGW St. 1 at 7.

12. The market is looking for services beyond the delivery of LNG by transport vehicle, and PGW is positioned to provide these services, if Rate LNG-N is approved. PGW St. 1 at 7.

13. PGW has identified one potential LNG-N customer, Passyunk Energy Center, LLC (PEC). PGW St. 1 at 8-11.

14. PGW is pursuing a public-private partnership (P3) with PEC for the construction of new LNG facilities at PGW's Passyunk Plant (Passyunk P3 Project) that would be capable of producing 120,000 gallons of LNG per day. PGW St. 1 at 8-9.

15. As part of the Passyunk P3 Project, PEC will fund and construct LNG liquefaction facilities at PGW's Passyunk Plant, which PGW will lease for \$10 per year after it has inspected and accepted the liquefier. PGW St. 1 at 9; PGW St. 1-R at 3.

DESCRIPTION AND TERMS OF THE JOINT PETITION FOR SETTLEMENT

The Joint Petition for Settlement is a 13-page document signed by three of the five active parties. As noted above, although PICGUG and OSBA did not sign the Settlement, the Settling Parties indicated in the Settlement that both PICGUG and OSBA authorized them to state their non-opposition to the Settlement. Separately, both OSBA and PICGUG filed letters indicating their non-opposition to the Settlement. Exhibit Number 1 contains the tariff schedule agreed upon by the Settling Parties. Statement A was PGW's Statement in Support. Statement B was I&E's Statement in Support. Statement C was OCA's Statement in Support.

The essential terms of the Joint Petition for Settlement of the Philadelphia Gas Works' LNG-rate proceeding are set forth in Sections III and V of the Joint Petition. Settlement paragraphs 17-29 and 32-38 are as follows:

17. The Joint Petitioners hereby respectfully request that PGW's Tariff Schedule be approved as annexed hereto as Exhibit 1 in accordance with the following terms and conditions:

18. "Passyunk P3 Project" means the proposed public private partnership ("P3") project between Philadelphia Gas Works ("PGW") and Passyunk Energy Center, LLC ("PEC") which would add a liquefier and related facilities ("New Facilities" or

“Expanded LNG Facilities”) to PGW’s existing LNG plant at Passyunk.

Rate Impacts on Other Customers

19. The Settling Parties agree that once the Passyunk P3 Project is operational, PGW’s base rate and GCR cases are the appropriate venues to (a) evaluate the treatment of the revenues generated by transactions under Rate LNG-N; and (b) evaluate the impact of Rate LNG-N transactions on system capacity and design day requirements. PGW agrees to provide in future base rate and GCR cases the information necessary to separately identify LNG N costs and revenues. It is also agreed that this Settlement does not impact the right of any of the Settling Parties to challenge the recovery and reflection of any costs and revenues under Rate LNG-N in PGW’s future base rate and GCR cases, as applicable.

Unauthorized/de facto LNG receiving facilities

20. The Settling Parties agree that I&E’s Safety Division may inspect PGW’s LNG transport vehicle (e.g., tanker truck) shipping records at PGW’s on-site premises. The records include: a physical address and a means to identify trucking associated with the proposed Rate LNG-N tariff.

Jurisdiction over the Passyunk P3 Project

21. The Settling Parties agree that the Passyunk P3 Project falls under the jurisdiction of the U.S. Department of Transportation’s (“DOT”) Pipeline & Hazardous Materials Safety Administration (“PHMSA”) and is governed by PHMSA’s Federal Regulations in Part 193 (“Part 193”) of the Code of Federal Regulations (“CFR” or “49 CFR”). This includes, but is not limited to, inspection of the Passyunk P3 Project by the Commission — as the agent of PHMSA.

22. PGW agrees to include explicit language in its negotiated contracts (under Rate LNG-N) that Gas delivered to customers under Rate LNG-N (such as PEC) may be redelivered by that customer, provided the means and conditions of such redelivery do not render PGW’s LNG plants subject to FERC jurisdiction (unless PGW expressly agrees to such jurisdiction).

Design and Construction of Passyunk P3 Project; Notification Requirements

23. PGW will work cooperatively with I&E's Safety Division with regard to design and construction of the Passyunk P3 Project by facilitating I&E Safety Division's inspections. The existing LNG facilities at the Passyunk Plant and all of the Passyunk P3 Project at the Passyunk Plant used to provide services under Rate LNG-N at the Passyunk Plant will be designed, operated, and maintained in accordance with 49 CFR Part 193.

(a) PGW agrees to schedule in-person informational meetings with I&E Safety Division every two weeks between the time of PGW's notification of the Effective Date of an LNG-N project agreement utilizing a P3 structure and the time when that project is fully in service. Any meeting or meetings can be cancelled upon mutual agreement.

(b) The I&E Safety Division can request at any time additional updates/reviews/inspections, pursuant to applicable regulations, of the existing LNG facilities at the Passyunk Plant, all of the Passyunk P3 Project at the Passyunk Plant, or any future LNG construction projects utilizing a P3 structure. PGW will make efforts to accommodate all reasonable requests.

24. In addition to notice required under Part 193 and the in-person information meetings agreed to above (Paragraph 23(a)), upon finalization of any project agreements related to Rate LNG-N utilizing a P3 structure (including, but not limited to the agreement between PGW and PEC for the Passyunk P3 Project), PGW will within 30 days, provide written notification to the I&E Safety Division of the following information:

- (1) Effective Date of an LNG-N project agreement
- (2) Description and location of project;
- (3) Type of facility;
- (4) Provide preliminary design basis;
- (5) Estimated on-site construction start date;
- (6) New O&M procedures development schedule;
- (7) Training plan development schedule;
- (8) Estimated date to start performance testing; and
- (9) Name and address of PGW and PEC (or other prime P3 partner) contacts for the project.

25. PGW shall provide the I&E Safety Division with notification 90 days prior to the commencement of construction of the Passyunk P3 Project at the Passyunk Plant and other similar LNG-N projects utilizing a P3 structure. The above described

meetings (see Paragraph 23(a)) that commence with notice of the Effective Date will provide an opportunity to review plans as they are developed.

Future Operations and Maintenance; Qualifications and Training

26. PGW agrees that it will review, with I&E's Safety Division, the O&M procedures for the Passyunk P3 Project and record review process, in addition to any modifications or amendments of the O&M procedures resulting from any proposed project related to Rate LNG-N utilizing a P3 structure, beginning with meetings every two weeks upon notification of the Effective Date (under Paragraph 23(a)). PGW will provide preliminary procedures 30 days prior to the date the Passyunk P3 Project, or any other LNG-N project plant utilizing a P3 structure, is anticipated to go into service after successful performance testing.

(a) PGW acknowledges that any O&M procedural concerns that trigger revisions to the procedures may also facilitate the need for an additional review by I&E and the need for PGW to train their employees to the new requirements. Upon notice from I&E of its determination that concerns exist in PGW's procedures reviewed in the above paragraph, PGW shall, within 60 days, provide a response to such concerns including an assessment of whether, in PGW's view, the concerns are justified. If PGW concludes that the concerns are justified, in whole or in part, PGW will make revisions to address those concerns and train PGW's employees on the new requirements.

Continued Operations; Regulatory Impact Analysis

27. PGW agrees that following design completion it will meet with I&E and discuss the Passyunk P3 Project design, the intent of which is to review the project for compliance with Part 193 and the Pa. Code, as applicable, and confirm that existing customers' service will not be materially affected by the Passyunk P3 Project. PGW will provide a summary of the meeting to I&E.

Notice To Customers Under Current Rate LNG

28. PGW agrees to notify the entities with contracts under the current Rate LNG of the terms and conditions of Rate LNG-N. The Settling Parties acknowledge that Rate LNG-N would permit the same contractual arrangements, but would continue to make any such contract available only at PGW's discretion under Rate LNG-N.

Site Restoration

29. Mr. Mierzwa, on behalf of the OCA, expressed concern that PGW protect itself and its ratepayers from the potential for liabilities related to environmental remediation costs, if it has not already done so. In response, PGW indicated that protections are in place. Specifically, at the end of the Term, PGW may elect to have PEC remove the facilities at PEC's sole cost, and restore the premises to the condition existing prior to the construction of the Passyunk Plant Project. Term Sheet at p. 6 and 19; PGW St. 1-R at 24-25. Approval of Rate LNG-N does not waive the right of any of the Settling Parties to challenge PGW's recovery of any existing or future costs associated with projects entered into pursuant to Rate LNG-N including, but not limited to, site restoration costs.

ADDITIONAL TERMS AND CONDITIONS

32. The Commission's approval of the Settlement shall not be construed as approval of any Joint Petitioner's position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement the Settlement.

33. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any party in this or any other proceeding, if it were fully litigated.

34. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. The Settlement is the product of compromise. This Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement.

35. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all parties within five (5) business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of

no force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Joint Petitioner elects to withdraw from the Settlement as provided above, each of the Joint Petitioners reserves their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

36. All Joint Petitioners shall support the Settlement will make reasonable and good faith efforts to obtain approval of the Settlement by the ALJ and the Commission without modification. The Parties agree that such good faith efforts do not include opposing or responding to comments or oppositions to the Settlement. The Joint Petitioners acknowledge and agree that this Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated these proceedings resulting in the establishment of rates that are Commission-made, just and reasonable rates.

37. If the ALJ, in her Recommended Decision, recommends that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions with respect to any issues addressed by the Settlement. However, the Joint Petitioners do not waive their rights to file Exceptions with respect to: (a) any modifications to the terms and conditions of this Settlement; or (b) any additional matters proposed by the ALJ in her Recommended Decision. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed. The Joint Petitioners further reserve the right to file Exceptions to the compliance filing in the event that any of the exhibits therein are inconsistent with the Settlement and the exhibits attached thereto, the Commission's Final Order, or pertain to issues upon which there was no settlement.

38. This Settlement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

DISCUSSION

A. LEGAL STANDARD FOR SETTLEMENTS

The purpose of this investigation is to establish rates for PGW's customers that are just and reasonable pursuant to Section 1301 of the Public Utility Code.¹ Under Section 315 of the Public Utility Code, the burden of proof is on the public utility to show that any changes to its existing rates or proposed new rates are reasonable. 66 Pa.C.S. § 315.

Non-general rate filings are addressed in Section 1308(b) of the Public Utility Code. Section 1308(b) of the Code, 66 Pa.C.S. § 1308(b), provides:

Whenever there is filed with the commission by any public utility any tariff stating a new rate, the commission may, either upon complaint or upon its own motion upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, and pending such hearing and the decision thereon, the commission, upon filing with such tariff and delivering to the public utility affected thereby a statement in writing of its reasons therefor, may, at any time before it becomes effective, suspend the operation of such rate for a period not longer than six months from the time such rate would otherwise become effective, and an additional period of not more than three months pending such decision.... This subsection shall not apply to any tariff stating a new rate which constitutes a general rate increase as defined in subsection (d).

Because of the nature of non-general rate filings, as required by the statute, the standard applied by the Commission is whether the public utility's rates are just and reasonable based on the general information required under 52 Pa.Code § 53.52(b). *Popowsky v. Pa. Pub. Util. Comm'n*, 683 A.2d 958 (Pa.Cmwlt. 1996).

Further, the Commission must make all findings necessary to determine whether the rates are just and reasonable. *Barasch v. Pa. Pub. Util. Comm'n*, 507 Pa. 496, 491 A.2d 94 (1985). Moreover, Section 703(e) of the Code requires the Commission to make findings that

¹ 66 Pa.C.S. § 1301.

are “in sufficient detail to enable the court on appeal, to determine the controverted question presented by the proceeding”. 66 Pa.C.S. § 703(e). *See Popowsky v. Pa. Pub. Util. Comm’n*, 669 A.2d 1029, 1040 (Pa.Cmwlth.1995) (*rev’d on other grounds*, 706 A.2d 1197 (Pa. 1997)).

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 positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991). *See also Pa. Pub. Util. Comm’n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm’n v. Philadelphia Electric Company*, 60 Pa. PUC 1 (1985). In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Settlement resolves all of the contested issues in this case, fairly balances the interests of the company and its ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

In this case, the parties have reached a settlement. In its policy statement regarding Settlements in rate cases the Commission provides in pertinent part:

In the Commission’s judgment, the results achieved from a negotiated Settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.

52 Pa.Code § 69.401.

Not every issue was of equal concern to every party. Accordingly, each of the Joint Petitioners' statements in support did not necessarily address each and every aspect of the Settlement. PGW, I&E and OCA have agreed to a Settlement that resolves all of the issues in this proceeding. The Settling Parties agree that the Settlement is in the public interest and complies with the Public Utility Code. PGW, I&E and OCA each provided statements in support of the Settlement, each requesting that the presiding officer and the Commission approve the Joint Petition for Settlement in its entirety.

B. SETTLEMENT AND STATEMENTS IN SUPPORT

1. Parties' General Statements

The Settling Parties submit that the Settlement is in the public interest. The parties argue that the Settlement represents a balanced compromise of all of the active parties in this proceeding and is a reasonable resolution of PGW's claims for increased rates while balancing the interests of ratepayers and the public. The parties assert that the Settlement provides for the implementation of the Tariff Schedule, which will permit PGW to replace the existing Rate LNG with the Rate LNG-N, expanding the types of LNG sales that PGW could offer to customers (who executed contracts with PGW) under Rate LNG-N. The Settling Parties maintain that the Settlement amicably and expeditiously resolves most of the important and potentially contentious issues. The Joint Petitioners also state that they arrived at the Settlement, including the Tariff Schedule, after conducting extensive discovery, submitting testimony into the record, and having in-depth discussions. The parties contend that the Settlement constitutes reasonably negotiated compromises on the issues addressed. The parties argue that the Settlement is consistent with the Commission's rules and practices encouraging settlements, 52 Pa.Code §§ 5.231, 69.391, 69.401-69.406, and is supported by a substantial record. (Joint Petition for Settlement at 9, ¶¶ 30-31).

2. Expanded LNG services under Rate LNG-N

PGW argues that its proposed LNG-N filing will aid the Company in continuing to provide safe and reliable service to the public within its service territory while, at the same time, providing an option that will better maximize PGW's LNG assets for the benefit of its ratepayers. (PGW Statement in Support at 8).

Under Rate LNG-N, PGW contends that it will have a mechanism to offer LNG-related gas sales, transportation, liquefaction, storage, vaporization, delivery methods, and exchange services in response to market demands for LNG and LNG Services.² PGW maintains that Rate LNG-N would only be available to customers that have negotiated an agreement with PGW regarding LNG sales and services.³ (PGW Statement in Support at 8).

PGW asserts that depending upon the needs of the LNG customer, these LNG-related sales and services could include: 1) the provision of the commodity; 2) transportation of natural gas from the Company's City Gate to the Company's Liquefied Natural Gas facilities; 3) the liquefaction of the natural gas by the Company's Liquefied Natural Gas facilities; 4) the injection of the Customer's liquefied natural gas into the Company's Liquefied Natural Gas facilities; 5) the storage of liquefied natural gas; 6) the vaporization of liquefied natural gas; 7) the withdrawal of the liquefied natural gas via transport vehicle; and 8) the delivery of commodity from the Company's Liquefied Natural Gas facilities via pipeline, exchange services, or other delivery mechanism.⁴ PGW notes that only one service (sale of LNG to transport vehicle) is available under the existing Rate LNG. (PGW Statement in Support at 8).

Under the Settlement and Tariff Schedule, the Company argues that it will be able to provide for the sale of LNG in ways other than by truck and also to provide a full range of LNG-related services.⁵ PGW contends that the market is looking for services beyond the

² See PGW St. 1 at 7.

³ PGW St. 1 at 4.

⁴ PGW St. 1 at 4-5.

⁵ PGW St. 1 at 7.

delivery of LNG by transport vehicle, and it is positioned to provide these services, if Rate LNG-N is approved.⁶ (PGW Statement in Support at 8-9).

PGW argues that the ability to provide expanded LNG services is reasonable, is in the public interest and should be approved. The Company notes that none of the active parties objected to the need for expanded LNG services. PGW asserts that the expanded LNG services under Rate LNG-N will pave the way for PGW to optimize PGW's existing LNG facilities or to explore LNG expansion opportunities. (PGW Statement in Support at 9).

I&E notes that as a part of the Settlement, the parties agree that I&E's Safety Division may inspect PGW's LNG transport vehicle shipping records, at PGW's on-site premises, and that such records would include a physical address and a means to identify trucking associated with the proposed Rate LNG-N tariff.⁷ I&E submits that this term is in the public interest, because it provides I&E's Safety Division with a mechanism to gauge whether LNG shippers, whether intentionally, or unintentionally, due to a lack of knowledge regarding the federal pipeline safety code, create de facto LNG receiving facilities. Specifically, I&E notes that it identified concerns regarding the potential creation of de facto LNG receiving facilities because PGW indicated that its partner in the Passyunk P3 Project (PEC) is able to receive LNG via trucked-trailer deliveries.⁸ (I&E Statement in Support at 10).

I&E contends that its witness Whiteash noted that if PEC is not the ultimate consumer or end user of the LNG received at its facilities, then the PEC receiving facilities are subject to the federal safety standards of 49 CFR § 193.⁹ After recognizing this possibility, I&E contends that PGW must demonstrate the measures it would take to avoid intentionally facilitating unauthorized LNG receiving facilities and to provide the I&E Safety Division a list of all LNG tanker truck receiving facilities to include a physical delivery address and a means to identify trucking associated with the Rate LNG-N tariff.¹⁰ Additionally, the I&E witness argues that PGW

⁶ *Id.*

⁷ Joint Petition, ¶ 20.

⁸ PGW St. No. 1, p. 10.

⁹ I&E St. No. 2, p. 10 (referencing 49 CFR 193.2001(b)(1)).

¹⁰ *Id.* at pp. 10-11.

should provide an update of the list to the I&E Safety Division every six months (April 1 and October 1).¹¹ (I&E Statement in Support at 10-11).

I&E also asserts that PGW does have a responsibility to protect against the risks associated with the expansion of trucking services and public risks associated with the unauthorized storage of LNG since PGW's request for implementation of Rate LNG-N would expand LNG trucking services.¹² (I&E Statement in Support at 11).

I&E notes that it and PGW were able to reach a compromise, which is intended to provide I&E with an agreed-upon method to inspect PGW's LNG transport vehicle shipping records. Specifically, PGW has committed to permitting I&E's Safety Division with the ability to inspect the LNG transport vehicle shipping records, including a physical address and means to identify trucking associated with the proposed Rate LNG-N tariff, at PGW's on-site premises. I&E submits that this outcome is in the public interest because I&E's Safety Division may review trucking information that it deems necessary to monitor for safety purposes. Accordingly, this term represents a reasonable compromise that promotes safety and accountability; therefore, it should be adopted without modification. (I&E Statement in Support at 11-12).

OCA made no comments on this issue in its Statement in Support.

3. Rates and revenues under Rate LNG-N

PGW states that the rates charged under Rate LNG-N will be negotiated. The Customer Agreement will stipulate the negotiated rate(s) and negotiated terms of service. PGW also states that these Agreements must be economically advantageous to PGW, as determined by PGW in its sole discretion.¹³ This is substantially the same as the negotiated rates under the Company's existing, voluntary Rate LNG.¹⁴ PGW notes that the negotiated rate(s) shall be in excess of the PGW's incremental costs to provide the negotiated services to the Customer. PGW

¹¹ *Id.* at p. 11.

¹² I&E St. No. 2-SR, p. 5.

¹³ PGW St. 1 at 5.

¹⁴ *Id.*

provided an example that if PGW is the party who is supplying the commodity itself, the incremental cost to provide that commodity is either the current Gas Cost Rate (GCR) or the current Weighted Average Cost of Gas (WACOG). PGW indicates that the charge for the commodity itself will not be less than the current GCR or the current WACOG. PGW notes that this is the same treatment given to sales of the commodity under the current Rate LNG.¹⁵ (PGW Statement in Support at 9-10).

PGW maintains that the treatment of revenues under Rate LNG-N will depend on the party that supplies the LNG or natural gas commodity.¹⁶ PGW asserts that all net proceeds of such transactions (i.e., after all costs have been covered) will be applied for the benefit of PGW's retail rate customers.¹⁷ Under Rate LNG-N, PGW anticipates that many customers will be supplying the natural gas commodity to PGW (for liquefaction or storage).¹⁸ PGW contends that in those circumstances, there will be no actual sale of LNG or natural gas by PGW.¹⁹ PGW asserts that instead of providing natural gas in the form of LNG, PGW will be supplying LNG *services* (such as liquefaction, and/or storage, and/or exchange or some combination thereof) to that customer, such as the Passyunk Energy Center, LLC , which is discussed in a later part of the decision.²⁰ PGW acknowledges that there may be transactions (such as sales to a transport vehicle) under Rate LNG-N where PGW is the party that is supplying the commodity.²¹ PGW indicates that revenues from sales of that commodity will be included in the computation of the GCR.²² If that commodity is provided in liquefied form by PGW, there will be an additional negotiated charge for the liquefaction of the natural gas which will be reflected in base rates.²³ PGW also notes that this is the same treatment given to sales under current Rate LNG.²⁴ PGW notes that no party opposed the rate structure or treatment of revenues as filed by PGW. Under the Settlement and Tariff Schedule, PGW will use negotiated rates and the net proceeds of such

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Id.

16

PGW St. 1 at 6.

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PGW St. 1-R at 3.

18

PGW St. 1-R at 4.

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Id.

20

PGW St. 1-R at 4-5.

21

PGW St. 1-R at 5.

22

PGW St. 1 at 6; PGW St. 1-R at 5.

23

Id.

24

Id.

transactions (i.e., after all costs have been covered) will be applied for the benefit of PGW's retail rate customers. (PGW Statement in Support at 9-10).

None of the other parties directly address this issue in their Statements in Support.

4. Rate Impacts on Non-LNG-N Customers

The Settling Parties have agreed to the following settlement condition to address any issues related to Non-LNG-N customers.

The Settling Parties agree that once the Passyunk P3 Project is operational, PGW's base rate and GCR cases are the appropriate venues to (a) evaluate the treatment of the revenues generated by transactions under Rate LNG-N; and (b) evaluate the impact of Rate LNG-N transactions on system capacity and design day requirements. PGW agrees to provide in future base rate and GCR cases the information necessary to separately identify LNG-N costs and revenues. It is also agreed that this Settlement does not impact the right of any of the Settling Parties to challenge the recovery and reflection of any costs and revenues under Rate LNG-N in PGW's future base rate and GCR cases, as applicable.²⁵

I&E notes that under PGW's proposed LNG-N tariff, in addition to expanding the scope of LNG-related services, service may be provided under a firm or interruptible basis. I&E asserts that one of its chief concerns is that PGW's non-Rate LNG-N customers not be adversely impacted by Rate LNG-N, either in the form of increased rates or any compromised availability of the natural gas supply.²⁶ (I&E Statement in Support at 7).

Further, I&E indicates that its witness Cline explained that PGW currently uses its LNG services for peak shaving or providing customers with natural gas during times of increased use. Accordingly, I&E argues that if such LNG was no longer available for peak shaving, it would cause PGW to use more expensive capacity or storage contracts, thereby placing PGW out of

²⁵ Joint Petition, ¶ 19.

²⁶ I&E St. No. 1, pp. 5-6.

compliance with the Commission's policy of least cost gas procurement.²⁷ (I&E Statement in Support at 7).

Additionally, I&E also notes that the proposed LNG-N tariff is novel and should be closely monitored to ensure it did not adversely impact non-LNG-N ratepayers.²⁸ (I&E Statement in Support at 8).

I&E argues that the Passyunk P3 Project is an example of the complexity of an LNG-N contract relying on a number of parties with numerous contingencies.²⁹ I&E maintains that the costs and revenue generated by Rate LNG-N should be identified separately in PGW's future GCR and base rate filings to ensure that PGW is accountable to ratepayers for its projection of revenue benefits as well as its representation that non-LNG-N ratepayers would not be adversely impacted. Finally, Mr. Cline also recommended that both PGW and the Commission recognize parties' ability to challenge the recovery and reflection of any costs and revenues in PGW's future base rate and GCR filings.³⁰ (I&E Statement of Support at 8).

I&E maintains that the settlement term is in agreement with its witness Cline's recommendation in this case. I&E asserts that by implementing Rate LNG-N, all PGW's ratepayers may benefit if PGW's projections associated with Passyunk P3 Project of an additional \$1.35 million to \$4 million in net revenue annually materialize. PGW states this additional revenue could be used to mitigate or delay future base rate adjustments for ratepayers.³¹ I&E indicates that PGW's agreement to evaluate the treatment of Rate LNG-N revenues and to evaluate the rate's impact on PGW's system capacity and design day requirements is necessary to confirm that ratepayers are guaranteed protections in future proceedings. This term provides parties with an understanding on how to gauge the impact of Rate LNG-N and to challenge PGW's future recovery and reflection of rate LNG-N costs and revenues. (I&E Statement in Support at 9).

²⁷ I&E St. No. 1, p. 6.

²⁸ *Id.* at p. 7.

²⁹ *Id.* at p. 7.

³⁰ *Id.* at p. 9

³¹ PGW St. No. 1, pp. 9-10.

OCA argues through its witness Mierzwa that services provided under Rate LNG N may include the use of the Company's interstate pipeline capacity that is currently paid for by GCR customers.³² OCA also asserts that PGW document in detail the Rate LNG-N transactions that use interstate pipeline resources, and report that information in its annual GCR proceeding.³³ OCA maintains that this information will allow for a determination to be made as to whether incremental revenues were derived from the use of the interstate pipeline capacity paid for by GCR customers and the appropriate GCR credit.³⁴ (OCA Statement in Support at 3). OCA asserts that the Settlement ensures that the parties will have the necessary information to evaluate, and potentially challenge, any potential rate impact on PGW's other customers. (OCA Statement in Support at 4).

PGW asserts that the Settlement and Tariff Schedule will have no effect on the rates charged³⁵ or service rendered by the Company to non-LNG customers.³⁶ PGW maintains that the Settlement and Tariff Schedule will not adversely impact residential customers. PGW also contends that the new rates will not adversely impact non-residential retail service, transportation service, or interruptible service customers. PGW argues that approval of Rate LNG-N will have no impact on the right of parties to challenge the justness and reasonableness of any LNG-N enabled transactions in future base rate or GCR proceedings.³⁷ (PGW Statement in Support at 11-12).

PGW notes that under the Settlement, the Settling Parties agree that once the Passyunk P3 Project is operational (discussed below), PGW's base rate and GCR cases are the appropriate venues to (a) evaluate the treatment of the revenues generated by transactions under

³² OCA St. 1 at 6-7.

³³ *Id.*

³⁴ *Id.*

³⁵ Since Rate LNG-N does not require the Commission to review any portion of the overall ratemaking equation for non-LNG rates and does not require any adjustment to non-LNG rates, the consideration of Rate LNG N does not constitute single issue rate making (which is impermissible according to the Commission). *See, e.g., PUC v. Equitable Gas Company, LLC*, Docket Nos. R-2012-2304727, R-2012-2304731, R-2012-2304735, Opinion and Order entered December 20, 2012 at 16-18 (wherein Equitable sought to change a single determinant, the increased Btu content resulting in reduced throughput, to adjust delivery charge revenues for all customers).

³⁶ *See* PGW St. 1-R at 3, 6; PGW St. 1-RJ at 3, 4.

³⁷ PGW St. 1-R at 3; PGW St 1-RJ at 4.

Rate LNG-N; and (b) evaluate the impact of Rate LNG-N transactions on system capacity and design day requirements. PGW agrees to provide in future base rate and GCR cases the information necessary to separately identify LNG-N costs and revenues. PGW also indicates that this Settlement does not impact the right of any of the Settling Parties to challenge the recovery and reflection of any costs and revenues under Rate LNG-N in PGW's future base rate and GCR cases. PGW asserts that the impacts of the new rate can be evaluated once contracts under Rate LNG-N are in place, so future proceedings are the appropriate venues to deal with such issues. (PGW Statement in Support at 12-13).

5. Rate Impact on Existing LNG Customers

PGW argues that the only customers impacted by the implementation of Rate LNG-N will be PGW's current LNG customers. PGW notes that those customers will need to negotiate agreements under Rate LNG-N.³⁸ PGW argues that this is expected to have a minimal impact.³⁹ PGW noted that none of its customers under Rate LNG have deliveries scheduled under their existing agreements with Rate LNG. PGW maintains that it does not anticipate receiving requests, in the near future, for deliveries under those existing agreements.⁴⁰ (PGW Statement in Support at 10-11).

OCA notes that the non-residential customers who have contracts under the current Rate LNG were not notified of the elimination of the current Rate LNG and of the need to make new arrangements for service under Rate LNG-N.⁴¹ (OCA Statement in Support at 4).

Under the Joint Petition for Settlement, PGW agrees to notify the entities with contracts under the current Rate LNG of the terms and conditions of Rate LNG-N. (Joint Petition for Settlement at 8, ¶ 28). The Joint Petitioners acknowledge that Rate LNG-N would permit the same contractual arrangements, but would continue to make any such contract available only at PGW's discretion under Rate LNG-N. (Joint Petition for Settlement at 8, ¶ 28).

³⁸ PGW St. 1 at 6.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ OCA St. 1 at 7.

I&E did not take a position on the issue. (I&E Statement in Support at 25).

6. The Passyunk P3 Project

a) Jurisdiction over Passyunk P3 Project

The Joint Petitioners have agreed that the Passyunk P3 Project falls under the jurisdiction of the U.S. Department of Transportation's (DOT) Pipeline & Hazardous Materials Safety Administration (PHMSA) and is governed by PHMSA's Federal Regulations in Part 193 (Part 193) of the Code of Federal Regulations (CFR or 49 CFR). This includes, but is not limited to, inspection of the Passyunk P3 Project by the Commission — as the agent of PHMSA.⁴² The Joint Petitioners all agree that the Passyunk P3 Project is properly within the jurisdiction of PHMSA and it is governed by Part 193 of the CFR. Additionally, the Joint Petitioners all agree that, in the context of its status as a PHMSA agent, the Commission's authority includes the authority to inspect the Passyunk P3 Project.

I&E submits that memorializing the Joint Petitioners' agreement regarding jurisdiction and the Commission's authority in this Settlement is important for purposes of order and regulatory certainty because it recognizes the regulatory parameters in place for the Passyunk P3 Project. (I&E Statement in Support at 13).

I&E also argues that this provision protects the public interest by ensuring that if any gas delivered under Rate LNG-N is redelivered in a manner that subjects PGW's LNG plant to FERC jurisdiction, PGW would be aware of this fact in advance, and either assent to the arrangement and plan accordingly, or decline negotiating the contract, at its discretion. I&E avers that ensuring PGW is kept apprised of redelivery options that may trigger FERC jurisdiction so that it can take the appropriate action to accommodate the requirements of such jurisdiction is in the public interest. (I&E Statement in Support at 13).

⁴² Joint Petition for Settlement at 5, ¶ 21.

PGW agrees that the Passyunk P3 Project facilities are subject to inspection by the Commission.⁴³ PGW asserts that the jurisdiction over the Project will be consistent with current jurisdiction over PGW's LNG activities.⁴⁴ PGW acknowledges that it will comply with all applicable Part 193 regulations, as it has for many years.⁴⁵ PGW notes that the Passyunk Plant Project will: (a) be subject to Part 193 of the 49 CFR, including inspection by the Commission, as the agent of PHMSA; and (b) not fall under the jurisdiction of the FERC.⁴⁶ There will not be interstate peak shaving.⁴⁷ (PGW Statement in Support at 15).

b) Operations and Maintenance Procedures

The Joint Petitioners have agreed to the following term related to the operations and maintenance procedures for the Passyunk P3 Project.

PGW will work cooperatively with I&E's Safety Division with regard to design and construction of the Passyunk P3 Project by facilitating I&E Safety Division's inspections. The existing LNG facilities at the Passyunk Plant and all of the Passyunk P3 Project at the Passyunk Plant used to provide services under Rate LNG-N at the Passyunk Plant will be designed, operated, and maintained in accordance with 49 CFR Part 193.

(a) PGW agrees to schedule in-person informational meetings with I&E Safety Division every two weeks between the time of PGW's notification of the Effective Date of an LNG-N project agreement utilizing a P3 structure and the time when that project is fully in service. Any meeting or meetings can be cancelled upon mutual agreement.

(b) The I&E Safety Division can request at any time additional updates/reviews/inspections, pursuant to applicable regulations, of the existing LNG facilities at the Passyunk Plant, all of the Passyunk P3 Project at the Passyunk Plant, or any future LNG construction projects utilizing a P3 structure. PGW will make efforts to accommodate all reasonable requests.⁴⁸

⁴³ PGW St. 1-R at 11; Settlement at ¶ 21.

⁴⁴ PGW St. 1-R at 11.

⁴⁵ PGW St. 1-R at 9, 15.

⁴⁶ PGW St. 1-R at 11.

⁴⁷ PGW St. 1-R at 11-12.

⁴⁸ Joint Petition for Settlement at 6, ¶ 23(a) and (b).

I&E notes that PGW will provide its Safety Division with an opportunity to review PGW's O&M procedures and record review process, in addition to any modifications or amendments of the O&M procedures resulting from any proposed project related to Rate LNG-N using a P3 structure, beginning with meetings every two weeks upon notification of the effective date of an LNG-N project agreement. Additionally, I&E also avers that PGW will provide preliminary procedures 30 days prior to the anticipated in-service date of the Passyunk P3 Project and any future LNG-N project relying upon a public-private partnership structure. (I&E Statement in Support at 16-18).

I&E argues that the shorter timeframe is mitigated by PGW's commitment to schedule in-person informational meetings with the I&E Safety Division on a bi-weekly basis between the time of PGW's notification of the effective date of an LNG-N project agreement using a public-private partnership structure and the time when the project will be fully in-service. Because the meetings will provide the Safety Division with a regular forum to obtain updates and to be apprised of project developments, I&E asserts that these meetings can also serve to enable the Safety Division to gain timely information about proposed O&M procedures revisions. (I&E Statement in Support at 16-18).

Under the terms of the Settlement, after the design of the Passyunk P3 Project is complete, PGW has agreed to meet with I&E and: (1) review the Passyunk P3 Project for compliance with the applicable portions of Part 193 of the Code of Federal Regulations and the Pa. Code; and (2) confirm that existing customers' service will not be materially affected by the Passyunk P3 Project. After the meeting, PGW will provide a meeting summary to I&E.⁴⁹

At the outset of this case, I&E contends that its witness Whiteash identified the need to confirm PGW's representation that the operation of PGW's Passyunk Plant would not be curtailed or amended during construction of the Passyunk P3 Project.⁵⁰ Mr. Whiteash asserted that in order for the I&E Safety Division to confirm PGW's representation, a regulatory impact assessment would need to be completed. Mr. Whiteash explained that, from a safety perspective, it

⁴⁹ Joint Petition for Settlement at 8, ¶ 27.

⁵⁰ I&E St. No. 2, p. 20; I&E Ex. No. 2, Sch. 7.

is imperative for PGW to assess any potential regulatory integration impact that might affect existing Passyunk Plant operations, and to evaluate the proposed siting, design, construction, and equipment requirements of the Passyunk P3 Project.⁵¹ Therefore, I&E maintains that its Safety Division be permitted to perform a regulatory impact assessment to confirm the applicability of 49 CFR § 193 regulations, as it relates to the proposed changes to the Passyunk P3 Project or any other proposed project related to LNG-N, as early as possible, so that any impacts found by the I&E Safety Division are conveyed to PGW as early as possible.⁵² In order to ensure that any regulatory impacts resulting from the Passyunk P3 Project were timely and appropriately assessed, I&E also argues that PGW begin immediately coordinating efforts with impacted staff and the I&E Safety Division to schedule a regulatory impact assessment as soon as possible.⁵³ (I&E Statement in Support at 21-22).

PGW avers that in negotiating the Term Sheet, it was mindful of the transactional risks occasioned by the project and has sought to eliminate risk to PGW and its ratepayers.⁵⁴ PGW notes that the Term Sheet contains numerous provisions that protect PGW and its ratepayers. PGW states that the key terms related to risk mitigation are summarized in Exh RMS-3. For example, PGW indicates that in the section of the Term Sheet titled, “Performance Security,” there are three provisions that specifically protect PGW and its ratepayers against default/non-payment situations.⁵⁵ (PGW Statement in Support at 14-15).

c) Site Restoration (Environmental Remediation)

In his Direct Testimony, OCA witness Mierzwa noted that, at the conclusion of the 25-year contract term between PGW and PEC, environmental remediation may be required at the Passyunk Plant Project site.⁵⁶ OCA witness Mierzwa observed that it was not apparent that PGW has protected itself and ratepayers from the potential for liabilities related to environmental

⁵¹ I&E St. No. 2 at 20.

⁵² *Id.* at 21.

⁵³ *Id.*

⁵⁴ PGW St. 1-RJ at 2; Exh. RMS-3.

⁵⁵ PGW St. 1-RJ at 2; Exh. RMS-3; Term Sheet at 15.

⁵⁶ OCA St. 1 at 7.

remediation costs, which could be significant.⁵⁷ As such, OCA witness Mierzwa initially recommended that PGW ensure that such protection is included in its arrangement with PEC if it has not already done.⁵⁸ (OCA Statement in Support at 4).

OCA argues that approval of the LNG-N Rate does not waive the right of any party to this proceeding to challenge PGW's recovery of any existing or future costs regarding projects associated with Rate LNG-N, including environmental remediation.⁵⁹ (OCA Statement in Support at 5).

As part of the Settlement, the Joint Petitioners have agreed to the following term:

Mr. Mierzwa, on behalf of the OCA, expressed concern that PGW protect itself and its ratepayers from the potential for liabilities related to environmental remediation costs, if it has not already done so. In response, PGW indicated that protections are in place. Specifically, at the end of the Term, PGW may elect to have PEC remove the facilities at PEC's sole cost, and restore the premises to the condition existing prior to the construction of the Passyunk Plant Project. Term Sheet at p. 6 and 19; PGW St. 1-R at 24-25. Approval of Rate LNG-N does not waive the right of any of the Settling Parties to challenge PGW's recovery of any existing or future costs associated with projects entered into pursuant to Rate LNG-N including, but not limited to, site restoration costs.^[60]

PGW argues that the inclusion of this term was necessary to address the concern of OCA witness Mierzwa, who opined that PGW needed to protect itself and its ratepayers from any potential environmental remediation that may be required at the Passyunk P3 Project site.⁶¹ PGW indicates that it has already assessed the Passyunk P3 Project for environmental impacts and determined that no such impact would be anticipated. PGW also notes that the lease governing the Passyunk P3 Project also provided protection by requiring PEC, at the end of the lease term, to remove the expanded LNG facilities and restore the premises to its prior condition

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ OCA St. 1-S at 2-3.

⁶⁰ Joint Petition for Settlement at 8-9, ¶ 29.

⁶¹ PGW St. No. 1-R, p. 7.

unless PGW exercised its option to take ownership of those facilities.⁶² (PGW Statement in Support at 16).

Although I&E did not take an explicit position on potential environmental remediation costs, I&E nonetheless avers that recognizing PGW's efforts to protect itself from liability while at the same time memorializing the ability to challenge future costs associated with Rate LNG-N projects is consistent with the public interest because it protects both PGW and its ratepayers. (I&E Statement in Support at 27).

First, I&E argues that PGW made efforts to protect itself against financial liability for environmental remediation or other potential liabilities that may arise under Rate LNG-N. I&E submits that as a regulated public utility, PGW's efforts to protect its financial position are in the public interest. Second, I&E asserts that the public interest requires that ratepayers be protected from the risk of imprudent and unreasonable costs that may arise under Rate LNG-N, especially since non LNG-N ratepayers could be impacted by consequences that result from the Passyunk P3 Project of any future Rate LNG-N project. I&E notes that the Settlement provides the necessary protection to ratepayers in the event that such environmental remediation costs materialize. (I&E Statement in Support at 27-28).

7. Settlement in General

The Settling Parties agree that this Settlement will go into effect upon the Commission's entry of a final order approving the Settlement, in full and without modification. If the Commission rejects the Settlement, the Agreement automatically will terminate and be null and void. The Settlement also shall automatically become null and void if the Commission, in approving the Settlement, modifies any of its terms or conditions or adds any conditions, unless it is subsequently accepted by the aggrieved signatory party, or parties, as so modified. The Settling Parties agree that this Settlement is made without admission against or prejudice to any factual or legal positions which any of the signatories hereto may assert in subsequent litigation in the event that the Commission does not issue a final Order approving this Settlement in full

⁶² PGW St. No. 1-R, p. 24.

and without modification. If the Commission does not adopt this Settlement in accordance with the terms set forth herein, the Settling Parties reserve their full right to argue that the Commission is without the legal authority to order the implementation of all or part of the terms and conditions set forth herein and no party shall be deemed to have waived or be estopped from asserting such a position before the Commission or before any court. The Settling Parties also agree to waive exceptions to the Recommended Decision if the Joint Petition for Settlement of Philadelphia Gas Works' LNG Rate Proceeding is approved without change or modification. *See* Joint Petition for Settlement at 11, ¶ 37.

I&E asserts that although it did serve direct and surrebuttal testimony in this proceeding, I&E fully supports the Settlement, which addresses and resolves the issues and concerns raised in I&E's testimony. Accordingly, I&E avers that all issues have been satisfactorily resolved through discovery and discussions with PGW and are incorporated in the Settlement. I&E represents that the Settlement maintains the proper balance of the interests of all parties. (I&E Statement in Support at 28).

I&E further submits that the acceptance of this Settlement will negate the need for evidentiary hearings, which would create extensive devotion of time and expense for the preparation, presentation, and cross-examination of multiple witnesses, the preparation of briefs, and the potential of filed exceptions and/or appeals, all yielding substantial savings for the Commission and all parties, and ultimately all customers, as well as certainty on the disposition of issues. I&E is satisfied that no further action is necessary and considers its investigation of this tariff filing complete. (I&E Statement in Support at 28-29).

Moreover, PGW argues that approving PGW's Petition with the changes as set forth in the Settlement is consistent with the Commission's policy to encourage settlements. PGW maintains that the Settlement reduces the administrative burden and costs to resolve the issues. PGW avers that the Settlement is in the public interest and should be adopted. (PGW Statement in Support at 7, 16-17).

Lastly, OCA submits that the terms of the Settlement are in the public interest and in the interest of PGW's ratepayers. (OCA Statement in Support at 5).

8. Disposition

The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *See, Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Associates*, 74 Pa. PUC 767 (1991), *Pa. Pub. Util. Comm'n v. Philadelphia Electric Company*, 60 Pa. PUC 1 (1985).

The Settlement contains several provisions that are clearly designed to address the concerns of both I&E and OCA. While the rate structure itself is not directly disputed by these parties, the Settlement does address I&E's concerns regarding the expansion of services under the LNG-N rate so that PGW does not run afoul of any of the current statutes and regulations, especially related to record keeping of transport vehicles. The Settlement also clarified the jurisdictional issues related to any projects that may result from this new rate. Further, the Settlement addresses specific concerns that I&E and OCA have regarding the Passyunk P3 Project. Specifically, the Settlement addresses the I&E's concerns related to the operations and maintenance of this new project and provides notification requirements so that I&E may review project details as they become available. The Settlement also requires that PGW provide notice regarding future operations to I&E and requires bi-weekly meetings to provide status updates on the project. The Settlement addresses OCA's concerns that PGW protect itself from possible future environmental remediations and that PGW will specifically address this with the Passyunk P3 Project. The parties have also addressed I&E and OCA's concerns regarding notice to current LNG rate customers so that they are fully made aware of the changes to the rate under the new LNG-N rate. Lastly, according to the Settlement, PGW will provide the parties with adequate information to understand the costs and revenues generated by the new rate and that these issues may be addressed in future base rate and GCR filings, in order to protect non-LNG-N consumers.

After considering the Joint Petition for Settlement of Philadelphia Gas Works' LNG Rate Proceeding as well as the savings achieved by not fully litigating this case, it is my conclusion that the Settlement is fair, just, reasonable and in the public interest. Accordingly, I recommend that the Joint Petition for Settlement of Philadelphia Gas Works' LNG Rate Proceeding be approved in its entirety and without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties in this case. 66 Pa.C.S. § 1308(b).

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

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

4. The rates, terms and conditions contained in the Philadelphia Gas Works' LNG Rate filing of April 5, 2019, as modified by the Joint Settlement, are just, reasonable and in the public interest and are in accord with the rules and Regulations of the Commission and the provisions of the Public Utility Code. See 66 Pa.C.S. § 315(a); 52 Pa.Code §§ 69.2703(a), (b).

5. The joint settlement petition is in the public interest.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Stipulation of the Record by the parties is adopted and Philadelphia Gas Works' April 5, 2019, Liquefied Natural Gas Rate Filing; PGW St. 1, Direct Testimony of Raymond M. Snyder, dated April 5, 2019; PGW St. 1-R, Rebuttal Testimony of Raymond M. Snyder and accompanying Exhibits RMS-1 and RMS-2, dated July 10, 2019; PGW St. 1-RJ, Rejoinder Testimony of Raymond M. Snyder and accompanying Exhibit RMS-3, dated July 23, 2019; I&E St. 1, Direct Testimony of Ethan Cline and accompanying Exhibit I&E Exhibit 1, dated June 26, 2019; I&E St. 1-SR, Surrebuttal Testimony of Ethan Cline, dated July 18, 2019; I&E St. 2, Direct Testimony of Christopher Whiteash and accompanying Exhibit I&E Exhibit 2, dated June 26, 2019; I&E St. 2-SR, Surrebuttal Testimony of Christopher Whiteash, dated July 18, 2019; OCA St. 1, Direct Testimony of Jerome D. Mierzwa and accompanying Appendix A, dated June 26, 2019; OCA St. 1-SR, Surrebuttal Testimony of Jerome D. Mierzwa, dated July 18, 2019; PGW Exhibit No. 1 are entered in the record at Docket No. R-2019-3009016;

2. That the Joint Petition for Settlement of the Philadelphia Gas Works' Liquefied Natural Gas Rate Proceeding, including all appendices and documents identified therein, is admitted into the record of the proceeding at Docket Number R-2019-3009016;

3. That the Joint Petition for Settlement of the Philadelphia Gas Works' Liquefied Natural Gas Rate Proceeding submitted by the Philadelphia Gas Works, the Bureau of Investigation and Enforcement, and the Office of Consumer Advocate at Docket No. R-2019-3009016 be approved;

4. That the Philadelphia Gas Works be authorized to file a tariff supplement to reflect rates and terms consistent with the Settlement and applicable to the Section 1308(b) rate investigation at Docket No. R-2019-3009016 to be effective upon at least one day's notice for services rendered on or after December 4, 2019;

5. That the formal Complaint filed by the Bureau of Investigation and Enforcement at C-2019-3009266 be deemed satisfied;

6. That the formal Complaint filed by the Office of Small Business Advocate at C-2019-3009471 is dismissed;

7. That the Commission Investigation at Docket No. R-2019-3009016 be terminated and marked closed.

Date: September 11, 2019

/s/
Marta Guhl
Administrative Law Judge