

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2020-3022134
Office of Small Business Advocate	:	C-2020-3022857
Office of Consumer Advocate	:	C-2020-3022886
Shelley Saul	:	C-2020-3022920
William H. Yennie, III	:	C-2020-3023031
Charles Gillinder	:	C-2020-3023038
Carol Losee	:	C-2020-3023174
Marla J. Hulse	:	C-2020-3023447
Candace Howard	:	C-2020-3023501
	:	
v.	:	
	:	
Pike County Light and Power Company - Gas	:	

RECOMMENDED DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision recommends approval without modification of a joint petition for settlement of Pike County Light & Power Company’s gas base rate increase request because it is in the public interest and supported by substantial evidence. The settlement provides for an increase in rates designed to produce an overall increase in annual gas distribution operating revenue of \$225,000, a reduction from the \$262,000 originally requested by the utility. The last Commission Public Meeting before the end of the suspension period (July 28, 2021) is on July 15, 2021.

HISTORY OF THE PROCEEDINGS

On October 26, 2020, Pike County Light & Power Company (PCLP or Pike), filed with the Pennsylvania Public Utility Commission (Commission) Supplement No. 110 to Tariff Gas - Pa. P.U.C. No. 6 to become effective December 28, 2020, and docketed at R-2020-3022134 (Gas Filing). Tariff 6 contains proposed changes in rates, rules, and regulations calculated to produce \$262,000 in additional annual revenues.

The Commission's Bureau of Investigation and Enforcement (BIE) entered an appearance on November 3, 2020. The Office of Small Business Advocate (OSBA) and Office of Consumer Advocate (OCA), each filed complaints on November 13, and November 16, 2020, respectively. Additionally, several ratepayers filed formal complaints: Shelly Saul, William H. Yennie III, Charles Gillinder, Carol Losee, Marla J. Hulse, and Candace Howard (collectively, ratepayer-complainants).

By order entered December 17, 2020, the Commission suspended the Gas Filing until July 28, 2021, and instituted an investigation to determine the lawfulness, justness and reasonableness of the rates rules and regulations contained in the proposed tariff supplements.

By hearing notice dated December 17, 2020, the filings were assigned to me and a prehearing conference was scheduled for January 11, 2021.¹ The prehearing conference convened as scheduled. Counsel for PCLP, BIE, OCA and OSBA appeared. Additionally, three of the ratepayer-complainants, Charles Gillinder, John Dalton, and Shelly Saul appeared and participated. The parties agreed to a schedule for the filing of written testimony. Evidentiary hearings were scheduled to begin on March 9, 2021, by telephone.

Two public input hearings were also scheduled for February 8, 2021, and were conducted by telephone at 1:00 p.m. and 6:00 p.m. These hearings permitted the public to

¹ PCLP also filed to increase its electric rates. R-2020-3022135 (Electric Filing). The prehearing conference was a joint conference which addressed the litigation schedule for both filings.

comment on both the Gas Filing and the Electric Filing. Fifteen witnesses testified at the 1:00 p.m. hearing and ten witnesses testified at the 6:00 p.m. hearing.

By email dated March 5, 2021, the Active Parties² notified me that they had reached an agreement in principle to resolve the issues raised in the Gas Filing and had agreed to waive cross examination of all witnesses. The hearings were cancelled, and the Active Parties filed a Joint Stipulation for Admission of Testimony and Exhibits into the Evidentiary Record on March 12, 2021. The motion was granted by Interim Order dated March 15, 2021, and the parties were directed to file the admitted testimony and exhibits with the Secretary's Bureau as provided by 52 Pa.Code § 5.412a.

On March 10, 2021, I issued an Interim Order which instructed the Active Parties to file a joint stipulation for settlement along with statements in support by April 9, 2021. That order also directed the remaining parties to file comments, if any, on or before April 19, 2021.

The Active Parties filed a Joint Petition for Settlement on April 9, 2021. Ratepayer-complainant Charles Gillinder objected to the settlement by email dated April 12, 2021. The record closed on April 20, 2021.

PUBLIC INPUT HEARINGS

Two public input hearings were held by telephone on February 8, 2021. Twenty-five (25) witnesses testified, and many others called to listen to the proceedings. Overall, the witnesses opposed the proposed increases in both the Gas Filing and the Electric Filing. Other testimony was directed specifically to the Gas Filing.³ Leaders from each of the local

² The Active Parties are PCLP, BIE, OCA and OSBA.

³ The testimony related specifically to the Electric Filing is addressed in the Recommended Decision at Docket R-2020-3022135.

governments, including Pike County,⁴ Milford Township⁵ and Milford Borough⁶ testified, as well as residential and small business customers. All opposed the proposed rate increase.

The government officials who testified described the community served by PCLP as small and tight-knit. The area does not have any large industry.⁷ The commercial class largely consists of small, “mom and pop,” businesses. On the whole the population is older and lower income.⁸ Many residents are renters.⁹ The community relies heavily on tourism.¹⁰ While many homes are typically occupied on weekends or seasonally, many of these residences are now occupied full-time because of the pandemic.^{11 12} The COVID-19 pandemic has hit the community hard. Small businesses, and especially restaurants and businesses in the hospitality industry, have also been severely impacted.¹³

The government officials testified that the rate increase would not only be a direct hardship on their citizens, but also would impact government budgets as well.¹⁴ These increased costs would ultimately have to be paid for with tax revenue. Moreover, higher costs to business

⁴ Matthew Osterberg, Chair, Pike County Commissioners, N.T. 82-84; Pike County Commissioners Ex. 1.

⁵ Rachel Hendricks, Township Supervisor, Milford Township, N.T. 151-57.

⁶ Frank Tarquinio, President of Milford Borough Council, N.T. 69-72; Sean Strub, Mayor, Milford Borough, N.T. 101-104.

⁷ Strub, N.T. 101-102.

⁸ Strub; Tarquinio.

⁹ Strub.

¹⁰ Tarquinio, N.T. 69-70.

¹¹ E.g., Provenzano, N.T. 95.

¹² Strub, N.T. 101-102.

¹³ E.g., Hendricks, N.T. 154.

¹⁴ Osterberg, N.T. 82 (increase likely to add \$10,000 in operating costs).

would be passed on to customers through higher prices, exacerbating the impact of the rate increase.¹⁵ Several witnesses characterized this as the “domino” effect of the rate increase.¹⁶

Most witnesses testified that the rate increase was too high,¹⁷ and would cause financial hardship on top of the economic hardship caused by the pandemic.¹⁸ Several witnesses noted that they had lost their jobs or had their income reduced as a result of the COVID-19 pandemic.¹⁹ Many observed that their utility bills were already higher than normal because they were working from home.²⁰ Many also had school children who were learning remotely because the schools were closed, which has increased their energy consumption.²¹

Many witnesses questioned the timing of the rate increase request during a pandemic.²² Others stated that it was unfair for the company to request an increase when the community is already struggling economically.²³

Witnesses also expressed their view that the Commission should not approve any rate increase for the company.²⁴ One witness testified that infrastructure improvements should be

¹⁵ Osterberg, N.T. 83; Tarquinio, N.T. 70-72. This sentiment was echoed by other witnesses as well. E.g., Stefan Ciardullo, N.T. 187; Julie Soberg. 162.

¹⁶ Soberg, N.T. 162; see also Ciardullo, N.T. 187.

¹⁷ Strub, N.T. 101; Wylie, N.T. 159; Scheibner, N.T. 98; Ewbank, N.T. 178; Sutton, N.T. 120; Provenzano, N.T. 96.

¹⁸ E.g., Alvarez, N.T. 181; Cole, N.T. 110-11; Sutton, N.T. 120; Scheibner, N.T. 98; Dooley, N.T. 87; Ewbank, N.T. 177; Weber, N.T. 91.

¹⁹ E.g., Soberg, N.T. 161-62.

²⁰ Ciardullo, N.T. 186-87.

²¹ Sutton; Cole. See also, Provenzano, N.T. 95 (noting that increased demand due to the COVID-19 pandemic has likely increased revenue).

²² Soberg, N.T. 162; Joseph Dooley, N.T. 86; Fred Weber, N.T. 91; Adam Cole, N.T. 110-11; Ciardullo, N.T. 185; Sarah Sutton, N.T. 121; Anthony Provenzano, N.T. 95; John Ciccolella, N.T. 106; Antoinette Alvarez, N.T. 181; Lisa Scheibner, N.T. 98.

²³ E.g., Osterberg, N.T. 83-84; Wylie, N.T. 159.

²⁴ E.g., Provenzano, N.T. 96.

paid for by investors, not customers.²⁵ Others questioned whether PCLP was managed prudently and that PCLP should have not waited to request such a large increase at one time. At least two witnesses noted that the company's customer service was "not great."²⁶ A few witnesses recognized that a rate increase may be necessary, but testified that it should be more gradual or delayed.²⁷

Ratepayer-complainant Charlie Gillinder testified at length, in specific opposition to the requested increase in the Gas Filing.²⁸ Among other issues, he questioned whether PCLP was purchasing gas prudently. According to Mr. Gillinder, there appears little incentive for PCLP to purchase gas at the lowest available prices.²⁹ He, along with Anthony Provenzano, noted that there is a pipeline that runs through PCLP service territory that does not serve PCLP customers.³⁰ According to Mr. Gillinder, by serving customers from an out-of-state pipeline, PCLP is not providing gas as inexpensively as it could and that PCLP customers are effectively subsidizing customers of other utilities. Many witnesses agreed with this testimony.³¹

DESCRIPTION OF THE JOINT PETITION FOR SETTLEMENT

The Joint Petition for Settlement includes the terms agreed upon by the Joint Petitioners³² as well as Tariff Sheets (Appendix A); Proof of Revenues (Appendix B); Depreciation/Amortization Rates (Appendix C); and the Statements in Support of each party

²⁵ Ciccolella, N.T. 107.

²⁶ Alvarez, N.T. 182. Mr. Strub noted that while the local company representative did the best he could, he only had limited resources made available to him by company management. N.T. 103.

²⁷ Soberg, N.T. 164; Weber; Osterberg, N.T. 84; Ciardullo, N.T. 187.

²⁸ N.T. 48-52.

²⁹ See also Dooley, N.T. 89.

³⁰ N.T. 48-52; N.T. 94.

³¹ E.g., Dooley, N.T. 89; Vaughne Hansen, N.T. 74; Daniel Wolff, N.T. 77; Weber, N.T. 91; Scheibner, N.T. 98; Strub, N.T. 101; Ciccolella, N.T. 106; Cole, N.T. 109.

³² The Joint Petitioners include PCLP, BIE, OCA and OSBA.

(Appendix D-G); and Proposed Findings of Fact, Conclusions of Law and Order Paragraphs (Appendix H).

The Joint Petitioners agreed to the following settlement terms³³:

16. Under the terms of the settlement, Pike (Gas) will be permitted to establish rates which will produce an overall increase in annual gas distribution operating revenues of approximately \$225,000, an increase of 11.6% in overall gas revenues, (31.5 % over current gas distribution revenues). The rate increase of \$225,000 is equivalent to a compound annual increase of 1.4% in overall revenues since rates were last changed effective October 2014 (3.0% increase in distribution revenues).

17. These rates, as determined in accordance with the attached proof of revenues (Appendix B) and tariff supplement (Appendix A), will be effective on one day's notice for service rendered no sooner than July 28, 2021.

18. The increase in overall revenues (including an estimate of purchased gas costs for full service and retail access customers) by class from present rates as proposed in this Settlement is as follows:

Customer Class	Present Revenues (\$000)	Revenues per Settlement (\$000)	Revenue Increase (\$000)	Percent Increase
SC-1 (Residential)	\$1,511.1	\$1,716.1	\$205.0	13.6%
SC-2 (Commercial)	\$422.3	\$442.3	\$20.0	4.7%
TOTAL	\$1,933.4	\$2,158.4	\$225.0	11.6%

19. In addition to, and in consideration of, the agreed-upon overall increase in operating revenues, Joint Petitioners agree to various terms and conditions set forth as follows:

- a. **Effective Date** - The rates reflecting the increase set forth above will become effective no sooner than July 28,

³³ These terms are stated verbatim and for ease of reference retain the same numbers as they appear in the Settlement.

2021. Pike (Gas) agrees that it will not file for a Distribution System Improvement Charge (“DSIC”) with an effective date that is prior to July 1, 2022. Pike (Gas) is allowed to file a tariff or tariff supplement proposing changes in its State Tax Adjustment Surcharge, Gas Cost Rate, and Base Cost of Gas, and any successor charges. In addition, Pike (Gas) is allowed to file for the recovery and / or refund of costs resulting from legislative changes and / or mandates (e.g., changes to federal income tax rates). Nothing in this paragraph is intended to limit Pike (Gas) rights under Section 1308(e) (governing extraordinary rate relief).

b. Rate Structure/Rate Design — Joint Petitioners agree to the distribution of revenue among customer classes in this Settlement as set forth in the attached Proof of Revenues at Appendix B. In addition, the Customer Charges will be set at \$8.00 for Service Classification No. 1 (SC- 1) and \$12.23 for Service Classification No. 2 (SC-2).

c. Other Tariff Changes – None.

d. Deferred TCJA “Protected” Balances – The Protected TCJA credit balance of \$14,387 as of June 30, 2021 is reflected as a rate base deduction and the unamortized balance will continue to reduce rate base in future proceedings until the balance is fully returned to ratepayers. The Company will amortize the Protected TCJA balance over fifty-years as a credit to expense at the rate of \$288 per annum.

e. Deferred TCJA “Non-Protected” Balances – The Non-Protected TCJA negative balance of \$42,955 as of June 30, 2021 is reflected as a rate base adjustment and the unamortized balance will continue to increase rate base in future proceedings until the balance is fully collected from ratepayers. The Company will amortize the Non-Protected TCJA balance over five-years as a charge to expense at the rate of \$8,591 per annum.

f. DSIC Surcharge – LTIP Projects approved by the PAPUC in Docket No. P-2019-30073004 will not include plant claimed in this rate case for the July 1, 2021 through December 31, 2021 period of \$89,000 and all plant placed in service prior to June 30, 2021. For purposes of calculating its DSIC, Pike (Gas) shall use the equity return rate for gas

utilities contained in the Commission’s most recent Quarterly Report on the Earnings of Jurisdictional Utilities as updated each quarter consistent with any changes to the equity return rate for gas utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa. C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa. C.S. § 1358(b)(1).

g. Depreciation Rates – There were no changes made to plant depreciation and amortization rates for Pike (Gas). The depreciation / amortization rates are contained in Appendix C.

20. The design and structure of rates for Pike (Gas) customers under this Settlement are developed based upon the customer and usage charges contained within the tariff supplement set forth in Appendix A. Joint Petitioners agree that rates and charges set forth in Appendix A are just and reasonable and are in the public interest. Joint Petitioners have agreed to undertake best efforts to provide this Petition and all supporting documentation as promptly as possible with the goal of having the rates become effective by July 28, 2021.

* * *

22. Joint Petitioners agree that adoption and approval of this Petition for Settlement by the ALJ and the Commission is in the public interest. A comparison of the total monthly bill impact for residential and commercial rate classes comparing present rates, as filed rates, and settlement rates is provided below:

Customer Charge	Present	As Filed		Proposed Settlement	
	Rates	Amount	% Increase	Amount	% Increase
SC1 - Residential	\$7.50	\$10.61	41.5%	\$8.00	6.7%
SC- Commercial	\$9.40	\$13.31	41.6%	\$12.23	30.1%
Average Customer Bill*					
SC1 - Residential Heating (80 CCF)	\$109.93	\$128.37	16.8%	\$124.85	13.6%

SC1 - Residential Non-Heating (50 CCF)	\$71.52	\$84.21	17.7%	\$81.03	13.3%
SC2 - Commercial Gen'l Service (623 CCF)	\$753.20	\$761.99	1.2%	\$786.30	4.4%
SC2 - Commercial Heating (250 CCF)	\$327.99	\$334.28	1.9%	\$342.97	4.6%

* Billing comparison based on Gas Cost Rate (GCR) of \$0.81406 per CCF currently in effect.
Company's initial filing reflected prior GCR rate of \$0.61210 that expired October 31, 2020.

* * *

25. If the Commission withholds approval of this Petition for Settlement as to any of the terms and conditions, or alters any of the terms and conditions, any Joint Petitioner may withdraw from this settlement upon written notice of its intent to the Commission and the remaining parties within three (3) business days of the date of entry of the Commission's Order and may resume with the litigation of this proceeding within ten days of the entry of the Order making any such modifications.

26. Joint Petitioners agree that Commission approval of this Petition for Settlement without modification shall be considered to have the same effect as full litigation of the instant proceeding resulting in the establishment of rates that are Commission-made rates.

27. In the event that the Commission does not approve this Petition for Settlement, the Joint Petitioners reserve their respective rights to resume litigation. If the ALJ, in her Recommended Decision, recommends that the Commission adopt this Petition for Settlement as herein proposed, Joint Petitioners agree to waive the filing of Exceptions. However, Joint Petitioners do not waive their rights to file Exceptions with respect to any additional matters dealt with, or any modifications to the terms and conditions of this Petition for Settlement recommended by the ALJ in her Recommended Decision.

28. The Joint Petitioners recognize that this Petition for Settlement does not bind formal complainants who have not joined herein.

29. Pike (Gas), I&E, OCA, and OSBA have attached to this Petition for Settlement, as Appendices "D", "E", "F", and "G", respectively, Statements of Support setting forth the bases upon which they believe the Settlement is fair, just and reasonable and is, therefore, in the public interest.

30. In compliance with the ALJ’s March 10, 2021 Order at Ordering paragraph 6, the parties have attached to this Petition for Settlement Appendix H, the proposed finding of fact conclusions of law, and ordering paragraphs.

31. The Joint Petitioners agree that this Settlement shall not constitute or be cited as controlling precedent in this or any other jurisdiction.

LEGAL STANDARDS

The purpose of this investigation is to establish rates for the Companies’ customers that are just and reasonable pursuant to Section 1301 of the Public Utility Code.³⁴ Section 1301 (a) of the Code requires “[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with [the] regulations or orders of the [C]ommission.”³⁵ Pursuant to the just and reasonable standard, a utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers [,] as well as a reasonable rate of return on its investment.”³⁶ There is no single way to arrive at just and reasonable rates, and the Commission has broad discretion in determining whether rates are reasonable and to decide what factors it will consider in setting or evaluating a utility’s rates.³⁷

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.³⁸ In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*,³⁹ and

³⁴ 66 Pa.C.S. § 1301.

³⁵ 66 Pa.C.S. § 1301(a).

³⁶ *City of Lancaster Sewer Fund v. Pa. Pub. Util. Comm’n*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002).

³⁷ *Pa. Publ. Util. Comm’n v. City of Bethlehem- Water Dep’t*, Docket No. R-2020-3020256 (Opinion and Order entered April 15, 2021) (*City of Bethlehem*) (citing *Popowsky v. Pa. Pub. Util. Comm’n*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996)).

³⁸ *Pa. Gas & Water Co. v. Pa. Pub. Util. Comm’n*, 341 A.2d 239 (Pa.Cmwlth. 1975).

³⁹ 262 U.S. at 679 (1923).

*Federal Power Commission v. Hope Natural Gas Co.*⁴⁰ 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 reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.^[41]

The burden of proving that every element of a rate increase request is just and reasonable rests with the public utility.⁴² However, in proving that its proposed rates are just and reasonable, a public utility need not defend every claim it has made in its filing, even those which no other party has question.⁴³

The Commission encourages parties in contested on-the-record proceedings to settle cases.⁴⁴ 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

⁴⁰ 320 U.S. at 591 (1944).

⁴¹ 262 U.S. at 692-93.

⁴² 66 Pa. C.S. § 315(a).

⁴³ *City of Bethlehem* at 10.

⁴⁴ *See* 52 Pa.Code § 5.231.

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.⁴⁵ In their supporting statements, PCLP, BIE, OCA, and OSBA, conclude, after extensive discovery, the filing of testimony, and discussion, that this Settlement resolves all contested issues in this case and unanimously agree that the Settlement is in the public interest. Although not all of the Joint Petitioners took a position on every issue or addressed every issue in equal detail, generally they agreed that the Settlement was in the interests of the stakeholders whom they represent and represented a reasonable outcome of their various disputes. The Joint Petitioners claim that acceptance of the Settlement will avoid the necessity of further administrative and possibly appellate proceedings regarding the settled issues at what would have been a substantial cost to the Joint Petitioners and PCLP’s customers.

DISCUSSION OF THE JOINT PETITION

The Settlement provides for an overall increase in annual gas distribution operating revenue as well as the allocation of the distribution revenue and a rate design for each rate class.

A. Revenue Increase

The Joint Petitioners have agreed that PCLP will be permitted to establish rates which are designed to produce an increase in annual base rate operating revenue of approximately \$225,000 to a revenue level of approximately \$2.2 million, representing an increase in total gas revenue of 11.6%. The bill for the typical residential customer using 80 cubic feet (CCF) per month would increase from \$109.33 to \$124.85 per month, a 13.6% increase. This is a reduction from amount originally filed by PCLP.

⁴⁵ *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

According to PCLP, the agreed-upon rate and revenue levels outlined in the Petition for Settlement will allow Pike to (a) produce an adequate return on Pike's invested capital that is dedicated to the service of the Pike's customers, (b) provide sufficient operating revenues to meet operating expenses, taxes and other charges, (c) enable the Company to maintain its creditworthiness at a level sufficient to raise capital necessary to perform its obligations to provide safe, adequate and proper service to its customers, and (d) provide a reasonable rate of return on the Company's investment in its utility property. Thus, Pike submits that the additional revenues provided for under the Petition for Settlement are just and reasonable and in the public interest.

PCLP also points out that the utility provides natural gas distribution service directly to approximately 1,250 customers in Pike County, Pennsylvania. Under this Joint Petition for Settlement, the monthly bill impact comparing present, as filed, and settlement rates as provided in paragraph 22 of the Joint Settlement shows the bill impact for Pike's customers. The rates contained within the Petition for Settlement are just and reasonable and in the public interest.

BIE agrees that PCLP will receive sufficient operating funds in order to provide safe and adequate service while ratepayers are protected because the resulting increase minimizes the impact of the Pike's initial request. According to BIE, mitigation of the level of the rate increase benefits ratepayers and results in just and reasonable.

OCA also observes that the agreed upon revenue increase represents an approximately 14% reduction from PCLP's original rate increase request. Based on the OCA's analysis of the Company's filing, and discovery responses, the amount of the rate increase under the proposed Settlement represents a result that is within the range of likely outcomes in the event of full litigation of the case. OCA also states that the Pike's initial filing did not contain testimony from a cost of capital witness and the initial revenue request was calculated using a 9.75% return on common equity. According to OCA, this return is consistent with fully litigated outcomes. Therefore, OCA takes the position that the Settlement as a whole yields a result that is reasonable and in the public interest. This increase represents a difficult but reasonable

compromise given the extraordinary circumstances resulting from the COVID-19 pandemic, in conjunction with the period since Pike's last base rate proceeding.

B. Rate Structure and Rate Design

In its original filing, Pike had proposed a Customer Charge of \$10.21 for SC-1 and \$12.81 for SC-2. The Joint Petitioners have agreed to customer charges that are lower than those proposed by the Company in its original filing. For Service Classification No. 1 (SC-1), the Customer Charge will be set at \$8.00 and for Service Classification No. 2 (SC-2); the charge will be \$12.23.

BIE believes the customer charges as settled are in the public interest. These customer charges reflect a compromise between the parties, are reasonable and do not pose rate shock to customers.

OCA agrees that the rate allocation provided by the settlement should be approved, noting that the percentage increase allocated to the residential class is consistent with the percentage recommended by OCA witness Karl Pavlovic. *See*, OCA St. 1 at 20. As such, the OCA submits that the allocation is reasonable and should be approved.

OCA also supports the residential customer charge because the settlement provides for a more moderate increase than the original proposal. The Company's current residential customer charge is \$7.50. The Company proposed to increase this charge to \$10.61. OCA witness Karl Pavlovic testified that the customer charge should not be increased in this proceeding. OCA St. 2 at 20. Under the Settlement the petitioners have agreed to a residential customer charge of \$8.00. OCA observes that the reduction of \$2.61 from Pike Gas's originally filed Customer Charge of \$10.61, is a 24.6% reduction from the filing. The OCA submits that this is a reasonable outcome in this proceeding, and should be adopted.

OSBA agreed to the rate structure and rate design set forth in the settlement.⁴⁶ OSBA supports the overall settlement because the ultimate revenue allocation will provide for progress toward cost-based rates as defined by the Commission, and “rejects the Company’s filed proposal due to its reliance on a cost allocation method that is hopelessly inconsistent with Commission precedent.”⁴⁷

OSBA also concurs with the rate design for small business customers provided in the Settlement because the settlement adopts the recommendation of OSBA’s expert witness, Robert Knecht:

Regarding Rate SC2 rate design, Mr. Knecht explained that the Company’s proposed increase in the customer charge from \$9.40 per month to \$13.31 was justified both based on allocated cost and the practices of other Pennsylvania natural gas distribution companies. OSBA Statement No. 1 at 18. The Settlement limits the increase in the customer charge to \$12.23, reflecting the scale back in the overall rate increase.

Mr. Knecht also explained that the Company had not justified its proposed increase in the charge spread between the first volumetric block (first 300 ccf) and the tail block (over 300 ccf) charges, and he recommended that no increase be permitted absent cost evidence from the Company. OSBA Statement No. 1 at 19. As the Company failed to provide such evidence, the Settlement adopts Mr. Knecht’s recommendation. The charge spread between blocks remains at 15.52 cents per ccf, 46.03 to 30.51 at current rates and 50.89 to 35.37 at Settlement rates. Settlement Appendix B, page 1.^[48]

C. Deferred TCJA “Protected” Balances

The Settlement Petition requires Pike to amortize over fifty-years the Protected return to Tax Cuts and Jobs Act (TCJA) credit balance of \$14,387 at the rate of \$288 per annum.

⁴⁶ In its Statement in Support, OSBA noted that its expert witness expressed grave reservations regarding the allocation of costs. OSBA observed that there is a theoretical basis to assign the costs for mains using both demand and customer allocation factors, this approach has been rejected by the Commission Appendix G, OSBA Statement in Support at p. 3.

⁴⁷ Appendix G, OSBA Statement in Support at p. 5.

⁴⁸ Appendix G, OSBA Statement in Support at pp. 5-6.

The credit balance is reflected as a rate base deduction and the unamortized balance will continue to reduce rate base in future proceedings until the balance is fully returned to ratepayers.

BIE supports this term because reflecting the proper increases or decreases to rate base for remaining protected and unprotected balances of excess deferred income taxes allows for the reflection of accurate rate base balances until the credits are fully extinguished, as such this term is within the public interest. OCA agrees because these provisions ensure the reasonable and stable treatment of these costs in this and future proceedings.

D. Deferred TCJA “Non-Protected Balances”

In addition to the TCJA Protected Balances, the Settlement requires Pike to amortize over five-years the Non-Protected TCJA negative balance of \$42,955 as a charge to expense at the rate of \$8,591 per annum. This negative balance is reflected as a rate base adjustment and the unamortized balance will continue to increase rate base in future proceedings until the balance is fully collected from ratepayers.

Like the treatment of the Protected TCJA balances, BIE and OCA support this term because reflecting the proper increases or decreases to rate base for remaining protected and unprotected balances of excess deferred income taxes allows for the reflection of accurate rate base balances until the balances are fully extinguished, as such this term is within the public interest.

E. DSIC Surcharge

The Settlement contains provisions for a DSIC surcharge. Pike’s Long Term Infrastructure Improvement Plan (LTIIP) projects approved in the Company’s most recent LTIIP proceeding,⁴⁹ will not include plant claimed in this rate case for the July 1, 2021 through December 31, 2021 period of \$89,000 and all plant placed in service prior to June 30, 2021. This

⁴⁹ See Docket No. P-2019-3007304 (approved June 13, 2019).

term ensures the DSIC only recovers the return dollars and depreciation expense of eligible plant not previously recovered in base rates.

In addition, for purposes of calculating its DSIC, Pike agreed to use the equity return rate for gas utilities contained in the Commission's most recent Quarterly Report on the Earnings of Jurisdictional Utilities. BIE supports this term as it is important for utilities to rely on the most current information available. The Commission's Quarterly Reports are also unique to each utility type, Pike's use of this information to calculate its DSIC is reasonable and in the public interest. OCA notes that this provision of the Settlement helps ensure the appropriate calculation of any future DSIC filings.

F. Objections to the Settlement

By email dated April 12, 2021, Ratepayer-Complainant Charles Gillinder objected to the Joint Petition for Settlement. Specifically, Mr. Gillinder 1) questions the accuracy of inputs provided by PCLP; 2) alleges the commodity contract with "Con-Ed" is 50% over market and therefore is not just and reasonable; 3) the Settlement guarantees revenue to PCLP; 4) the Settlement does not provide for a stay-out on PCLP's next rate filing; 5) bill impact on ratepayers is still too high; 6) a gas purchase agreement between PCLP and "Con Ed", if renewed, may negatively impact PCLP's ability to purchase gas at reasonable prices. Finally, Mr. Gillinder questions the impact of any electricity capacity agreement with "Con-Ed" on the operation of the gas utility.

G. Recommendation

The proposed Settlement is reasonable and in the public interest. I therefore recommend approval without modifications. The Settlement represents a fair compromise of the serious issues raised in this proceeding. After investigation and discovery, the parties have achieved a reasoned accord resulting in just and reasonable rates for service rendered by the Company.

Although none of the statements in support filed by the Joint Petitioners explicitly say so, this Settlement is a “black box” settlement. Therefore, most of the individual revenue and expense line items, as well as most of the other elements of the rate filing are not addressed or analyzed as part of the Settlement. This means that the parties could not agree as to each and every element of the revenue requirement calculations.

The Commission has recognized that “black box” settlements can serve an important purpose in reaching consensus in rate cases:

We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company’s revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company’s cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases.^[50]

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.⁵¹

In reviewing the settlement terms and the accompanying statements in support, the Settlement provides sufficient information to support the conclusion that the revenue requirements and other settlement terms are in the public interest. The public advocates, BIE, OCA and OSBA, each maintain that the interests of their respective constituencies have been

⁵⁰ *Pa. Pub. Util. Comm’n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013), at p. 27 (citations omitted).

⁵¹ See *Pa. Pub. Util. Comm’n v. Pa. Power Co.*, 55 Pa. PUC 552, 579 (1982); *Pa. Pub. Util. Comm’n v. Nat’l Fuel Gas Dist. Corp.*, 73 Pa. PUC 552, 603-605 (1990).

adequately protected and they further represent that the terms of the Settlement are in the public interest. The result, the reduction in proposed revenue requirement increases, the revenue allocations, the reduction in the proposed residential customer charges, along with all of the other terms and conditions of the Settlement, together represents a fair and reasonable compromise of the positions initially taken by the Joint Petitioners in their written testimony.

I have considered the objections raised by Mr. Gillinder. Mr. Gillinder does not identify the specific “inputs” used by Pike that he alleges are inaccurate,⁵² nor does he point to record evidence to support his claims regarding the agreements with Con-Ed. I am not unsympathetic to his concern that the rate increase will still have a substantial impact on the customers of PCLP. However, the Company must have the ability to attract sufficient capital to ensure that the PCLP is able to provide safe and reliable gas service.

I am also not unsympathetic to Mr. Gillinder’s observation that the Settlement does not include a stay-out provision, but I reject his suggestion that the Settlement should include a six-year stay-out. In my experience, six years is generally too long a period of time between rate filings, particularly given the increased focus infrastructure improvement responsibilities place on utilities, as well as the economic impact of the Covid-19 pandemic. Long periods between rate cases exacerbate rate shock to ratepayers and increase the likelihood that the utility will fail to make adequate investments necessary for the provision of service. Moreover, the Settlement does include a nearly one-year stay-out for a Distribution Service Improvement Charge, which will provide some level of stability for ratepayers.

As to the remaining Ratepayer-Complainants, each was served with a copy of the Joint Petition and offered an opportunity to comment or object to its terms and demonstrate why the

⁵² It is worth pointing out that expert witness in this case and also the Electric Filing noted inconsistencies and inaccuracies in Pike’s filings. However, the Joint Petitioners have “agreed to disagree” on the details of certain aspects of the rate filing and that the end result of the agreed revenue requirement and rate design is reasonable.

case should be litigated rather than settled. Inasmuch as their due process rights have been fully protected, their respective formal complaints must be dismissed for lack of prosecution.⁵³

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 501, 66 Pa.C.S. § 1308(d).

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. Phila. Elec. 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.Cmwlt. 2006).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement filed on April 9, 2021, by Pike County Light and Power Company (Gas), the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate, is granted, and the Settlement is thereby adopted, in full, without modification or correction.

⁵³ See, *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlt. 1984) (Commission is required to provide due process to the parties; when parties are afforded notice and an opportunity to be heard, Commission requirement to provide due process is satisfied).

2. That Pike County Light and Power Company (Gas) 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 \$225,000, consistent with the rates, rules and regulations set forth in Appendix B (Proof of Revenue) to the Joint Petition for Settlement.

3. That Pike County Light and Power Company (Gas) shall be permitted to file tariffs in the form set forth in Appendix A to the Joint Petition for Settlement, to become effective upon at least one day's notice, for service rendered on and after July 28, 2021, so as to produce an annual increase in revenues consistent with this Order.

4. That Pike County Light and Power Company (Gas), the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate shall comply with the terms of the Joint Petition for Settlement submitted in this proceeding, as though each term and condition stated therein had been the subject of an individual ordering paragraph.

5. That the complaint of the Office of Consumer Advocate at Docket No. C-2020-3022886, is deemed satisfied and marked closed.

6. That the complaint of the Office of Small Business Advocate at Docket No. C-2020-3022857, is deemed satisfied and marked closed.

7. That the formal complaints of Complainants Shelly Saul at Docket No. C-2020-3022920, William H. Yennie, III at Docket No. C-2020-3023031, Charles Gillinder at Docket No. C-2020-3023038, Carol Losee at Docket No. C-2020-3023174, Marla J. Hulse at Docket No. C-2020-3023447, and Candace Howard at Docket No. C-2020-3023501 in this proceeding be dismissed and marked as closed.

8. That upon acceptance and approval by the Commission of the tariffs and allocation of proposed settlement rate increase filed by Pike County Light and Power Company (Gas), this proceeding shall be terminated and marked closed.

Date: May 5, 2021

_____/s/_____
Mary D. Long
Administrative Law Judge