

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Office of Consumer Advocate	:	
	:	
v.	:	C-2021-3026811
	:	
Pennsylvania Power Company	:	
Pennsylvania Power Company Supplement	:	
No. 97 to Tariff Electric Pa. P.U.C. No. 36 -	:	M-2021-3026675
Distribution System Improvement Charge	:	

RECOMMENDED DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

The Office of Consumer Advocate (“OCA”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) seeking to ensure that the existing and proposed Distribution System Improvement Charge (“DSIC”) tariff and DSIC rate, including *inter alia*, the recovery of Advanced Distribution Management System (“ADMS”) costs, of Pennsylvania Power Company (“Penn Power” or “Company”) do not result in rates and charges that are excessive, discriminatory or otherwise contrary to applicable statutes, Commission regulations or policy.

The parties have reached a settlement. This decision recommends the approval of the Settlement in the Joint Petition for Approval of Settlement (hereinafter "Joint Petition" or “Settlement”) filed by the parties.

In the settlement agreement, Penn Power will not seek recovery of ADMS-related capital costs as defined in and for the period of the Company’s Commission-approved Long Term Infrastructure Improvement Plan (“LTIP”) spanning the period January 1, 2020 through December 31, 2024 (“LTIP II”),¹ through its DSIC Rider effective as of July 1, 2021, or at any point thereafter.² Also, Penn Power is not obligated to refund any ADMS-related capital costs that were recovered through its DSIC Rider for the period beginning on April 1, 2021 and ending June 30, 2021.

HISTORY OF THE PROCEEDING

On June 21, 2021, Penn Power filed Supplement No. 97 to Tariff Electric Pa. PUC No. 36 (“Supplement No. 97”), which proposed to change the DSIC to 3.58%, effective July 1, 2021. OCA asserted that according to its filing, Penn Power began claiming investment in its ADMS as of December 2020.³ ADMS costs recovery was an issue in the settlement in *Petition of Pennsylvania Power Company for Approval of its Long-Term Infrastructure Improvement Plan*, Docket No. P-2019-3012614 (Opinion and Order entered January 16, 2020). The settling parties in that proceeding, including Penn Power and the OCA, agreed that the Company could present a future claim to recover ADMS costs in rates and that the other parties could review and challenge such a claim.⁴

On June 25, 2021, the OCA filed a Formal Complaint with the Commission stating that it wanted to ensure that the Company’s existing and proposed DSIC tariff and DSIC rate, including *inter alia*, the recovery of ADMS costs, do not result in rates and charges that are excessive, discriminatory or otherwise contrary to applicable statutes, Commission regulations or policy.

¹ Petition of Pennsylvania Power Company for Approval of its Long-Term Infrastructure Improvement Plan, Docket No. P-2019-3012614 (Opinion and Order entered January 16, 2020).

² Penn Power Statement in Support of Settlement (“Joint Petition, Attachment A”), p. 2-3.

³ OCA Statement in Support (“Joint Petition, Attachment B”), p. 1

⁴ See *Petition of Pa. Power Co. for a Waiver of the DSIC Cap*, Docket No. P-2019-3012628, Joint Petition for Settlement, ¶12d (approved by PUC Order entered March 12, 2020).

In the Complaint, the OCA made several requests for relief, including that the Commission: (1) investigate Tariff Supplement No. 97 and refund to customers all charges found to be improper; (2) consolidate all complaints filed against Tariff Supplement No. 97; (3) hold full evidentiary hearings examining the reasonableness of the Company's rate changes; (4) hold public input hearings in Penn Power's service territory, if consumer interest arises; (5) modify or reject the DSIC rate and tariff if they are not found to be in compliance with Sections 1301, 1350, 1351, and 1353 of the Public Utility Code, 66 Pa.C.S. §§ 1301, 1350, 1351, 1353; (6) modify or reject the July 1, 2021 DSIC rate and tariff if they are not found to be just and reasonable and in the public interest; and (7) grant any other relief deemed necessary.

On July 19, 2021, Penn Power filed an Answer denying that the DSIC rates calculated to recover ADMS costs during the second and third quarter of 2021 are unjust or unreasonable. The Company further stated that the Company's actions have been reasonable and performed in accordance with all applicable laws, as well as the Company's Commission-approved tariff, the Pennsylvania Public Utility Code, Commission regulations and orders.

By notice dated July 20, 2021, this matter was scheduled for a Prehearing Conference on August 19, 2021, before Administrative Law Judge ("ALJ") Darlene Heep.

A Prehearing Conference Order dated July 27, 2021, was issued.

On August 18, 2021, the Parties each filed a Prehearing Memorandum.

A Prehearing Conference was held on August 19, 2021. At the conference, the Parties agreed to a litigation schedule and reported that settlement discussions were ongoing.

On August 20, 2021, a Call-In Telephonic Evidentiary Hearing Notice was issued that scheduled evidentiary hearings for January 26-27, 2022. A Prehearing Order was issued on September 7, 2021.

On October 13, 2021, Penn Power submitted the Direct Testimony of Scott Wyman and Joanne Savage.

On November 17, 2021, the OCA submitted the Direct Testimony of Jerome D. Mierzwa.

On December 14, 2021, the Parties advised that a settlement in principle had been reached and requested a suspension of the litigation schedule. By Order issued December 16, 2021, the procedural schedule was suspended, and the parties were directed to file the settlement document and statements in support by January 26, 2022. The parties filed a Joint Petition for Approval of Settlement on January 26, 2022 and the record was closed on that day.

FINDINGS OF FACT⁵

1. Penn Power is an electric distribution company and default service provider under the Public Utility Code.⁶

2. Penn Power provides service to approximately 170,000 electric utility customers in Allegheny, Beaver, Butler, Crawford, Lawrence and Mercer Counties.

3. The Office of Consumer Advocate is empowered to represent the interests of consumers before the Pennsylvania Public Utility Commission, pursuant to Act 161 of the Pennsylvania General Assembly, 71 P.S. §§ 309-1 et seq, as enacted July 9, 1976.

4. On June 9, 2016, the Commission entered an Order at Docket Number P-2015-2508931 approving the petition for a Distribution System Improvement Charge filed by Penn Power.

⁵ The Findings of Fact are largely taken from Proposed Findings of Fact presented by the parties in the Joint Petition, Appendix 4.

⁶ 66 Pa.C.S. § 2803.

5. The DSIC charge is updated on a quarterly basis to reflect eligible plant additions placed in service during the three-month period ending one month prior to the effective date of each DSIC charge. Those plant additions are added to the eligible plant additions placed in service since the DSIC started to calculate the updated DSIC charge. The calculation begins with the original cost of the cumulative eligible plant investments less accumulated depreciation to date.⁷

6. On June 21, 2021, Penn Power filed Supplement No. 97, which proposed to change the DSIC to 3.58%, effective July 1, 2021.

7. Penn Power's ADMS project includes development of a software platform that will integrate its outage, distribution management and geographic information systems and segregate the distribution and transmission supervisory control and data acquisition systems.⁸

8. On January 16, 2020, the Commission approved the Penn Power LTIP for 2020-2024, which included Penn Power's ADMS project. The total project cost was estimated to be \$3.31 million and planned for 2022.⁹

9. As of the date of the Joint Petition, the amount of ADMS property put in service is \$98,844; \$99,417 was included in Penn Power's DSIC rate beginning on April 1, 2021, but reduced by a credit in the amount of \$573.00 that was accounted for as an offset to Penn Power's DSIC rate beginning on August 1, 2021.¹⁰

⁷ Joint Petition, Appendix 2, p. 5.

⁸ Joint Petition, Appendix 1, pp. 4-6.

⁹ *Petition of Penn Power Co. for Approval of its Long-Term Infrastructure Improvement Plan*, Docket No. P-2019-3012614, Order at 16, 42 (Jan. 16, 2020).

¹⁰ Joint Petition, Appendix 2, pp. 9-10.

10. No ADMS costs were included in Penn Power's October 1, 2021 or January 1, 2022 DSIC rate change filings.¹¹

11. The remaining amount Penn Power forecasts to place in service associated with its ADMS projects is approximately \$2.7 million, with an expected in-service date happening between October and December 2022.¹²

DESCRIPTION AND TERMS OF THE JOINT PETITION FOR SETTLEMENT

The Joint Petition for Settlement is a 7-page document signed by both active parties, with 61 pages of attachments. Appendix 1 is Penn Power Statement Number 1, the Direct Testimony of Penn Power witness Scott R. Wyman, attachments and verification. Appendix 2 is the Direct Testimony of Penn Power witness Joanne Savage with attachments and verification. Appendix 3 contains the Direct Testimony of OCA witness Jerome D. Mierzwa with attachments and verification. The parties stipulated to the testimony and Appendices 1, 2 and 3 were admitted into evidence by Order dated February 11, 2022.

Appendix 4 contains Proposed Findings of Fact. Appendix 5 contains Proposed Ordering Paragraphs. Attachment A is a Penn Power Statement in Support of the Joint Petition. Attachment B is the OCA Statement in Support of the Joint Petition.

The essential terms of the settlement are set forth in Section II of the Joint Petition. Settlement paragraphs¹³ are as follows:

16. The Settlement consists of the following terms and conditions:

a. Penn Power agrees that it will not seek recovery of ADMS-related capital costs, as defined in and for the period

¹¹ Joint Petition, Appendix 3, p. 10.

¹² Joint Petition, Appendix 3, p. 10, Attachment A, p. 2.

¹³ Paragraph numbering is maintained to be consistent with the Settlement documentation.

of the Company's Commission-approved LTIP II, through its DSIC Rider effective as of July 1, 2021.

b. In its calculations for the first available DSIC rate change filing following a final order approving this Settlement, Penn Power will clearly itemize a line item to reverse all ADMS costs that Penn Power has recovered for rates effective July 1, 2021 and after.

c. This Settlement in no way represents a waiver of the arguments that either Party has or would make with respect to the appropriateness of recovery of ADMS-related capital costs through Penn Power's DSIC Rider. The Parties agree that this Settlement is not intended to establish precedent as to the issues involved or restrict either Party from raising the same or similar arguments in any future proceeding before the Commission.

d. Notwithstanding and without waiver of those arguments, the Parties agree that Penn Power will not be obligated to refund any ADMS-related capital costs that were recovered through its DSIC Rider for the period effective on April 1, 2021 and ending June 30, 2021.

e. In the event that Penn Power were to elect to pursue DSIC recovery for any ADMS investment placed in service after December 31, 2024, Penn Power will issue a dedicated notice to the OCA advising of inclusion of those costs in any filed rate. This notice will be separate and distinct from the proposed rate filing including the costs.

Settlement p.4. Additional Terms and Conditions of the Settlement reached are as follow:

20. This Settlement is proposed by the Joint Petitioners to settle the instant case and is made without any admission against, or prejudice to, any position which any Joint Petitioner might adopt during subsequent litigation of this case or any other case.

21. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or modify the terms and conditions herein, this Settlement may be withdrawn upon written notice to the

Commission and all active parties within five business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or any Joint Petitioner elects to withdraw as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including but not limited to presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

22. If the ALJ, in her Recommended Decision, recommends that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of exceptions. However, the Joint Petitioners do not waive their rights to file exceptions with respect to any modifications to the terms and conditions of this Settlement, or any additional matters proposed by the ALJ in her Recommended Decision. The Joint Petitioners also reserve the right to file replies to any exceptions that may be filed.

Settlement pp. 6-7.

DISCUSSION

A. Legal Standard

In this case, the parties have reached a settlement. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding.¹⁴

The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a "burden of proof" standard, as is utilized for contested matters. *Pa. Pub. Util. Comm'n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-

¹⁴ "In the Commission's judgment, the results achieved from a negotiated Settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding." 52 Pa. Code § 69.401.

2179103 (Opinion and Order entered July 14, 2011) (*Lancaster*). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions foster, promote and serve the public interest. *Id.*, (citing, *Warner v. GTE N., Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996)) (*Warner*); *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991); *see also, Pa. Pub. Util. Comm'n v. City of Lancaster - Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011). The Commission has also stated that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. Pub. Util. Comm'n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

OCA and Penn Power have agreed to a Settlement that resolves all of the issues in this proceeding. The Settling Parties agree that the Settlement is in the public interest and complies with the Public Utility Code. Penn Power and OCA each provided statements in support of the Settlement, each requesting that the presiding officer and the Commission approve the Joint Petition for Settlement in its entirety without modification.

B. Settlement and Statements in Support

The parties assert that the settlement reached is in the public interest. They state that in reaching the settlement, they considered all contested issues raised in the testimony and evidence and have reached a fair resolution of the issues.¹⁵

1. Penn Power Support for the Settlement

Penn Power believes that the Settlement meaningfully addresses all issues raised by the parties to the case and reduces issues for dispute in a way that produces an overall outcome that is well within the range of reasonable outcomes that are supported by the record

¹⁵ Joint Petition, Attachment A, p. 2-3; Attachment B, p. 3.

evidence in this proceeding.¹⁶ Penn Power also finds that the Settlement "appropriately balances the interests of Penn Power customers in receiving safe, adequate and reliable service at just and reasonable rates with the interests of the Company and its shareholders in being given a reasonable opportunity to earn a fair return on their investment in property dedicated to the public service."¹⁷

Further, Penn Power asserts that the Settlement reduces the administrative burdens on the Commission and the litigation costs of all parties, avoiding the cost of the evidentiary hearing process, and the preparation of briefs and exceptions, and any appeals that would have followed. As stated by Penn Power, "the parties having knowingly entered into compromises they were comfortable with are able to enjoy greater regulatory certainty and collaboration in such a way that makes the outcome one that satisfies all parties in a way they may not otherwise have been able to expect should they have litigated."¹⁸

2. OCA Support for the Settlement

OCA, acknowledging that the settlement contains modifications from the original recommendations proposed by OCA, asserts that the terms and conditions of the settlement satisfactorily address the issues raised in the OCA Formal Complaint and OCA testimony while achieving a fair resolution of the issues presented in the proceedings.¹⁹ OCA also addressed specific aspects of the settlement and why they are in the interest of the public, the parties and the customers.

¹⁶ Joint Petition, Attachment A, p. 3.

¹⁷ *Id.*

¹⁸ Joint Petition, Attachment A, p. 4.

¹⁹ Joint Petition, Attachment B, p. 3.

a. Recovery of ADMS Costs

Up to the date of the filing of the Joint Petition, Penn Power recovered net \$98,844 for ADMS investment put in service in the quarter ending one month prior to its DSIC rate effective April 1, 2021.²⁰ Penn Power intends to invest, approximately, an additional \$2.7 million in ADMS in 2022, which Penn Power planned to recover through DSIC rates in 2022 and 2023.²¹ OCA filed the Formal Complaint and submitted witness testimony questioning whether certain ADMS related costs may be included in Penn Power's DSIC.

OCA witness Jerome D. Mierzwa asserts in his testimony that ADMS costs should not be included in Penn Power's DSIC. He testified that it is a software investment necessary in the normal course of business, is not a DSIC dependent project, and, therefore, should be recovered through base rates as part of the overall capital improvements program.²² Referencing *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611, Final Implementation Order at 23-24, App. A at 2 (Aug. 2, 2012), OCA was also concerned that the ADMS would be utilized to design, operate and manage new facilities to extend service to new customers, and may include transmission costs, neither of which is eligible for DSIC recovery.²³ Penn Power agreeing under the settlement that it will not seek recovery of ADMS-related capital costs for a defined period of the Company's Commission-approved LTIP, while not waiving other future potential ADMS cost recovery methods, addresses OCA's concerns.

Also under the settlement, Penn Power will not be required to refund the \$99,844 recovered through the DSIC rate between April 1, 2021 and June 20, 2021. The company will refund any ADMS costs recovered in DSIC rates effective after July 2021. Any refunds will be included in the first DSIC rate change filing following the final order in the instant matter and is

²⁰ Joint Petition, Attachment 2, pp. 7, 9; Penn Power did not make any further ADMS investments in 2021. OCA Sch. JDM-1 (Penn Power response to OCA-II-1).

²¹ *Id.*

²² Joint Petition, Appendix 3, p. 7-8.

²³ Joint Petition, Appendix 3, p. 8; Attachment B, pp. 3-4.

to be itemized in the supporting calculations submitted with the filing and will not be recovered in Penn Power's DSIC rates and additional ADMS costs through 2021.²⁴

OCA believes that the settlement reached here is a reasonable compromise that addresses its concerns and also allows Penn Power to present a claim to recover its ADMS costs through base rates in a future base rate proceeding.

b. Future Claim for DSIC Recovery of ADMS Costs

The Settlement also provides that if Penn Power claims DSIC recovery for any ADMS investment placed in service after December 31, 2024, Penn Power will issue a dedicated notice to the OCA advising of inclusion of those costs in any rate filing, separate and distinct from the proposed rate filing including the costs.²⁵ The Settlement also preserves the rights of the parties to address the appropriateness of recovery of ADMS-related capital costs through Penn Power's DSIC Rider in any future proceeding.²⁶ OCA requests that these provisions be approved because they provide OCA with notice and the opportunity to review and challenge any such claim.

RECOMMENDATION

A settlement is acceptable if the terms and conditions are in the public interest. *See, Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985). The terms and conditions of this settlement meet that standard.

The proposed settlement addresses the concerns of OCA regarding the recovery of ADMS costs in a DSIC but provides Penn Power the opportunity to seek to recover such costs

²⁴ Settlement at ¶¶ 16d, 16b; Attachment B. p. 4.

²⁵ Settlement ¶ 16e.

²⁶ Settlement ¶ 16c.

in a future rate case. The parties have reached a reasonable compromise without a stranglehold on either party. Additionally, the Settlement reduces the administrative burden and costs to resolve the issues.

The Joint Petition for Settlement, as well as the savings of time and expenditures by not fully litigating this case, establish that the Settlement is fair, just, reasonable and in the public interest. Accordingly, it is recommended that the Joint Petition for Settlement be approved in its entirety and without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties in this case. 66 Pa.C.S. §§ 1350-1360.

2. The party filing the Complaint bears the burden of proving by a preponderance of the evidence that it is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

3. 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.s.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

4. The Joint Petition for Approval of Settlement at Docket No. C-2021-3026811 submitted by the Office of Consumer Advocate and Pennsylvania Power Company promotes the public interest and therefore should be approved as submitted, without modification. *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assoc.s.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement of the Office of Consumer Advocate and Pennsylvania Power Company at Docket Number C-2021-3026811 be approved without modification.
2. That the formal complaint at docket number C-2021-3026811 be deemed satisfied and shall be marked closed.

Date: March 14, 2022

/s/
Darlene Heep
Administrative Law Judge