**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held July 15, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

John F. Coleman, Jr.

Ralph V. Yanora

Pennsylvania Public Utility Commission : R-2020-3022135

Office of Small Business Advocate : C-2020-3022858

Office of Consumer Advocate : C-2020-3022887

Shelley Saul : C-2020-3022921

Dawn Metzger : C-2020-3022987

Anthony Pinkala : C-2020-3023020

William H. Yennie, III : C-2020-3023035

John W. Dalton, Jr. : C-2020-3023239

Charles Gillinder : C-2020-3023416

Carol Losee : C-2020-3023152

Marla J. Hulse : C-2020-3023418

Candace Howard : C-2020-3023490

:

 v. :

 :

Pike County Light & Power Company - Electric :

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Mary D. Long, issued on May 5, 2021, and the Exceptions and Reply Exceptions filed thereto, in the above-captioned proceeding.

Exceptions to the Recommended Decision were filed by the Office of Small Business Advocate (OSBA) on May 20, 2021. Replies to Exceptions were filed by Pike County Power & Light Company - Electric (PCLPC), the Commission’s Bureau of Investigation and Enforcement (I&E), and the Office of Consumer Advocate (OCA) on May 27, 2021.

Also, before the Commission are two petitions for settlement pertaining to this rate proceeding: (1) the Joint Petition for Approval of Partial Settlement of Rate Investigation (Joint Petition-Revenue or Revenue Settlement) between the active parties to the proceeding, PCLPC, I&E, the OCA and, the OSBA (Active Parties, Joint Petitioners-Revenue or Settling Parties-Revenue), filed on April 9, 2021; and (2) the Joint Petition for Settlement on Rate Structure and Rate Design (Joint Petition -Rate Design or Rate Design Settlement), between PCLPC, I&E and the OCA (Joint Petitioners-Rate Design, or Settling Parties-Rate Design) filed on April 16, 2021.[[1]](#footnote-2)

For the reasons stated, *infra*, we shall adopt both the Revenue Settlement and the Rate Design Settlement, and approve the terms and provisions of each Settlement, without modification, as in the public interest. Additionally, we shall: (1) deny the Exceptions of the OSBA; and (2) adopt the ALJ’s Recommended Decision, consistent with this Opinion and Order.

As discussed below, the genesis of this proceeding is a general rate increase in which the PCLPC proposed base rate changes that would have increased its annual operating revenues by $1,933,600 (1.9 million), or an increase of 24.7% in additional annual revenues.

As discussed *infra*, in this Opinion and Order, both the Revenue Settlement and the Rate Design Settlement embody a “black box” settlement. Under the terms of the Revenue Settlement, the approved increase to PCLPC’s annual operating revenues from jurisdictional service is proposed to be $ 1.4 million, which reflects a substantial decrease from the originally requested $ 1.9 million rate increase or an increase of 13.8% in overall electric revenues. The approved revenue increase will be allocated among PCLPC’s customers per the terms of the Rate Design Settlement, which distributes the revenue increase among PCLPC’s customer classes.

The result of the rate structure under the terms of the Rate Design Settlement is that the average residential customer will experience an estimated 12.1% increase, or roughly $12.59 increase in their monthly electric distribution costs. Similarly, the average commercial – demand (SC2-Secondary - Demand) customer will experience an estimated 17.3% increase, or roughly $77.91 increase in their monthly electric distribution costs. Finally, the average commercial non-demand (SC2‑Secondary – Non-Demand) will experience an estimated 18.9% increase, or roughly $13.35 in their monthly electric distribution costs

Taken together, the Revenue Settlement and the Rate Design Settlement reflect a reasonable compromise to achieve just and reasonable rates, which also mitigates the original requested rate increase at a time in which many ratepayers continue to suffer economic hardship due to the 2019 Coronavirus (COVID-19) pandemic emergency, while providing PCLPC with a level of revenue sufficient to provide an opportunity to earn an adequate return of and on its investment such that PCLPC may continue the provision of safe and reliable electric service within the Commonwealth.

Accordingly, by this Opinion and Order, we shall approve both the Revenue Settlement and the Rate Design Settlement, without modification, as reasonable and necessary, supported by substantial evidence and in the public interest.

# Background

PCLPC is an electric utility serving approximately 4,800 electric customers, of which 960 are commercial, 3,810 are residential and 90 are lighting.[[2]](#footnote-3) In 2016, Corning Natural Gas Holding Company acquired PCLPC from Orange and Rockland Utilities.[[3]](#footnote-4) PCLPC has been operating under electric rates that went into effect in September 2014.[[4]](#footnote-5)

PCLPC requests a rate increase to meet increased costs, particularly related to plant additions, including some projects identified in PCLPC’s Long-Term Infrastructure Improvement Plan, which was recently approved by the Commission.[[5]](#footnote-6)

# History of Proceeding

On October 26, 2020, PCLPC filed with the Commission, Supplement No. 82 to Tariff Electric - Pa. P.U.C. No. 8 (Tariff No. 8) to become effective December 28, 2020 and docketed at R-2020-3022135 (Electric Filing). Tariff No. 8 contains proposed changes in rates, rules, and regulations calculated to produce an increase of $1,933,600 or (24.7%) in additional annual revenues.

On November 3, 2020, I&E entered an appearance in this proceeding. The OCA and the OSBA, each filed complaints on November 16, and November 13, 2020, respectively. Additionally, several ratepayers filed Formal Complaints: Shelly Saul, Dawn Metzger, Anthony Pinkala, William H. Yennie III, John W. Dalton, Jr., Charles Gillinder, Carol Losee, Marla J. Hulse, and Candace Howard.

 By order entered December 17, 2020, the Commission suspended the Electric Filing until July 28, 2021, and instituted an investigation to determine the lawfulness, justness and reasonableness of the rates rules and regulations contained in PCLPC’s Tariff No. 8.

By hearing notice dated December 18, 2020, the filings were assigned to ALJ Long and a prehearing conference was scheduled for January 11, 2021. The prehearing conference convened as scheduled. Counsel for PCLPC, I&E, 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. Fifteen witnesses testified at the 1:00 p.m. hearing and ten witnesses testified at the 6:00 p.m. hearing.[[6]](#footnote-7)

By email dated March 5, 2021, the Active Parties notified ALJ Long that they had reached an agreement in principle to resolve the issues raised in the Electric 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 Active Parties were directed to file the admitted testimony and exhibits with the Secretary’s Bureau as provided by 52 Pa. Code § 5.412.

By March 10, 2021, Interim Order, the Active Parties were instructed 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.

By email dated March 29, 2021, the Active Parties notified ALJ Long that they had failed to reach a unanimous resolution of the issue of allocation of revenue among customer classes and requested leave to file main briefs on April 5, 2021.

By Interim Order entered March 29, 2021, the Parties were granted leave to file main briefs by noon on April 5, 2021. Reply briefs were due by April 9, 2021. Ratepayer complainants were permitted to file comments regarding the litigated issue no later than Wednesday, April 15, 2021. Comments to the settled issues remained due on April 19, 2021.

 The Active Parties filed main briefs addressing cost allocation, the allocation of revenue to the various rate classes and rate design on April 5, 2021. The Parties filed reply briefs on April 9, 2021. The reply briefs noted that the Active Parties had reached an additional agreement on customer charges for each rate class, which was addressed in the Revenue Settlement.

 Also on April 9, 2021, the Active Parties filed the Revenue Settlement which included, among other things, the unanimous Active Parties’ agreement to an annual revenue increase of $1.4 million. The Active Parties also stated that they had agreed to customer charges. However, the Active Parties indicated that the allocation of revenue and remaining elements of rate design remained unresolved.

Upon review of the filings, the ALJ determined that the analysis provided by the Active Parties on revenue allocation and rate design was lacking and did not provide sufficient evidence regarding the rates that would be produced by each Parties’ respective position.

 On April 12, 2021, a conference was held, and the Active Parties were directed to convene a settlement conference and attempt to reach a comprehensive agreement, to be filed by April 16, 2021. An Interim Order was issued that extended the deadlines for comments and responsive comments.

On April 16, 2021, PCLPC, I&E and the OCA filed the Rate Design Settlement, along with statements in support. Charles Gillinder, by email dated April 18, 2021, opposed the settlements.[[7]](#footnote-8) The OSBA, which did not join the Rate Design Settlement, filed comments opposing it on April 20, 2021. PCLPC, I&E and the OCA filed responsive comments on April 22, 2021.

 The record closed on April 23, 2021.

In the Recommended Decision, issued on May 5, 2021, ALJ Long recommended approval of both the Revenue Settlement and the Rate Design Settlement, without modification, finding that each was supported by substantial evidence and in the public interest, and that together the Settlements result in just and reasonable rates for PCLPC. R.D. at 1-2.

As previously noted, the OSBA filed Exceptions to the Recommended Decision on May 20, 2021. On May 27, 2021, PCLPC, I&E and the OCA, filed their Replies to Exceptions.

# Legal Standards

## Justness and Reasonableness of Rates

In deciding this or any other general rate increase case brought under Section 1308(d) of the Public Utility Code (Code), 66 Pa. C.S. § 1308(d), certain general principles always apply. A public utility is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. PUC v.* *Pennsylvania Gas and Water Co.*, 341 A.2d 239, 251 (Pa. Cmwlth. 1975). In determining a fair rate of return, the Commission is guided by the criteria provided by the United States Supreme Court in the landmark cases of *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679 (1923) *(Bluefield)* and *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) *(Hope Natural Gas)*. In *Bluefield*, the Court stated:

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

*Bluefield*, 262 U.S. at 692-693.

Section 1301(a) of the Code mandates that “[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.” 66 Pa. C.S. § 1301(a). 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.” *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002) (*City of Lancaster*). There is no single way to arrive at just and reasonable rates, and “[t]he [Commission] has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.” *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996) (*Popowsky II*).

The burden of proof to establish the justness and reasonableness of every element of a public utility’s rate increase request rests solely upon the public utility in all proceedings filed under Section 1308(d) of the Code. The standard to be met by the public utility is set forth in Section 315(a) of the Code, 66 Pa. C.S. § 315(a), as follows:

**Reasonableness of rates.** – In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

In reviewing Section 315(a) of the Code, the Pennsylvania Commonwealth Court interpreted a public utility’s burden of proof in a rate proceeding as follows:

Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the public utility. *It is well-established that the evidence adduced by a utility to meet this burden must be substantial*.

*Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980) (emphasis added). *See also*, *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

In general rate increase proceedings, it is well established that the burden of proof does not shift to parties challenging a requested rate increase. Rather, the utility’s burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one, and that burden remains with the public utility throughout the course of the rate proceeding. There is no similar burden placed on parties to justify a proposed adjustment to the Company’s filing. The Pennsylvania Supreme Court has held:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations, and that is the burden which the utility patently failed to carry.

*Berner v. Pa. PUC*, 116 A.2d 738, 744 (Pa. 1955).

This does not mean, however, that in proving that its proposed rates are just and reasonable, a public utility must affirmatively defend every claim it has made in its filing, even those which no other party has questioned. As the Pennsylvania Commonwealth Court has held:

While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.

*Allegheny Center Assocs. v. Pa. PUC*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990) (citation omitted). *See also, Pa. PUC v. Equitable Gas Co.*, 73 Pa. P.U.C. 310, 359-360 (1990).

Additionally, Section 315(a) of the Code, 66 Pa. C.S. § 315(a), cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose. Inasmuch as the Legislature is not presumed to intend an absurd result in interpretation of its enactments,[[8]](#footnote-9) the burden of proof must be on the party who proposes a rate increase beyond that sought by the utility. The mere rejection of evidence contrary to that adduced by the public utility is not an impermissible shifting of the evidentiary burden. *United States Steel Corp. v. Pa. PUC*, 456 A.2d 686 (Pa. Cmwlth. 1983).

In analyzing a proposed general rate increase, the Commission determines a rate of return to be applied to a rate base measured by the aggregate value of all the utility’s property used and useful in the public service. The Commission determines a proper rate of return by calculating the utility’s capital structure and the cost of the different types of capital during the period in issue. The Commission is granted wide discretion, because of its administrative expertise, in determining the cost of capital. *Equitable Gas Co. v. Pa. PUC*, 405 A.2d 1055, 1059 (Pa. Cmwlth. 1979) (determination of cost of capital is basically a matter of judgment which should be left to the regulatory agency and not disturbed absent an abuse of discretion).

## Settlements Must Serve the Public Interest

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

In this case, both the Revenue Settlement and the Rate Design Settlement are “black box” settlements. This means that the Active Parties were not able to agree on every element of the revenue requirement calculation. 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.

*Pa.* *PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013) (*Peoples TWP*), at 28 (citations omitted).

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

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) (*CS Water and Sewer*). The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote, and serve the public interest. *Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al*. (Order entered July 14, 2011), citing *Warner v. GTE North, Inc*., Docket No. C‑00902815 (Order entered April 1, 1996) and *CS Water and Sewer.* To the extent the Joint Petitioners request that the Commission enter an order in this proceeding approving the Revenue Settlement and the Rate Design Settlement without modification, they share the burden of proof to show that the terms and conditions of the proposed settlements are in the public interest. *See* 66 Pa. C.S. § 332(a) (“Except as may be otherwise provided in section 315…or other provisions of this part . . . the proponent of a rule or order has the burden of proof.”)

## Other Applicable Legal Standards

As a preliminary matter, we note that any issue or exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. We are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see,* *generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In the Recommended Decision, the ALJ reached six Conclusions of Law. R.D. at 42-43. The Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

# Joint Petitions for Settlement

## Revenue Settlement

**1. Terms and Conditions of the Revenue Settlement**

As previously indicated, the Revenue Settlement is a “black box” agreement, which means that it does not reflect a specific resolution of every element of the revenue requirement, including rate of return, but rather represents the Settling Parties’-Revenue agreed upon final revenue increase amount based on their respective individual analyses of the various revenue and expense items. The primary element of the Revenue Settlement is the agreement of PCLPC, I&E, the OCA and the OSBA to the overall revenue requirement and to customers charges. The Revenue Settlement, if approved, will result in rates designed to produce an overall increase in annual electric distribution operating revenues of approximately $1.4 million, reflecting an increase of 13.8% in overall electric revenues, and 26.9% in electric distribution revenues. This compromise represents an approximately 28% reduction in the overall electric revenue requested by PCLPC in its original filing.

The Revenue Settlement, filed on April 9, 2021, includes the terms unanimously agreed upon by the Active Parties, as well as Depreciation/Amortization Rates (Appendix A); the statements in support of the Joint Petitioners (Appendices B-E); and Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs (Appendix F).

The Active Parties agreed to the following settlement terms: [[9]](#footnote-10)

1. Under the terms of the Partial Settlement. Pike (Electric) will be permitted to establish rates which will produce an overall increase in annual electric distribution operating revenues of approximately $1.4 million, an increase of 13.8% in overall electric revenues, and 26.9% in electric distribution revenues.
2. Rates will be effective on one day's notice for service rendered no sooner than July 28, 2021.
3. In addition to, and in consideration of, the agreed-upon overall increase in operating revenues, Joint Petitioners agree to the terms and conditions set forth as follows:
	1. Effective Date - The rates reflecting the increase set forth above will become effective no sooner than July 28, 2021. Pike (Electric) 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 (Electric) is allowed to file a tariff or tariff supplement proposing changes in its State Tax Adjustment Surcharge, System Benefits Charge, Tax Cuts and Jobs Act Surcharge, Default Service rates, including the Market Price for Electric Supply, Electric Supply Adjustment Charge, and any successor charges. In addition, Pike (Electric) 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 (Electric) rights under Section 1308(e) (governing extraordinary rate relief).

* 1. Revenue Allocation/Rate Structure/Rate Design — Reserved for Litigation

* 1. Customer Charge – Joint Petitioners have agreed to the following Customer Charges:

SC1 – Residential Heating & Non-Heating: $8.80

SC2 – Small Commercial & Industrial (Secondary): $17.26

SC2 – Large Commercial & Industrial (Primary): $140.00

* 1. Other Tariff Changes – Pike (Electric) introduced eight new LED Street light and two LED flood light luminaries and the associated charges for SC-3, Municipal Street lights. Induction Street light and Incandescent flood light luminaries and the associated charges for SC-3, municipal streetlights have been eliminated. The Company also introduced four new LED lighting and two LED flood lighting luminaries and the associated charges for SC-4, private lighting. Mercury Vapor lighting luminaries and the associated charges for SC-4, private lighting have been eliminated.

* 1. Storm Expense - Deferred storm expenses of $977,630 will be amortized over five-years at the rate of $195,526 per annum.

* 1. Tax Cuts and Jobs Act (“TCJA”) Surcharge Credit – The Company will pass back TCJA credits deferred during the current and stub periods of approximately $180,700 on June 30, 2021, using the current TCJA temporary surcharge credit mechanism over a period of six-months with interest using the residential mortgage lending rate specified by the Secretary of Banking in accordance with the Loan Interest Protection Law (41. P.S. §§ 101, et seq.).

1. Deferred TCJA “Protected” Balances – The Protected TCJA credit balance of $110,645 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 forty-years as a credit to expense at the rate of $2,766 per annum.

1. Deferred TCJA “Non-Protected” Balances – The Non-Protected TCJA credit balance of $73,270 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 Non-Protected TCJA balance over five-years as a credit to expense at the rate of $14,654 per annum.

1. DSIC Surcharge – LTIIP Projects approved by the PAPUC in Docket No. P-2020-3022285 will not include plant claimed in this rate case for the July 1, 2021 through December 31, 2021 period of $275,000 and all plant placed in service prior to June 30, 2021. The Company will be permitted to include the Civil portion of the 34.5 Kv underground project estimated at $450,000 in the DSIC after that project is placed into service. For purposes of calculating its DSIC, Pike (Electric) shall use the equity return rate for electric 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 electric 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).

1. Depreciation Rates – No party objected to the Company’s proposed plant depreciation and amortization rates. The depreciation / amortization rates are contained in Appendix A.

 \* \* \*

* 1. Joint Petitioners agree that adoption and approval of this Petition for Partial Settlement by the ALJ and the Commission is in the public interest. While the revenue allocation of the $1,400,000 settlement revenue requirement was not settled, the Joint Petitioners have settled on customer charges, and the comparison of those impacts are provided below:

|  |  |
| --- | --- |
|   |  **Pike County Light & Power Company**   |
|   |  Electric Rate Case Filing  |
|   |  Docket No. R-2020-3022135  |
|   |   |
|   |   | As Filed  | Proposed Settlement  |
| Customer Charge  | Present Rates  | Amount  | % Increase  | Amount  | % Increase  |
| SC1-Residential Heating & Non-Heating  | $8.50  | $11.70  | 37.6%  | $8.80  | 3.5%  |
|   |   |   |   |   |   |
| SC2- Small Commercial & Industrial (Secondary)  | $13.60  | $18.73  | 37.7%  | $17.26  | 26.9%  |
|   |   |   |   |   |   |
| SC2- Large Commercial & Industrial (Primary)  | $110.90  | $152.00  | 37.1%  | $140.00  | 26.2%  |

* 1. This Partial Settlement provides for a sound and reasonable revenue requirement and appropriately balances the interests of Pike (Electric) and its customers. In addition, adoption and approval of this Petition for Partial Settlement will avoid the need for the evidentiary hearings and the cross-examination of witnesses, for briefing, and for continued litigation of the settled issues, thereby eliminating substantial costs.

* 1. This Petition for Partial Settlement arises from extensive discovery, testimony and discussions and reflects compromises by all sides. It is being proposed to partially settle the instant case. Accordingly, this Petition for Partial Settlement is made without any admission against, or prejudice to, any positions which any Joint Petitioner might adopt during any subsequent litigation of this proceeding (should this Petition for Partial Settlement be rejected or modified), or in any other proceeding.

* 1. If the Commission withholds approval of this Petition for Partial 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.

* 1. Joint Petitioners agree that Commission approval of this Petition for Partial 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.

* 1. In the event that the Commission does not approve this Petition for Partial 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 Partial Settlement as herein proposed, Joint Petitioners agree to waive the filing of Exceptions on the matters settled in this Petition. However, Joint Petitioners do not waive their rights to file Exceptions with respect to the litigated issue on Rate Structure and Design, any additional matters dealt with, or any modifications to the terms and conditions of this Petition for Partial Settlement recommended by the ALJ in her Recommended Decision.

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

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

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

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

Revenue Settlement at 3-11.

The Joint Petitioners further requested that the Commission: (1) approve the Revenue Settlement; (2) grant PCLPC permission to file a tariff supplement consistent with the Revenue Settlement; (3) deem the Formal Complaint of the OCA to be satisfied and marked closed; and (4) deem the Formal Complaint of the OSBA to be satisfied, in part, with respect to the revenue terms. Joint Petition-Revenue at Appendix F, pp. 1-7.

## 2. Positions of the Parties

### a. Statements in Support of the Revenue Settlement

The Statements in Support from PCLPC, I&E, the OCA and the OSBA, included with the Joint Petition-Revenue, address how the Revenue Settlement is consistent with Commission policy encouraging settlements as a means of reducing the time and expense that would otherwise be expended by the Parties in fully litigated proceedings. PCLPC Statement in Support at 1-6; I&E Statement in Support at 1-9 (citing 52 Pa. Code § 5.231(a)). The Settling Parties-Revenue submit that the Settlement reflects a compromise of positions, and therefore satisfies the public interest review when evaluating partial settlements. *See*, PCLPC Statement in Support at 2; I&E Statement in Support at 5.

Specifically, in support of the Revenue Settlement, PCLPC argued that the compromise rate and revenue levels outlined in the Revenue Settlement will produce an adequate return on PCLPC's invested capital to ensure PCLPC’s ability to: (1) deliver safe and reliable electric service to its customers; (2) provide sufficient operating revenues to meet operating expenses, taxes and other charges; and (3) enable PCLPC to maintain its creditworthiness at a level sufficient to raise necessary capital, while also providing a reasonable rate of return on PCLPC's investment in electric property. PCLPC further argued that the Revenue Settlement will enable PCLPC to adequately address system reliability and other operational issues, raised by witnesses in the public input hearing, by providing revenues necessary to address certain system and operational issues. PCLPC Statement in Support at 1-3.

I&E and the OCA asserted in their Statements in Support of the Revenue Settlement that, through discovery and negotiation, the compromise revenue increase balances the interests of PCLPC and its customers. I&E noted that PCLPC will receive sufficient operating funds to provide safe and adequate service while ratepayers benefit from a reduction in PCLPC’s initial rate increase request. The OCA noted that the compromise revenue reflects a difficult but reasonable compromise in the context of the extraordinary circumstances of the Covid-19 pandemic and in view of the extended period since PCLPC’s last base rate proceeding. Both I&E and the OCA concluded that the Revenue Settlement as a whole, achieves rates which are just and reasonable and necessary for PCLPC to provide safe and adequate service to its customers, and therefore, is in the public interest. *See*, I&E Statement in Support at 1-9; OCA Statement in Support at 1-5.

Finally, the OSBA’s Statement in Support of the Revenue Settlement acknowledged the benefit to its constituency that the Revenue Settlement resolved the issue of the respective customer charge, noting that the issue was of special importance to the OSBA, and in the best interests of PCLPC’s small business customers. OSBA Statement in Support at 1-4.

#### b. Statements in Opposition to the Revenue Settlement

As noted, *supra.*, nonactive party ratepayer-complainants filed comments in general opposition to any rate increase.

#### 3. ALJ’s Recommended Decision

The ALJ recommended adoption of the Revenue Settlement, without modification. The ALJ’s analysis turned on: (1) a review of the substantial record evidence; (2) the positions of the Parties; (3) weighing, on balance, the PCLPC’s interests in maintaining sufficient revenues for its continued provision of safe and reliable service and a reasonable rate of return; and (4) the interest of the PCLPC’s customers in safe and reliable service at affordable rates. The ALJ reviewed the Joint Petition-Revenue under the standards applicable for the granting of a rate increase under the *Bluefield* and *Hope* *Natural Gas* decisions, as well as the Commission guidance for consideration of whether to approve a Settlement, as set forth in *Pa. Pub. Util. Comm’n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013). Upon review, the ALJ concluded that the terms of the “black box” Revenue Settlement were supported by substantial evidence and the Revenue Settlement was in the public interest, and therefore, should be approved. R.D. at 28-30.

**4.** **Disposition**

No Exceptions were filed objecting to the ALJ’s analysis and recommendation to adopt the Revenue Settlement, without modification. Upon review, we agree with the ALJ’s analysis and find that the terms and conditions reached by the unanimous agreement of the Active Parties under the Revenue Settlement achieve the appropriate balance between the interests of customers and the utility, and result in rates which are just and reasonable and supported by substantial record evidence. Accordingly, we shall adopt the ALJ’s recommendation and approve the Revenue Settlement without modification.

As noted, our approval of the Revenue Settlement is predicated upon our conclusion that the Settlement is reasonable and in the public interest and supported by substantial evidence. Further, under the terms of the Revenue Settlement, the Joint Petitioners achieved a settlement which reduces the PCLPC’s originally proposed rate increase from $1.9 million to $1.4 million, for an increase of 13.8% in overall electric revenues, and 26.9% in electric distribution revenues. This compromise represents approximately a 28% reduction in overall electric revenue requested by PCLPC in its original filing while affording PCLPC adequate revenue necessary to maintain safe and reliable electric service.

## Rate Design Settlement

**1.** **Terms and Condition of the Rate Design Settlement**

In the proceeding before the ALJ, each of the Active Parties presented a proposed allocation of revenue for each rate class. These positions were supported by their respective experts regarding such allocation and utilizing the revenue increase proposed in the Revenue Settlement. PCLPC, I&E and the OCA or Joint Petitioners-Rate Design were able to agree on a revenue allocation as set forth in the Rate Design Settlement. The Rate Design Settlement, like the Revenue Settlement, is a “black box” settlement. Under the Rate Design Settlement, the Joint Petitioners-Rate Design did not reach agreement in a particular cost of service study (COSS) methodology. Rather, according to the Joint Petitioners-Rate Design, the resulting rate class allocation under the Rate Design Settlement is a product of negotiation and settlement and achieves a result within the range of results argued by the respective Parties.

The Rate Design Settlement, filed on April 16, 2021, included a Tariff Supplement (Appendix A); Proof of Revenues (Appendix B); Statements in Support (Appendices C-E) and Supplemental Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs (Appendix F).

The Rate Design Settlement included the following terms and conditions:[[10]](#footnote-11)

* + 1. Under the terms of the Rate Structure Settlement, Pike (Electric), I&E, and the OCA have agreed to a just and reasonable rate structure and rate design which will allow the Pike (Electric) to recover the Jointly Settled, black box revenue requirement of $1,400,000 as described in the April 9, 2021 petition for partial settlement. 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, if approved by the Commission.

* + 1. The table below reflects the increase in delivery revenues by class from present rates as proposed by the Rate Structure Petitioners:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|   |   |   |   | Delivery Revenue at:  | Increase:  |
| Service Class  | Type of Service  | Annual Bills  | Total Sales (kWh)  | Present Rates  | Proposed Rates  | Rev Change  | Percent Change  |
| 1  | Residential Service  | 45,756  | 30,847,400  | 2,682,831  | 3,263,225  | 580,394  | 21.6%  |
| 2  | General Secondary - Demand  | 9,215  | 30,487,565  | 1,988,600  | 2,670,784  | 682,184  | 34.3%  |
| 2  | General Secondary - Non-Demand  | 2,185  | 1,161,935  | 71,700  | 99,412  | 27,711  | 38.6%  |

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2  | General Primary Service  | 96  | 10,129,300  | 350,721  | 435,924  | 85,203  | 24.3%  |
| 3  | Municipal Street Lighting  | 108  | 211,700  | 86,228  | 110,717  | 24,489  | 28.4%  |
| 4  | Private Area Lighting  | 960  | 155,200  | 34,425  | 34,425  | 0  | 0.0%  |
| Total  |   | 58,320  | 72,993,100  | 5,214,505  | 6,614,486  | 1,399,981  | 26.8%  |

* + 1. In addition to, and in consideration of, the agreed-upon provisions of the April 9, 2021 Joint Petition for Partial Settlement, the Rate Structure Petitioners agree to the additional terms and conditions set forth as follows:

a. Rate Structure/Rate Design — Rate Structure Petitioners agree to the distribution of revenue among customer classes in this Rate Structure Settlement as set forth in the attached Proof of Revenues at Appendix B.

* 1. 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:

|  |
| --- |
| **Pike County & Power Company** |
| Electric Rate Case Filing |
| Docket No. R- 2020-3022135 |
|   |   | As Filed  | Proposed Settlement  |
| Customer Charge  | Present Rates | Amount | % Increase | Amount | % Increase |
|   |   |   |   |   |   |
| SC-1 Residential Heating & Non-heating  | $8.50  | $11.70  | 37.6%  | $8.80  | 3.5%  |
|   |   |   |   |   |   |
| SC-2 Small Commercial & Industrial (Secondary)  | $13.60  | $18.73  | 37.7%  | $17.26  | 26.9%  |
|   |   |   |   |   |   |
| SC-Large Commercial & Industrial (Primary)  | $110.90  | $152.00  | 37.1%  | $140.00  | 26.2%  |
|   |   |   |   |   |   |
| Average Customer Bill  |   |   |   |   |   |
|   |   |   |   |   |   |
| SC1-Residential (674 Kwh)  | $103.90  | $121.90  | 17.3%  | $116.49  | 12.1%  |
|   |   |   |   |   |   |
| SC2- Secondary -Demand (3,308 Kwh)  | $450.61  | $552.89  | 22.7%  | $528.52  | 17.3%  |
|   |   |   |   |   |   |
| SC2- Second- Non-Demand (532 Kwh)  | $70.46  | $87.59  | 24.3%  | $83.81  | 18.9%  |
|   |   |   |   |   |   |
| SC2 - Primary (105,514 Kwh)  | $9,958.27  | $11,225.55  | 12.7%  | $10,892.36  | 9.4%  |
|   |   |   |   |   |   |
| SC3- Muni Street Lighting 1,960 (Kwh)  | $869.53  | $1,250.09  | 43.8%  | $1,171.80  | 34.8%  |
|   |   |   |   |   |   |
| SC4- Private Lighting (162 Kwh)  | $45.06  | $51.35  | 14.0%  | $45.06  | 0.0%  |

* 1. This Rate Structure Settlement provides for a sound and reasonable rate structure and rate design within the range of positions of the Rate Structure Petitioners testimony and evidence in this matter. The rate structure and rate design proposed in Appendix A and B is based within the range of the varying positions of the parties in this proceeding to create a rate structure under black box revenue requirement of $1,400,000 previously agreed to by the Statutory Advocates and the Company. The Rate Structure Petitioners agree that adoption and approval of this Joint Petition for Settlement on Rates Structure and Rate Design by the ALJ and the Commission, in conjunction with the terms agreed to unanimously by the statutory advocates and the company in the April 9, 2021 black box settlement, is in the public interest.

* 1. Under this Rate Structure Settlement, the total monthly bill for a typical residential customer using 674 kilowatt hours (kWh) per month will increase from $103.90 to $116.49, or by approximately 12.1%. The distribution portion of the bill will increase from $58.62 to $71.30, or by approximately 21.6%. Similarly, the typical bill for commercial demand customers (SC2-Secondary - Demand) using 3,308 kWh per month will increase from $450.61 to $528.52, or approximately 17.3%. Finally, the typical bill for commercial non-demand customer (SC2-Secondary – Non-Demand) using 532 kWh per month will increase from $70.46 to $83.81, or approximately 18.9%.

* 1. This Rate Structure Settlement arises from extensive discovery, testimony and discussions and reflects compromises by all sides. It is being proposed by the Rate Structure Petitioners to resolve the remaining unsettled issues in the rate case--rate structure and rate design. Accordingly, this Joint Petition for Settlement on Rate Structure and Rate Design is made without any admission against, or prejudice to, any positions which any Rate Structure Petitioner might adopt during any subsequent litigation of this proceeding (should this Petition for Settlement be rejected or modified), or in any other proceeding.

* 1. If the Commission withholds approval of this Joint Petition for Settlement on Rate Structure as to any of the terms and conditions, or alters any of the terms and conditions, any Rate Structure Petitioner may withdraw from this Rate Structure 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.

* 1. Rate Structure Petitioners agree that Commission approval of this Petition for Settlement without modification, in conjunction with the April 9, 2021 Joint Petition for Partial settlement, 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.

* 1. In the event that the Commission does not approve this Joint Petition for Settlement on Rate Structure and Rate Design by Pike, I&E, and the OCA in conjunction with the Joint Petition filed April 9, 2021, the Rate Structure Petitioners reserve their respective rights to resume litigation. If the ALJ, in her Recommended Decision, recommends that the Commission adopt this Petition for Settlement on Rate Structure and Rate Design as herein proposed, the Rate Structure Petitioners agree to waive the filing of Exceptions on the matters settled in this Petition for Settlement on Rate Structure. However, if the ALJ in her Recommended Decision, recommends that the Commission adopt a different rate structure and rate design, the Rate Structure Petitioners do not waive their right to file Exceptions to the Recommended Decision. The Rate Structure Petitioners do not waive their rights to file Reply Exceptions to the Office of Small Business Advocate’s Exceptions, if any, with respect to Rate Structure and Design outcome of the Recommended Decision, as well as any additional matters dealt with, or any modifications to the terms and conditions of this Petition for Settlement on Rate Structure recommended by the ALJ in her Recommended Decision.

* 1. The Rate Structure Petitioners recognize that this Petition for Settlement does not bind formal complainants who have not joined herein.

\* \* \*

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

Rate Design Settlement at 3-8.

**2. Positions of the Parties**

* 1. **Statements in Support of the Rate Design Settlement**

PCLPC asserted before the ALJ that the Rate Design Settlement achieves a fair and balanced black box approach to administer the annual revenue increase established under the Revenue Settlement. Specifically, PCLPC noted that Paragraph 12 of the Rate Design Settlement provides a rate comparison for all customers based on the average customer bill, which illustrates the reasonable and equitable customer impact. Under the Rate Design Settlement, the average residential customer will experience an estimated 12.1% increase, or roughly $12.59 increase in their monthly electric distribution costs. Similarly, the average SC2-Secondary – Demand customer will experience an estimated 17.3% increase, or roughly $77.91 increase in their monthly electric distribution costs. Finally, the average SC2- Secondary – Non-Demand will experience an estimated 18.9% increase, or roughly $13.35 in their monthly electric distribution costs. PCLPC Statement in Support at 1-5.

PCLPC argued that the rate structure and design reached by compromise reflects a fair balance within the range of positions argued by the Parties, including the OSBA. PCLPC further noted that, contrary to the OSBA’s arguments, the Commission has repeatedly recognized that no single cost of service study methodology is “perfect,” and that many factors may be considered and are reasonable for experts to present unique and defensible methodologies. *Id*.

I&E, while noting that the Code does not permit a public utility to establish or maintain unreasonable differences in rates among rate classes, asserted that the revenue allocation set forth in the Rate Design Settlement not only reflects a compromise of the Rate Design Petitioners, but also produces an allocation that moves each class closer to its actual cost of service. I&E maintained that the revenue allocation under the Rate Design Settlement is in the public interest because it is designed to limit customer class subsidies, and to place costs upon the classes responsible for causing those costs. *See*, I&E Statement in Support at 1-7; OCA Statement in Support at 1-4.

* 1. **Statements in Opposition to the Rate Design Settlement**

As noted, *supra.*, nonactive party ratepayer-complainants filed comments in general opposition to any rate increase.

The OSBA opposed the revenue allocation in the Rate Design Settlement, arguing that it improperly increases the allocation to the OSBA’s constituent small business class. The OSBA argued that the Parties to the Rate Design Settlement utilized a COSS premised upon studies which included “obvious technical errors,” and maintained that a COSS proposed by the OSBA should be utilized to determine the proper revenue allocation. Specifically, the OSBA asserted that the other COSSs were not appropriately grounded in cost causation, which is the “polestar” criterion for revenue allocation, per *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006). Accordingly, the OSBA argued that the revenue allocation reached *via* compromise, in the context of a negotiated settlement, which falls within the range of possible revenue allocations argued by the Parties’ respective experts, is not supported by any evidence in the record. OSBA Comments in Opposition at 1-10.

 **3. ALJ’s Recommended Decision**

In the Recommended Decision, the ALJ noted that, while the Active Parties did reach an unanimous agreement regarding customer charges under the Revenue Settlement, the Active Parties did not reach an unanimous agreement on the allocation of the revenue increase among PCLPC’s customer classes, where the OSBA disputed the allocation of the increase to its constituent small business class. Noting the OSBA’s objections, the ALJ reviewed the evidence of record developed by the Active Parties, and the rate structure and rate design terms and conditions achieved under the proposed “black box” Rate Design Settlement, albeit nonunanimous. The ALJ concluded that, in these circumstances, the terms of the Rate Design Settlement achieve a just and reasonable rate increase among PCLPC’s customer classes, including the small business class, which was supported by substantial evidence of record and is in the public interest. In reaching this conclusion, the ALJ applied the standards applicable to approving a settlement in rate proceedings. R.D. at 41-42.

The ALJ was not persuaded by the OSBA’s position that the revenue allocation under the Rate Design Settlement should be rejected because it conflicted with the OSBA’s COSS, stating:

The methods and inputs for the competing COSS presented in this case were hotly contested among the experts. Contrary to OSBA’s position, there is substantial evidence in the record which suggests that it is not appropriate to rely on OSBA’s COSS to establish rates.

Both PCLP and OCA criticized OSBA’s cost of service study, which resulted in a significant portion of the revenue increase allocated to the residential class. Specifically, in rebuttal testimony, PCLP’s experts disputed the results of OSBA’s COSS, noting that OSBA’s assignment of a 30% customer component to primary plant is not only arbitrary, but also grossly overstates the customer component. Accordingly, PCLP’s experts recommended that OSBA’s COSS is “grossly in error” and should be rejected.

Similarly, OCA’s witness criticized the accuracy of OSBA’s COSS, arguing that Mr. Knecht made certain assumptions based solely on judgment and the practices of other utilities, resulting in an inaccurate assignment of costs to the various rate classes.

R.D. at 37 (citations omitted).

Accordingly, the ALJ recommended that the Commission approve the Rate Design Settlement without modification.

**4. Exceptions and Replies**

In its Exception No. 1, the OSBA contends that the ALJ erred by approving, without modification, the Rate Design Settlement submitted to the Commission by PCLPC, I&E and the OCA. The OSBA’s Exception No. 1 reiterates its arguments from testimony and briefs, maintaining its belief that the Settlement is neither reasonable nor in the best interest of the public. The OSBA maintains that an “incorrect” COSS was relied upon in approving the Rate Design Settlement, thereby resulting in an impermissible increase to the non-residential SC2 class of customers. OSBA Exc. at 3.

In the OSBA’s view, it was not within the ALJ’s discretion to recommend approval of rate structure and rate design which represents a compromise of the range of the positions argued by the Parties, as in the Rate Design Settlement. Rather, the OSBA in effect, argues that a single cost of service study must be identified as the underpinning of the agreed upon compromise rate structure and rate design. Therefore, in the present case, the OSBA asserts that the ALJ was required to select a single COSS to rely upon in approving the “black box” settlement of the rate structure and rate design under the Rate Design Settlement. OSBA Exc. at 4-8.

In Reply, PCLPC, I&E and the OCA each point out that the Rate Design Settlement is a “black box” settlement, representing a compromise within the range of positions of the Parties. The Parties note that no single COSS methodology was relied upon in reaching the compromise rate structure and rate design, as no single COSS was required as a prerequisite to approval of a “black box” settlement of the revenue allocation among customer classes. Therefore, PCLPC, I&E and the OCA maintain that the ALJ did not commit reversible error by approving the Rate Design Settlement. PCLPC R. Exc. at 2-5; I&E R. Exc. at 3-8; OCA R. Exc. at 1-6.

 **5. Disposition**

Based upon our review, and as discussed in more detail, *infra*, having thoroughly reviewed PCLPC’s rate filing, the supporting evidence of record, and the proposed rates and rate structure and design in the Rate Design Settlement, the Recommended Decision, and the OSBA’s Exceptions and Replies thereto, we conclude that it is in the best interest of the public to approve the Rate Design Settlement. Therefore, we shall deny the Exceptions of the OSBA, adopt the ALJ’s recommendation and approve the Rate Design Settlement.

In taking this action, we concur with the PCLPC, I&E, the OCA and the ALJ that the provisions of Rate Design Settlement, in these circumstances, achieve a just and reasonable rate increase among PCLPC’s customer classes, which was supported by substantial evidence of record and is in the public interest.

We note that our disposition of the Rate Design Settlement in this case requires our consideration whether a nonunanimous settlement is just and reasonable and in the public interest. It is understood that, per *Popowsky II*, in rate proceedings, the Commission has broad discretion to determine what factors are relevant to consider and what weight is to be given to those factors, when determining whether the proposed rate increase should be approved. Therefore, while the standard for approval of a partial or nonunanimous settlement remains whether the settlement is reasonable and in the public interest *per* *Pa. PUC v. Philadelphia Electric Company*, the Commission’s discretion continues to include consideration of whatever factors are deemed relevant in a given case per *Popowsky II*. Such factors may be weighed differently as the Commission deems appropriate in the given circumstances.

Turning now to the Rate Design Settlement in the present case, upon review, we shall approve it, without modification. We find that all the Parties were afforded due process in this proceeding, and that the single issue raised by the OSBA does not establish a basis to undermine our finding that the Rate Design Settlement is reasonable and in the public intertest. In the present case, the Rate Design Settlement provides a benefit to the ratepayers, by a reduction in the overall rate increase originally sought by PCLPC and limiting the rate increase to an amount necessary for the PCLPC to provide safe and reliable electric service to its customers. R.D. at 36-42; PCLPC Statement in Support at 1-5; I&E Statement in Support at 1-7; OCA Statement in Support at 1-4.

While we acknowledge the rate increase and rate design and structure was achieved under the terms of a “black box” settlement, which does not necessarily attribute specific factors relied upon in the specified rate increase, we expressly find that the substantial evidence of record supports the rate structure and rate design agreed to under the terms of the Rate Design Settlement.

Further, we agree with the ALJ’s finding that, considering the positions of the Parties summarized on pages 30 through 44 of the ALJ’s Recommended Decision, the revenue allocation and rate design provided for under the Rate Design Settlement is an appropriate resolution of the issue, falling within a range of the Parties’ positions, as presented by their respective experts. *See* R.D. at 30-50.

We disagree with the OSBA’s argument that the negotiated settlement achieved under the Rate Design Settlement is not supported by substantial evidence. We find the OSBA’s position, that the ALJ was required to approve and rely upon a single COSS among those proffered by the Parties, in order to approve the “black box” compromise rate structure and rate design achieved under the Rate Design Settlement, to be without merit. To the contrary, we approve the Parties’ efforts at reaching a reasonable and just resolution of the allocation of revenues based upon agreement within the range of possible outcomes argued by the Parties and supported by their respective expert’s testimony.

Viewed in its entirety, the Rate Design Settlement fairly and equitably resolves the issues impacting residential consumers, business customers, and the public interest at large and represents a fair balance of the interests of PCLPC and its customers.

Additionally, we find that the Settlement will result in significant savings of time and expenses for all Parties involved by reducing or avoiding the necessity of further administrative proceedings, as well as reducing or avoiding the need for possible appellate court proceedings, thereby conserving administrative resources. Further, the Rate Design Settlement provides regulatory certainty with respect to the disposition of issues which benefits all the parties. For the reasons stated herein and in the Rate Design Petitioners’ Statements in Support, we concur with the ALJ’s conclusion that the Rate Design Settlement is supported by substantial evidence and is in the public interest. Accordingly, we shall adopt the ALJ’s Recommended Decision that approves the Rate Design Settlement, without modification.

# Conclusion

Based upon our review and analysis of the record and the positions of the Parties, we shall adopt both the Revenue Settlement and the Rate Design Settlement as in the public interest. Additionally, we shall: (1) deny, the Exceptions of the OSBA; and (2) adopt the ALJ’s Recommended Decision, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of the Office of Small Business Advocate filed on May 20, 2021, to the Recommended Decision of Administrative Law Judge Mary D. Long, issued on May 5, 2021, are denied, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Mary D. Long, issued on May 5, 2021, is adopted, consistent with this Opinion and Order.

3. That the Joint Petition for Partial Settlement of Rate Investigation filed on April 9, 2021, by Pike County Light & Power Company - Electric, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate filed at Docket No. R‑2020‑3022135, including all terms and conditions stated therein, is granted, and the Joint Petition is hereby approved, without modification, consistent with this Opinion and Order.

5. That the Joint Petition for Settlement on Rate Structure and Rate Design filed on April 16, 2021, by Pike County Light & Power Company - Electric, the Commission’s Bureau of Investigation and Enforcement, and the Office of Consumer Advocate, filed at Docket No. R-2020-3022135, including all terms and conditions stated therein, is granted, and the Joint Petition is hereby approved, without modification, consistent with this Opinion and Order.

6. That the Pike County Light & Power Company - Electric is authorized to file tariffs, tariff supplements or tariff revisions containing the rates, rules and regulations, consistent with the findings herein, and Appendix B attached to the Joint Petition for Partial Settlement of Rate Investigation, consistent with this Opinion and Order, so as to produce annual sales revenue not in excess of $1.4 million.

7. That the Pike County Light & Power Company - Electric is authorized to file tariffs in the form set forth in Appendix A to the Joint Petition for Settlement of Rate Structure and Rate Design, 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 Opinion and Order.

8. That Pike County Light & Power Company - Electric, the Commission’s 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 Partial Settlement of Rate Investigation filed on April 9, 2021, as though each term therein were the subject of an individual ordering paragraph.

9. That Pike County Light & Power Company - Electric, the Commission’s Bureau of Investigation and Enforcement, and the Office of Consumer Advocate, shall comply with the terms of the Joint Petition for Settlement of Rate Structure and Rate Design filed on April 16, 2021, as though each term therein were the subject of an individual ordering paragraph.

10. That the Formal Complaint filed by the Office of Consumer Advocate in this proceeding at Docket No. C-2020-3022887, be deemed satisfied and marked closed.

11. That the Formal Complaint filed by the Office of Small Business Advocate in this proceeding at Docket No. C-2020-3022858 be deemed satisfied, in part, and dismissed, in part, and marked closed.

12. That the Formal Complaints of Complainants, Shelley Saul at Docket No. C-2020-3022921, Dawn Metzger at Docket No. C-2020-3022987, Anthony Pinkala at Docket No. C-2020-3023020, William H. Yennie, III at Docket No. C‑2020‑3023035, Charles Gillinder at Docket No. C-2020-3023416, Carol Losee at Docket No. C-2020-3023152, John W. Dalton at Docket No. C-2020-3023239, Marla J. Hulse at Docket No. C-2020-3023418, and Candace Howard at Docket No. C‑2020‑3023490, in this proceeding be dismissed and marked as closed.

13. That upon acceptance and approval by the Commission of the appropriate compliance filings, tariffs, tariff supplements or tariff revisions filed by the Pike County Light & Power Company - Electric consistent with this Opinion and Order, this proceeding at Docket No. R-2020-3022135 shall be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 15, 2021

ORDER ENTERED:July 21, 2021

1. The Revenue Settlement and the Rate Design Settlement together resolve the entire rate proceeding. The Revenue Settlement was joined by all Active Parties, while the Rate Design Settlement reflects a *nonunanimous* settlement initiated by all the Active Parties, except for the OSBA. The OSBA maintained that, while the agreed upon rate increase was just and reasonable, the allocation of the rate increase among customer classes was unreasonable in relation to the class of small business customers and argued for a smaller increase to be attributed to the small business customers. [↑](#footnote-ref-2)
2. PCLPC, St. 3 at 2. [↑](#footnote-ref-3)
3. PCLPC, St. 2 at 5. *See Joint Application of Pike Cnty. Light & Power Co., Buyer Corning Nat. Gas Holding Corp.*, Docket No. A-2015-2517036 (Opinion and Order entered August 11, 2016). [↑](#footnote-ref-4)
4. PCLPC, St. 2 at 9; *See Pa. PUC v. Pike Cnty Light & Power (Electric)*, Docket No. R-2013-2397237 (Opinion and Order entered September 11, 2014). [↑](#footnote-ref-5)
5. PCLPC, St. 2 at 9.; *Petition of Pike Cnty. Co. for Approval of its Elec. Long-Term Infrastructure Improvement Plan*, Docket No. P-2020-3022285 (Opinion and Order entered February 25, 2021). [↑](#footnote-ref-6)
6. These public input hearings were conducted to permit public comment on both PCLPC’s Gas rate case filing and the Electric Filing. A detailed account of the testimony offered at the public input hearings regarding the PCLPC’s Electric Filing is set forth in the ALJ’s Recommended Decision and is incorporated herein by reference. R.D. at 5-9. [↑](#footnote-ref-7)
7. By email, ratepayer-complainant Anthony Pinkala (C-2020-3023020) joined Mr. Gillinder’s comments. Ratepayer-complainant Dawn Metzger (C‑2020‑3022987) also noted her agreement with Mr. Gillinder’s comments. [↑](#footnote-ref-8)
8. 1 Pa. C.S. § 1922(1)(pertaining to rules of construction); *PA Financial Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 430-431, 64 A.2d 84, 87 (1995). [↑](#footnote-ref-9)
9. The Revenue Settlement terms are stated verbatim and retain original numbering for ease of reference. [↑](#footnote-ref-10)
10. The Rate Design Settlement terms are stated verbatim and retain original numbering for ease of reference. [↑](#footnote-ref-11)