

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2022-3031113
Office of Consumer Advocate	:	C-2022-3031737
Office of Small Business Advocate	:	C-2022-3031858
Philadelphia Area Industrial Energy Users Group	:	C-2022-3032107
Byron L. Goldstein	:	C-2022-3032005
West Norriton Township	:	C-2022-3033273
Hubert Matthews	:	C-2022-3033921
	:	
v.	:	
	:	
PECO Energy Company – Gas Division	:	

RECOMMENDED DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Decision recommends the Commission approve the Joint Petition for Full Settlement of Rate Proceeding (Settlement) dated September 19, 2022, filed by PECO Energy Company – Gas Division, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and the Philadelphia Area Industrial Energy Users Group (hereinafter collectively referred to as “Joint Petitioners”). All active parties in this proceeding have agreed to the Settlement.

The Company proposed an annual increase of approximately \$81.2 million (or 9.1%) in additional distribution revenue. Instead, the Settlement is designed to produce a total annual revenue increase of \$54.8 million (or 6.0%). Under the Settlement:

(1) the monthly residential gas distribution customer charge will increase \$0.62 (or 4.5%) from \$13.63 to \$14.25;

(2) the bill for a typical Residential customer using 80 hundred cubic feet (CcF's) per month will increase by \$8.57 (or 9.0%) per month, from \$95.31 to \$103.88; and

(3) the monthly gas distribution customer charge for a typical General Service rate commercial customer that uses an average of 400 CcF's per month will increase \$20.30 (or 4.8%) from \$420.72 to \$441.02.

This recommended decision approves the Settlement without modification because it is in the public interest and is supported by substantial evidence.

The suspension period for this matter ends on December 30, 2022. Thus, the last reasonable public meeting for the Commission to act is December 8, 2022.

HISTORY OF THE PROCEEDING

On March 31, 2022, PECO Energy Company – Gas Division (PECO or Company), filed Tariff Gas – Pa. P.U.C. No. 5 (Tariff No. 5) with the Pennsylvania Public Utility Commission (Commission) for approval of an annual increase of approximately \$81.2 million (or 9.1%) in additional distribution revenue to become effective May 30, 2022.

On April 4, 2022, the Office of Consumer Advocate (OCA) filed a Formal Complaint, Public Statement, Verification, and a Notice of Appearance on behalf of Laura J. Antinucci, Esq., et. al. The Complaint was docketed at C-2022-3031737.

On April 4, 2022, Scott B. Granger, Esq., entered a Notice of Appearance on behalf of the Bureau of Investigation and Enforcement (I&E).

On April 8, 2022, the Office of Small Business Advocate (OSBA) filed a Formal Complaint, Public Statement, Verification, and a Notice of Appearance on behalf of Steven C. Gray, Esq. The Complaint was docketed at C-2022-3031858.

On April 13, 2022, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene in this proceeding to which no parties objected.

By Order entered April 14, 2022, the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), the filing was suspended by operation of law until December 30, 2022, unless permitted by Commission Order to become effective at an earlier date. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness and reasonableness of PECO's existing rates, rules, and regulations. The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

In accordance with the Commission's April 14, 2022, Order, the matter was assigned to the undersigned Administrative Law Judge F. Joseph Brady.

By Hearing Notice dated April 15, 2022, a Telephonic Prehearing Conference was scheduled for April 27, 2022, at 10:00 a.m.

On April 18, 2022, Byron L. Goldstein filed a *pro se* Formal Complaint. The Complaint was docketed at C-2022-3032005.

A Prehearing Conference Order was issued on April 20, 2022, advising the parties of the date and time of the scheduled Prehearing Conference, and informing them of the procedures applicable to this proceeding.

On April 25, 2022, the Philadelphia Area Industrial Energy Users Group (PAIEUG) filed a Formal Complaint. The Complaint was docketed at C-2022-3032107.

On April 25-26, 2022, Prehearing Memoranda were filed by PECO, the OCA, the OSBA, I&E, PAIEUG, and CAUSE-PA.

A Telephonic Prehearing Conference was held on April 27, 2022. Counsel for PECO, the OCA, the OSBA, I&E, PAIEUG, and CAUSE-PA participated. Consumer Complainant Byron L. Goldstein also appeared *pro se*.¹

On May 11, 2022, Prehearing Order No. 2 was issued memorializing the matters decided and agreed upon by the parties attending the April 27, 2022 Prehearing Conference as well as setting the active parties as PECO, the OCA, the OSBA, I&E, PAIEUG, and CAUSE-PA.

On June 1, 2022, Call-in Telephonic Public Input Hearings were held at 1:00 pm and 6:00 pm with the undersigned presiding. A total of five (5) public witnesses offered testimony at the hearings.

On June 24, 2022, West Norriton Township filed a Formal Complaint. The Complaint was docketed at C-2022-3033273 and West Norriton Township was added as an inactive participant due to the late filing.

On July 13, 2022, Hubert Matthews filed a *pro se* Formal Complaint. The Complaint was docketed at C-2022-3033921 and Hubert Matthews was added as an inactive participant due to the late filing.

On August 11, 2022, PECO filed a Joint Stipulation for Admission of Testimony and Exhibits on behalf of the Joint Petitioners.

¹ Mr. Goldstein stated that he would like to be an inactive participant.

On August 12, 2022, an evidentiary hearing convened as scheduled. During the hearing, PECO presented oral rejoinder testimony, and also made its witnesses available for cross examination. All other party witnesses were excused from appearing at the hearing since all parties agreed to mutual waivers of cross examination and it was agreed that testimony and exhibits would be submitted for admission into the record by joint stipulation and verification.

On August 23, 2022, I issued an Interim Order granting the Joint Stipulation for Admission of Testimony and Exhibits.

On September 19, 2022, a Joint Petition for Full Settlement of Rate Proceeding was filed and served. Signatories to the Settlement include PECO, I&E, the OCA, the OSBA, CAUSE-PA, and PAIEUG. Each of the Joint Petitioners provided a Statement in Support appended to the Settlement.

By Interim Order dated September 21, 2022, the record was closed.

Also, on September 23, 2022, the OCA served a copy of the Settlement and attachments on the inactive Complainants, along with instructions to advise by September 29, 2022, whether they choose to join in, oppose, or not oppose the Settlement. West Norriton Township responded that it will not oppose the Settlement. Byron L. Goldstein and Hubert Matthews did not file a response.

This matter is ripe for recommended decision.

PUBLIC INPUT HEARINGS

On June 1, 2022, Call-in Telephonic Public Input Hearings were held at 1:00 pm and 6:00 pm with the undersigned presiding. A total of five (5) public witnesses offered testimony at the hearings.

Nicole Yerkes is not a customer of PECO gas. Tr. 42. Ms. Yerkes testified on behalf of the Bucks County Opportunity Council's relationship with PECO. Ms. Yerkes testified that PECO has been a partner with the National Energy Education Development (NEED) program for over 20 years, through which it has been able to help hundreds of households each year either prevent a utility shutoff or restore service following a shutoff. Tr. 43. Ms. Yerkes also stated that any increase in the rates will affect low-income families. Tr. 44-45.

Janette Penman is a PECO gas customer who testified that she objected to the proposed rate increase. Tr. 46. Ms. Penman stated that she uses gas for her heat, hot water, and dryer and the proposed increases will make it difficult for families like hers to balance their household budgets. Tr. 47. Ms. Penman also asked that PECO's financials be examined to see what has increased compared to previous years and what can be done to reduce and level out the proposed increase and the number of increases that are being passed along. Tr. 47. She also stated that the number of increases so often and so large are not fair to the customers that the Commission is charged with representing. Tr. 48.

Stephen Luxton appeared on behalf of Energy Coordinating Agency of Philadelphia (ECA). Tr. 50. Mr. Luxton described how PECO partnered with ECA to build a gas training lab for prospective gas technician candidates that would give them more hands-on training. Tr. 51-52. Mr. Luxton also testified that the ECA does not operate in any Pennsylvania counties outside of Philadelphia and the proposed rate increase will not impact the communities served by the ECA in Philadelphia. Tr. 54-55.

Byron Goldstein is a PECO gas customer who testified that he is opposed to the proposed rate increase. Tr. 75. Mr. Goldstein argued that PECO already increased its rates by 47% in the past year which resulted in an increase of over \$200 per month in gas costs to his family during the winter months. Tr. 76. Mr. Goldstein proposed that PECO and its parent company should look to decrease costs overall in doing business, as well as reduce dividends to shareholders in order to reduce the overall cost of gas to its customers. Tr. 76.

John Rowe is not a customer of PECO gas. Tr. 80. Mr. Rowe testified on behalf of the Utility Emergency Services Fund (UESF) and its relationship with PECO. Tr. 80. Mr. Rowe stated that the UESF partners with PECO to provide financial assistance to vulnerable utility customers to help bridge the gap between utility costs and affordability. Tr. 81. Mr. Rowe also testified that the UESF does not serve any PECO gas customers. Tr. 88.

TERMS AND CONDITIONS OF THE SETTLEMENT

The Settlement is a thirty (30) page document containing fifty-three (53) numbered paragraphs. Appendix A to the Settlement contains the proposed tariff supplement and rates to be filed upon approval of the Settlement. Appendix B contains the proof of corresponding revenue. Appendix C contains the gross plant costs. Appendix D contains the rate effects for typical customers in each major rate class. Also attached are Statements A, B, C, D, E, and F, which are the parties' respective statements in support submitted by PECO, I&E, the OCA, the OSBA, CAUSE-PA, and PAIEUG.

The essential terms of the Settlement are contained in Paragraphs 14 – 44, quoted below:²

A. Revenue Requirement

14. PECO will be permitted to charge, effective for service rendered on and after January 1, 2023, the Settlement Rates set forth in Appendix A. The Settlement Rates are designed to produce an annual increase in gas distribution revenues of \$54.8 million, in addition to the Distribution System Improvement Charge (“DSIC”) revenue of approximately \$7 million that will be added into base distribution rates and the DSIC rate will be reset to zero.

15. The Joint Petitioners agree that the Settlement Rates reflect a 2023 statutory state income tax rate of 8.99% and a nine-year amortization of the Accumulated Deferred Income Tax regulatory liability balance based on the difference between the current 9.99%

² For ease of reference, the essential terms of the Settlement, including footnotes, have been adopted verbatim and using the same paragraph numbering as found in the original. Although no substantive modifications were made, the formatting, including footnote numbers, may have been slightly modified consistent with the formatting and footnote numbering found within this recommended decision.

state income tax rate and the expected 4.99% state income tax rate in 2031. The Company will reflect the incremental impact of subsequent decreases to the state income tax rate for the post-2023 tax years through the Company’s existing State Tax Adjustment Clause. If the law regarding this tax decrease changes, is modified or is no longer in effect prior to PECO’s next base rate case, the parties to that proceeding will have the right to revisit this term and take any position there that they so choose.

16. PECO agrees not to seek rate recovery of COVID-19 related incremental expenses incurred during the calendar years of 2020 and 2021 in a future gas base rate case.

B. Gas Base Rate Stay Out

17. PECO will not file for another general rate increase under Section 1308(d) of the Public Utility Code for its gas operations prior to March 15, 2024.

C. Revenue Allocation and Rate Design

18. The Settlement Rates reflect the allocation of the annual net increase in gas distribution revenue to each rate class agreed to by the Joint Petitioners, as set forth in Table 1 below:

Table 1

Rate	Net Distribution Revenue ³	
	Increase	% Increase
Residential (“GR”)	\$39,315,400	14.6%
General Service (“GC”)	\$10,000,000	10.0%
Large High Load Factor (“L”)	\$0	0%
Outdoor Lighting (“OL”)	\$0	0%
Motor Vehicle Service- Firm (“MV-F”)	\$56,600	12.3%
Motor Vehicle Service- Interruptible (“MV-I”)	\$0	0%

³ The net revenue figures presented in Table 1 exclude an increase of approximately \$2,828,000 in operating costs recovered through the Company’s Gas Procurement Charge and Merchant Function Charge.

Rate	Net Distribution Revenue ⁴	
Interruptible Service (“IS”)	\$0	0%
Temperature Controlled Service (“TCS”)	\$0	0%
Gas Transportation – Interruptible (“TS-I”)	\$200,000	2.1%
Gas Transportation – Firm (“TS-F”)	\$2,400,000	16.0%
Total	\$51,972,000	13.2%

19. The Settlement Rates reflect the agreement among the Joint Petitioners with respect to PECO’s monthly Fixed Distribution Service (Customer) Charges for Rates GR and GC, as follows:

Rate GR	\$14.25
Rate GC	\$29.86

For Rates GR and GC, the Variable Distribution Charges were scaled back to produce the class revenues shown in the table in Paragraph 18 above. For all other rate classes, the Fixed Distribution Service Charges under the Settlement Rates were not adjusted, and the Variable Distribution Charges were scaled back to produce the class revenues shown in Table 1 above.

20. The Settlement Rates reflect the agreement among the Joint Petitioners to the following declining block Variable Distribution Charges for Rate GC:

First 200 thousand cubic feet (“mcf”)	\$4.4248
Over 200 mcf	\$3.5201

21. For its next gas base rate filing, the Company agrees to present a cost analysis and rate design proposal for Rate GC that evaluates (a) the potential for differentiated customer charges and (b) the cost basis for any declining block commodity charge differentials proposed in the Company’s next gas base rate case.

22. For its next gas base rate filing, the Company agrees to present a cost analysis of the relative cost to serve customers above

⁴ The net revenue figures presented in Table 1 exclude an increase of approximately \$2,828,000 in operating costs recovered through the Company’s Gas Procurement Charge and Merchant Function Charge.

and below 18 mmcf/year in the TS-F and TS-I rate classes. At a minimum, the Company will undertake the load factor analysis referenced at PECO Statement No. 7-R, page 20.

23. In its next gas base rate case filing, PECO will provide one cost-of-service study and also provide a good-faith calculation of the costs (both directly assigned and allocated) to serve negotiated rate customers, which may be produced under an applicable protective order.

D. Fully Projected Future Test Year Reports

24. PECO will provide the Commission's Bureau of Technical Utility Services, I&E, the OCA, and the OSBA with an update to PECO Exhibit MJT-2, Sch. C-2, no later than April 1, 2023, which will include actual capital expenditures, plant additions, and retirements by month from January 1, 2022 through December 31, 2022. Then, no later than April 1, 2024, another update of PECO Exhibit MJT-1, Sch. C-2 will be submitted showing actuals from January 1, 2023 through December 31, 2023. In PECO's next base rate proceeding, the Company will prepare a comparison of its actual expenses and rate base additions for the twelve months ended December 31, 2023 to its projections in this case.

E. Distribution System Improvement Charge

25. The Company will not implement a DSIC during the calendar year ending December 31, 2023 (except to implement any reconciliation of DSIC amounts in accordance with the Supplemental Implementation Order referenced below). The first DSIC in 2024 will be effective no earlier than March 31, 2024, based on DSIC-eligible expenditures during the period from January 1, 2024 to February 29, 2024. In any event, the Company will not begin to impose a DSIC until the total aggregate gross plant costs (before retirement, depreciation or amortization in 2022 and 2023) associated with the eligible property that has been placed in service exceed the following total aggregate plant costs claimed by the Company in the FPFTY: \$4,043,796,000, shown in detail in Appendix C.

26. In compliance with the Supplemental Implementation Order entered on September 21, 2016 at Docket No. M-2012-2293611, the amount of \$4,043,796,000 shown in Appendix C constitutes the baseline of gross plant balances to be achieved in order to restart charges under the Company's DSIC. This provision relates solely to the calculation of the DSIC during the time that the Settlement

Rates are in effect and is not determinative for future ratemaking purposes of the projected plant additions to be included in rate base in a fully projected future test year filing.

27. For purposes of calculating its DSIC, PECO shall use the equity return rate for gas utilities contained in the Commission's most recent Quarterly Report on the Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for gas utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa. C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa. C.S. § 1358(b)(1).

F. Gas Safety

(1) Gas Mapping Program

28. PECO agrees to accelerate its gas mapping program from its original 20-year commitment⁵ to a 15-year commitment, to be completed by December 31, 2032.

(2) Distribution Integrity Management Plan (“DIMP”)

29. PECO will continue its comprehensive analysis of its DIMP threat rankings and will commit to creating additional threat categories. PECO will communicate its findings and resulting changes to the Commission's Gas Safety Division.

30. PECO will host a collaborative to update I&E Safety on or before March 1, 2023 regarding the creation of new threat categories into PECO's DIMP prior to the anticipated 2023 Commission's DIMP Audit in the Spring of 2023.

G. Customer Programs

(1) Gas Energy Efficiency and Conservation (“EE&C”) Program

31. PECO will maintain the original \$2.008 million budget for Residential rebates under PECO's Gas EE&C Program along with the two originally proposed additional rebates. The Company agrees to perform an analysis of Residential and Small Commercial natural gas EE&C measures in 2023. The analysis will include items such as cost effectiveness, projected impact, adoption estimates, costs of

⁵ See *Pa. P.U.C. v. PECO Energy Co.*, Docket No. C-2015-2479970 (Opinion and Order entered Oct. 27, 2016) at 5.

incentives, and savings to ensure that PECO promotes reasonable measures to reduce natural gas use among residential and small commercial customers. PECO will also retain the ability to add measures and adjust incentive levels and energy efficiency requirements.

(2) Safe and Efficient Heating Program (“SEHP”)

32. PECO agrees to withdraw its request to change its existing SEHP budget in this proceeding.

H. Universal Service Programs

(1) Low-Income Usage Reduction Program (“LIURP”)

33. PECO will provide an additional \$650,000 in annual LIURP funding, which will increase program costs from the as-filed budget of \$2.5 million to \$3.15 million. In addition to this overall LIURP budget increase, PECO will also establish a three-year pilot program with an additional \$100,000 annual budget (\$300,000 total) to support health and safety remediation for natural gas customers who are deferred for participation in LIURP due to health and safety issues with their home. PECO will share relevant pilot data on an annual basis with its Universal Service Advisory Committee (“USAC”) regarding participation rates, spending levels, and the extent to which participants were able to receive full LIURP services after receiving health and safety remediation through the pilot.

34. Any unused LIURP budget will roll over and be added to the budget for the following year. If the amount of a carry-over from one year to the next exceeds 10% of the total budget, PECO will file a letter at the then-current Universal Service and Energy Conservation Program docket notifying the parties to this proceeding of the reason for the underspend and identifying the steps it will take to fully expend the remaining budget without impacting LIURP spending for the subsequent program year.

35. PECO agrees to track and report annually to its USAC on the number of LIURP jobs deferred due to health and safety issues with the home or other extenuating circumstances, and the specific reason(s) for deferral.

36. Within 12 months of a Commission Order approving this Settlement, PECO agrees to establish a multifamily working group comprised of members from its USAC to review multifamily usage data for its low-income customers, and will work in good faith with

members of the multifamily working group to determine (1) if it is necessary to establish a LIURP pilot program designed to serve multifamily residents whose usage is comparatively high but does not meet PECO's high usage threshold and (2) how such pilot program would be funded.

(2) Matching Energy Assistance Program (“MEAF”)

37. PECO agrees to contribute \$300,000 of shareholder funds annually to its MEAF program to provide grant assistance for its customers. At the end of each program year, PECO will allocate any funds for which it has not received a customer match – up to \$300,000 annually – to the MEAF agencies (in proportion to the number of low-income customers in each county within PECO's service territory) to support the distribution of additional MEAF grant assistance. All MEAF contributions will be used by MEAF agencies for the sole purpose of providing MEAF assistance to PECO customers. These provisions do not preclude an order or agreement in another case or context for additional MEAF funding.

(3) Outcome Objectives

38. Beginning in 2025, PECO will provide an annual report to its USAC that will include measurable outcome objectives/metrics aimed at: (1) improving how confirmed low-income customers are identified (as a percentage of estimated low-income customers); and (2) increasing enrollment of confirmed low-income customers into the Company's Customer Assistance Program (“CAP”) (by Poverty Level). These metrics will be measured against calendar year 2024 data as reported to the Commission's Bureau of Consumer Services. PECO will provide an opportunity for parties to respond to and discuss its proposed outcome objectives in the last USAC meeting of 2024.

39. In addition, PECO agrees to have at least two collaborative meetings to discuss possible avenues for reducing CAP defaults due to a failure to recertify. PECO will invite all of the parties to this proceeding and any interested USAC members to these meetings. PECO will host at least one of the collaborative meetings within 12 months from the date rates approved in this proceeding are effective and another within 24 months from the date that rates are effective. In order to aid the discussion, prior to each collaborative PECO will provide CAP failure to recertify default rates broken down by Poverty Level for the preceding 12 months. PECO will consider the recommendations of the collaborative members in good faith as it considers any appropriate modifications to its CAP.

40. Nothing in Paragraphs 38 and 39 of this Settlement limits the rights of any party to suggest future outcome objectives in any future proceeding.

(4) Outreach

41. PECO's Gas Division will continue its simplified application process for Low-Income Home Energy Assistance Program recipients seeking to enroll in CAP. PECO will report annually to its USAC about the number of gas customers who are able to enroll through this process.

42. PECO's low-income programs brochure, which describes CAP and LIURP in both English and Spanish, will be provided at outreach events and upon request to customers, community partners, and other interested parties. It will also be provided to all new residential gas customers as part of the customer welcome packet. Within three months of a Commission Order approving this Settlement, PECO will provide the draft brochure to its USAC members so the members can review and provide suggested edits.

43. As part of PECO's Natural Gas Conversion Program, the Company will provide the brochure described in Paragraph 42 above to inform those customers of PECO's low-income assistance programs.

I. Tariff Changes

44. As shown on Appendix A, the Company will remove the following language: "In the case of fraud, the reconnection charge will also include allocated overheads, all investigative costs and administrative costs as determined by the Company" and the column "Reconnect Fees" with \$370.00 from existing Rule 17.6. The Joint Petitioners agree to the Company's other originally proposed tariff changes set forth in PECO Exhibit JAB-2.

Settlement, ¶¶ 14-44.

Other specified terms of the Settlement include the provisions that: (1) each term and condition set forth in this Joint Petition, whether or not set out in a numbered paragraph, shown in a table or other graphic presentation, bolded, italicized or otherwise emphasized, or set forth in the body, a footnote, or parenthetical, or appendix, is a material consideration to the entry into this Settlement by the Joint Petitioners (Settlement, ¶ 48); (2) the Commission's

approval of the Settlement will not be construed as approval of any Joint Petitioner’s position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement, and thus, this Settlement may not be cited as legal precedent in any future proceeding, except to the extent required to implement this Settlement (Settlement, ¶ 49); (3) the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any Joint Petitioner in this or any other proceeding, if it were fully litigated (Settlement, ¶ 50); (4) the Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement (Settlement, ¶ 51); (5) the Settlement is conditioned upon the Commission’s approval of all its terms and conditions without modification; in the event the Commission does not approve the Settlement, or modifies any of the terms and conditions, the Joint Petitioners may withdraw from the Settlement upon written notice; in the event the Commission does not approve the Settlement or the Company or any other Joint Petitioner elects to withdraw from the Settlement as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case (Settlement, ¶ 52); and (6) if the presiding officer recommends approval of the Settlement, then the Joint Petitioners waive the filing of Exceptions but do not waive the filing of Exceptions to any recommended modifications and reserve the right to file Reply Exceptions in the event any Exceptions are filed (Settlement, ¶ 53).

DISCUSSION

A. Applicable Law

The purpose of this investigation is to establish rates for PECO customers which are “just and reasonable” pursuant to Section 1301 of the Public Utility Code, 66 Pa.C.S. § 1301. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. Gas and Water Co. v. Pa. Pub. Util. Comm’n*, 341 A.2d 239 (Pa. Cmwlth. 1975). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works and*

Improvement Company v. Public Service Commission of West Virginia, 262 U.S. 679 (1923) (*Bluefield*), and *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944). In *Bluefield* the United States Supreme Court stated:

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

Bluefield, 262 U.S. at 692-93.

The “burden of proof” standard employed in contested matters is not the standard for deciding whether a proposed settlement should be recommended for approval. *Pa. Pub. Util. Comm’n v. City of Lancaster -- Bureau of Water*, 2010 Pa. PUC LEXIS 1318 (Pa. PUC 2010). *See also Pa. Pub. Util. Comm’n v. Penn Estates Utils., Inc. Water Div.*, 2012 Pa. PUC LEXIS 331 (Pa. PUC 2012). In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. York Water Co.*, Docket No. R-00049165 (Opinion and Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm’n v. C. S. Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991).

Section 315(a) of the Code reads as follows:

§ 315. Burden of proof

(a) 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. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

66 Pa.C.S. § 315(a). Consequently, in this proceeding, the Borough has the burden to prove that the rate increase it has proposed through the Settlement is just and reasonable. The Joint Petitioners have reached an accord on the issues and claims that arose in this proceeding and submitted a Joint Petition for Settlement for Commission review. In reviewing the Settlement, the question which must be answered is whether it is in the public interest. The Joint Petitioners have the burden to prove that the Settlement is in the public interest.

In addition, it is the policy of the Commission to encourage settlements. 52 Pa. Code § 5.231(a). The Commission has set forth settlement guidelines and procedures for major rate cases at 52 Pa. Code § 69.401, wherein the Commission states:

§ 69.401. General.

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. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402-69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases. A partial settlement is a comprehensive resolution of all issues in which less than all interested parties have joined. A stipulation is a resolution of less than all issues in which all or less than all interested parties have joined.

Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. Rate cases are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows 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 reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy. *Pa. Pub. Util. Comm'n. v. PECO Energy Co.*, Docket No. R-2018-3000164 (Opinion and Order entered Dec. 20, 2018).

Nevertheless, the Commission has also stated:

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. 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. Because the Joint Petitioners request the Commission enter an order in this proceeding approving the Partial Settlement without modification, they share the burden of proof to show that the terms and conditions of the Partial Settlement are in the public interest.

Id. at 15 (citations omitted).

The instant Settlement was achieved without specific ratemaking adjustments to support the specific components it contains. However, the Settlement balances the interests of the Joint Petitioners to the proceeding and provides reasonable resolutions for the issues that were pending, producing fair results. The Joint Petitioners have agreed to an overall outcome that they find reasonable under the unique circumstances of the proceeding and have not identified individual components of the overall revenue requirement to settle upon.

The Settlement in this case is a “black box” settlement. This means that the parties were not able to agree on each and every element of the revenue requirement calculation. The Commission has noted that “black box” settlements are an important aspect in the process of

delivering timely and cost-effective regulation.” *Pa. Pub. Util. Comm’n v. Citizens’ Elec. Co. of Lewisburg, Pa.*, Docket No. R-2010-2172665 (Order entered Jan. 13, 2011); *See also Pa. Pub. Util. Comm’n v. Wellsboro Elec. Co.*, Docket No. R-2010-2172662 (Order entered January 13, 2011); *Pa. Pub. Util. Comm’n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered Dec. 19, 2013); *Pa. Pub. Util. Comm’n v. Borough of Ambler Water Dep’t*, Docket No. R-2014-2400003 (Order entered Dec. 4, 2014); *Pa. Pub. Util. Comm’n v. PECO Energy Co.*, Docket No. R-2015-2468981 (Opinion and Order entered Dec. 17, 2015); *Pa. Pub. Util. Comm’n v. Pa.-Am. Water Co.*, Docket No. R-2017-2595853 (Order entered Dec. 7, 2017); and *Pa. Pub. Util. Comm’n v. PECO Energy Co.*, Docket No. R-2018-3000164 (Opinion and Order entered Dec. 20, 2018).

A “black box” settlement is a means to reach agreement on a rate increase in a case where the issues raised are varied and complex. To delineate and specify each component of the rate increase to the issues would be difficult, time-consuming, expensive and costly to the consumers as a rate case expense. To curtail any delineation is to save time, expense and costs of the parties and the ratepayers. The Commission has in the past found such “black box” settlements to be reasonable and in the public interest. *See e.g., Pa. Pub. Util. Comm’n v. Columbia Gas of Pa., Inc.*, Docket No. R-2014-2406274 (Opinion and Order entered Dec. 10, 2014) (approving “black box” settlement for a base rate increase of \$32.5 million); *Pa. Pub. Util. Comm’n v. Duquesne Light Co.*, Docket No. R-2013-2372129 (Opinion and Order entered Apr. 23, 2014) (approving “black box” settlement for a base rate increase of \$48 million).

The instant case is consistent with Commission precedent.

B. Analysis

The Joint Petitioners submit that the Settlement is in the public interest because it provides for an annual revenue increase of \$54.8 million (or 6.1%) in lieu of the originally requested increase of approximately \$81.2 million (or 9.1%). Further, as part of the Settlement, PECO also agreed to not file for another gas distribution base rate increase prior to March 15, 2024, if the Settlement is approved. *See Settlement*, ¶¶ 14, 17.

According to the Joint Petitioners, the Settlement achieves a reasonable and beneficial result while curtailing the costs of litigation in avoiding evidentiary hearings, briefing, and expending further time by the Commission and the parties. The Joint Petitioners point out that they arrived at the Settlement terms after a comprehensive investigation of PECO's operations and finances, which included: (1) extensive discovery; (2) submission of written direct, rebuttal, and surrebuttal testimony covering a wide range of issues; (3) public input hearings; (4) an evidentiary hearing in which PECO witnesses presented oral rejoinder; and (5) negotiations among the Joint Petitioners as to the appropriate revenue level, rate structure, rate design, and other matters, as set forth in detail in the Settlement. The Joint Petitioners also assert that the Settlement has been achieved among parties representing a wide array of stakeholder interests, including residential, commercial and industrial customers, and organizations representing the interests of low-income customers. The Settling Parties advocate that the proposed Settlement is just, reasonable, in the public interest and should be approved without modification.

The individual parties that make up the Joint Petitioners offer further arguments of why the Settlement is in the public interest in their statements of support attached to the Settlement. These reasons are examined in the analysis below.

1. Settlement Terms

(a) Revenue Requirement (Settlement, ¶¶ 14-16)

The Settlement provides for gas distribution base rates designed to produce an annual increase in gas distribution base rate operating revenues of \$54.8 million for service rendered on and after January 1, 2023. *See* Settlement, ¶14. The \$54.8 million increase is in addition to base distribution rates (Settlement Rates) after the roll-in to those rates of approximately \$7 million in DSIC revenue and reflects adjustments for unbundled operating costs recovered through PECO's Gas Procurement Charge (GPC) and Merchant Function Charge (MFC). *Id.* The net revenue increase of \$54.8 million equates to a 6.0% increase of PECO's total Pennsylvania jurisdictional operating revenues. *See* Statement A, p.10.

The agreed-upon revenue requirement reflects the 2023 statutory state income tax rate of 8.99% and a nine-year amortization of the Accumulated Deferred Income Tax regulatory liability balance based on the difference between the current 9.99% state income tax rate and the expected 4.99% state income tax rate in 2031. *See* Settlement, ¶15. Also, PECO agreed not to seek rate recovery of COVID-19 related incremental expenses incurred during the calendar years of 2020 and 2021 in a future gas base rate case. *See* Settlement, ¶16.

In its Statement in Support, PECO noted that under the Settlement Rates, the bill for a typical Residential customer using 80 Ccf per month will increase by \$8.57 per month, from \$95.31 to \$103.88 (or 9.0%). *See* Statement A at 11. PECO also noted that by comparison, in the Company's initial filing, the bill for a typical Residential customer using 80 Ccf per month would have increased by \$12.26 per month, from \$95.31 to \$107.57 (or 12.9%). *Id.*

The Company further explained that it has continued to make substantial investments in its gas distribution system to ensure that customers continue to receive safe and reliable service. *Id.* PECO attested that it will invest approximately \$1.8 billion in new and replacement gas utility plant between January 2022 and December 2026, during which, materials and contracting costs will continue to increase as a result of general inflationary trends and rising labor and material costs in the utility industry. *Id.* PECO argued that these factors have compromised the Company's ability to earn a fair return on its investment absent rate relief. *Id.* PECO stated that on a *pro forma* basis, its gas distribution operations are projected to produce an overall return on invested capital of 5.67%, and a return on common equity of only 7.18%, during the twelve months ending December 31, 2022, which is inadequate. *Id.* PECO's position is, absent rate relief, its financial results would deteriorate even further in 2024 and thereafter could jeopardize PECO's ability to appropriately invest in the infrastructure needed to maintain and improve its safety, reliability, and customer service levels. *Id.* PECO explained that it is particularly important to maintain, and possibly improve its credit ratings, because the gas distribution function is extremely capital-intensive for which PECO will need to invest approximately \$1.8 billion in new and replacement gas distribution plants over the next five years (2022-2026). *Id.*

In its Statement in Support, I&E submitted that in its direct testimony, I&E discussed significant operating and maintenance expense adjustments and, cost of common equity and overall rate of return adjustments regarding PECO's base rate filing that had the potential to have significant impacts to the proposed overall annual distribution revenue increase. *See* Statement B at 8. In addition, I&E echoed the same "black box" settlement arguments advanced by the other Joint Petitioners. *Id.* As a result, I&E fully supports the negotiated level of overall base rate revenue increase as a full and fair compromise that provides PECO, the Joint Petitioners, affected ratepayers, and the Commission with resolution of these issues, all of which is in the public interest. *Id.*

In its Statement in Support, the OCA submitted that while the final revenue requirement settled upon deviates from the OCA's litigation position, other parties in this proceeding arrived at a revenue requirement that was higher than that of the OCA, and, thus, the OCA weighed the risk associated with litigation and the likelihood of an allowed increase against the settlement as a whole. *See* Statement C, pp. 6-7. The OCA further stated that, in light of the other provisions and protections provided to customers by this Settlement and the agreement by PECO for a stay-out until at least mid-March 2024, the Settlement is a fair compromise. *Id.*

The OCA also stated that the Settlement represents a "black box" approach to the revenue requirement, except for certain specified accounting provisions. *Id.* at 7. The OCA further noted that "black box" settlements avoid the need for protracted disputes over the merits of individual revenue requirement adjustments and avoid the need for a diverse group of stakeholders to attempt to reach a consensus on each of the disputed accounting and ratemaking issues raised in this matter, as policy and legal positions can differ. *Id.* As such, the parties have not specified a dollar amount for each issue or adjustment raised in this case. *Id.* Attempting to reach agreement regarding each adjustment in this proceeding would have likely prevented any settlement from being reached. *Id.* at 8.

In its Statement in Support, CAUSE-PA pointed out that the Settlement Rates represent a significant decrease from PECO's initial proposed rate increase. *See* Statement E at 4. Further, CAUSE-PA stated that this reduction will lessen the impact of the rate increase on low-

income consumers who already struggle to afford utility service and help PECO’s residential customers to maintain natural gas service in their homes. *Id.*

The remaining Joint Petitioners did not take a formal position related to the revenue requirements.

I agree with the Joint Petitioners that the proposed Settlement Rates are in the public interest. I find the Settlement Rates are in accordance with *Bluefield*. The Settlement Rates balance the right of the Company and its investors “to earn a return on the value of the property which it employs for the convenience of the public” and “to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties” with the right of customers to pay rates that are commensurate with “business undertakings which are attended by corresponding risks and uncertainties” without providing the utility “profits . . . realized or anticipated in highly profitable enterprises or speculative ventures.” *Bluefield*. Moreover, the parties legally obligated to protect consumers and the public interest vigorously investigated all aspects of the Company’s proposed increase and concluded that the Settlement Rates are just and reasonable.

(b) Gas Base Rate Stay-Out (Settlement, ¶ 17)

The Settlement provides that PECO will not file for another general rate increase under Section 1308(d) for its gas operations prior to March 15, 2024.

PECO, the OCA, CAUSE-PA, and PAIEUG state that the stay-out provision will provide customers base rate stability for a period of at least approximately two years (from 2023-2025 (reflecting the notice and suspension period if a rate filing were made on March 15, 2024)), which is two years beyond the end of the FPFTY in this case. *See* Statement A at 15; Statement C at 8; Statement E at 5; Statement F at 4.

I&E did not present testimony regarding a stay out, but stated that it does not oppose the agreement entered into by PECO and the Joint Petitioners as in the public interest. *See* Statement B at 9.

The OSBA did not comment on the stay-out provision.

A rate case stay-out is a traditionally recognized part of the public's interest in settlement of a rate proceeding as it gives ratepayers a specified level of rate security that would not exist absent the stay-out provision. Thus, I find that this term is reasonable and in the public interest.

(c) Revenue Allocation and Rate Design (Settlement, ¶¶ 18-23)

1. Revenue Allocation

PECO stated that it submitted a fully-allocated class cost of service study (COSS) as required by the Commission's filing requirements. *See* Statement A at 15. The Joint Petitioners agreed that a COSS should be used as a guide and that the Commission has long recognized that the movement toward cost of service should be tempered by the concept of gradualism in order to avoid large, disruptive, one-time increases to any particular customer class. *Id.* at 16-17. Accordingly, PECO asserted that the Joint Petitioners were able to reach agreement on the allocation among customer classes of the revenue increase under the Settlement Rates that is depicted in Paragraph 18 of the Settlement. *Id.* at 17. PECO's position is that allocation provides for reasonable movement toward the system average rate of return by the various customer classes as measured by the Company's COSS. *Id.* Further, PECO stated that the revenue allocation effected by the Settlement Rates and depicted in Paragraph 18 of the Settlement is consistent with the Commonwealth Court decision in *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010 (Pa. Cmwlth. Ct. 2006). *Id.*

I&E stated that it supports the revenue allocation, rate design and cost of service settlement terms as set forth in the Settlement at paragraphs 18 to 23 as a full and fair

compromise that provides PECO, the Joint Petitioners, affected ratepayers, and the Commission with regulatory certainty and resolution of the revenue allocation, rate design and cost of service issues, all of which is in the public interest. *See* Statement B at 11.

The OCA pointed out that, originally, PECO proposed to allocate approximately 78% of its requested revenue increase to the residential customer class, or rate class GR. *See* Statement C at 9. The OCA submitted that, under the terms of the Settlement, the portion of the revenue requirement increase allocated to the residential customer class has been reduced to 71.7%, which is a significant improvement. *Id.*

The OSBA's position is that revenue allocation set forth in the Settlement balances the interests of the other Parties while remaining generally consistent with the COSS and updated revenue allocation proposed by PECO and accepted by the OSBA. *See* Statement D at 3. The OSBA also pointed out that the Settlement proposes a revenue allocation of \$2.4 million, split \$2.2 million for TS-F and \$0.2 million for TS-I. *Id.* The OSBA argued that while these increases are modestly higher than that proposed by most parties, they were developed as part of an overall settlement wherein the litigation risk for large TS-F and TS-I customers associated with the I&E revenue allocation proposal and the OSBA rate design proposals is eliminated. *Id.*

The remaining Joint Petitioners did not take a formal position related to the issues of revenue allocation reflected in Paragraphs 18, 20-23 of the Settlement.

2. Rate Design

As part of the Settlement, the Joint Petitioners have agreed that the Gas Residential (Rate GR) customer class charge will be \$14.25 per month in lieu of a charge of \$18.50 per month proposed by PECO in its initial rate case filing. *See* Statement A at 18.

PECO stated the customer related costs for residential customers support a customer charge of \$28.01 per month for Rate GR. *Id.* Also, the Joint Petitioners have agreed to

a General Service customer charge of \$29.86 instead of \$38.82 as originally proposed by PECO. *Id.* Additionally, PECO agreed to present a cost analysis and rate design proposal in its next gas base rate case that evaluates the potential to differentiate the customer charge within the General Service (Rate GC) customer class between smaller and larger customers to address concerns raised by the OSBA. *Id.*

With respect to rate design for non-residential customers, the Joint Petitioners have agreed to declining block volumetric rates for Rate GC consistent with the recommendation made by the OSBA. *Id.* In addition, PECO stated that Paragraph 22 of the Settlement reflects a compromise among PECO, the OSBA and PAIEUG on the rate design for transportation customers, wherein PECO agreed to present a cost analysis of the relative cost to serve customers above and below 18 mmcf/year in the TS-F and TS-I rate classes. *Id.* At a minimum, PECO stated it will undertake the load factor analysis referenced at PECO Statement No. 7-R, page 20. *Id.*

The OCA stated that increases to the customer charge are detrimental to customers' conservation efforts and remove the ability to control a substantial part of the monthly bill, as well as, have a disproportionate impact on lower income customers. *See* Statement C, pp. 9-10. In this case, PECO originally requested that the residential customer charge increase from \$13.63 per month to \$18.50 per month, an increase of 36%. *Id.* However, the OCA pointed out that, under the Settlement, the residential customer charge will only increase to \$14.25 per month or an increase of approximately 4.6%. *Id.*

The OSBA recognized that, although it argued for no increase to the GC customer charge, the agreed upon increase in the Settlement represents only a 6.6% increase that is identical to the percentage increase to the Residential customer charge, and is a reasonable resolution of this issue. *See* Statement D at 3. The OSBA also pointed out that PECO will be required to undertake an analysis for its next base rates case as to whether a bifurcated customer charge for Rate GC would better match revenues and costs for the wide range of customers in Rate GC. *Id.*

The OSBA stated the revenue allocation for the TS-F and TS-I customer classes was a particularly contentious issue. *Id.* The Settlement proposes a revenue allocation of \$2.4 million, split \$2.2 million for TS-F and \$0.2 million for TS-I. The OSBA asserted that even though these increases are modestly higher than proposed by most parties, they were developed as part of an overall settlement wherein the litigation risk for large TS-F and TS-I customers associated with the I&E revenue allocation proposal and the OSBA rate design proposals is eliminated. *Id.* The OSBA submitted that this is a reasonable resolution to a matter that has spanned the last two PECO Gas base rates cases, in that it will require the Company to develop a cost basis for its TS-F and TS-I rate design that will justify any higher rates for the smaller customers within those rate classes. *Id.* at 5.

CAUSE-PA echoed the sentiments of the other parties that the increase fixed charge for Rate GR to \$14.25, as proposed in the Settlement, represents significant movement from the initial proposal of the Company of \$18.50. *See* Statement E at 6. CAUSE-PA posited that the fixed monthly charge proposed in the Settlement strikes a balance of the interests of the parties while also aiming to mitigate some of the impact of an increase in fixed cost for residential customers and therefore is in the public interest and should be approved without modification.⁶ *Id.*

The remaining Joint Petitioners did not take a formal position related to residential rate design.

I agree with the Joint Petitioners that the allocation of revenue responsibility can be one of the more contentious parts of a rate proceeding because any revenue responsibility not borne by a particular rate class must be borne by one or more other rate classes. Thus, establishing a reasonable revenue allocation requires a careful balancing of the countervailing interests of the non-utility parties representing the various customer classes. Accordingly, the Joint Petitioners are to be commended for achieving a complete settlement of all contested issues involving revenue allocation and rate design among a wide array of parties representing the interests of residential, commercial, and industrial customers.

⁶ CAUSE-PA did not take a formal position in this proceeding as to the GC service charge.

Additionally, the Settlement Rates also comport with well-accepted ratemaking principles, as well as make appropriate progress in moving all classes closer to their cost of service consistent with the principle of gradualism.

Lastly, regarding rate design, the Settlement Rates reflect the need to recover the customer component of total cost of service in the customer charge, while recognizing that increases in the customer charges can impact low-usage customers. Accordingly, the Settlement Rates provide for an increase in the Company's Rate GR and Rate GC customer charges, but in a lesser amount than the customer charges that the Company originally proposed.

Based on the foregoing, I find the proposed revenue allocation and rate design are reasonable, appropriately balance the interests of all parties, and are in the public interest.

(d) FPFTY Reports (Settlement, ¶ 24)

PECO stated that in its initial filing, PECO developed its FPFTY revenue requirement employing plant-in-service balances and other rate base elements projected as of the end of the FPFTY (December 31, 2023). *See* Statement A, pp. 20-21. In the Settlement, PECO has agreed to update PECO Exhibit MJT-2, Schedule C-2 by April 1, 2023, and PECO Exhibit MJT-1, Schedule C-2 by April 1, 2024, to include actual capital expenditures, plant additions, and retirements by month for 2022 and 2023, respectively. *Id.* at 21. In addition, PECO agreed that in its next base rate proceeding, it will prepare a comparison of its actual expenses and rate base additions for the twelve months ended December 31, 2023 to its projections in this case. *Id.*

I&E stated that usage of the FPFTY has become common practice by Pennsylvania utilities, including PECO, which agreed to provide such projections as part of its previous base rate case in which it made use of the FPFTY. Statement B at 12. Further, I&E asserted that it supports this settled upon term regarding the test year plant reporting obligation as a full and fair compromise that provides PECO, the Joint Petitioners, affected ratepayers, and the Commission with resolution of test year plant reporting, all of which is in the public interest. *Id.*

The OCA averred that this Settlement provision will allow the evaluation of PECO's projected plant in service additions against its actual plant that was placed in service, and thus, this Settlement provision is in the public interest and should be adopted. *See* Statement C at 10.

The remaining Joint Petitioners did not take a formal position related to FPPTY.

I concur with the Joint Petitioners and find this term reasonable and in the public interest.

(e) DSIC (Settlement, ¶¶ 25-27)

The Settlement provides that the DSIC rate will be reset to zero effective January 1, 2023, PECO will not implement a DSIC during the calendar year ending December 31, 2023, and the first DSIC in 2024 will be effective no earlier than March 31, 2024. Further, PECO will not begin to impose a DSIC until the total aggregate gross plant costs (before depreciation or amortization) associated with the eligible property that has been placed in service exceed the baseline of gross plant balances shown in Appendix C of the Settlement (which total \$4,043,796,000). This provision relates solely to the calculation of the DSIC during the time that the Settlement Rates are in effect. *See* Settlement, ¶¶ 14, 25-27.

PECO averred the Joint Petitioners have recognized that, notwithstanding the “black box” nature of the Settlement regarding revenue requirement, it is important to resolve, as part of the Settlement, the rate of return on equity that Joint Petitioners agree should be used by the Company in computing its DSIC revenue requirement. *See* Statement A at 22. PECO stated the Joint Petitioners have agreed that the Company shall use the rate of return on equity as calculated for gas utilities and published in the “Bureau of Technical Utility Services (TUS) Report on the Quarterly Earnings of Jurisdictional Utilities” for the most recent quarter for calculating the return on equity component of the Company's DSIC. *Id.* Further, PECO acknowledged that the TUS calculation is a recognized and accepted benchmark return on equity for use in calculating revenue requirement under the DSIC, and that TUS regularly updates its

calculation to reflect changes in market-determined equity costs based on a clearly stated methodology and database. *Id.* Finally, PECO pointed out that a term like Paragraph 27 has been adopted in settlements of numerous base rate cases for major utilities that employ a DSIC. *Id.*

I&E stated that although it did not submit testimony regarding PECO's DSIC implementation or the Supplemental Implementation Order, I&E recognized that 66 Pa.C.S. §§ 1350 *et seq.* provides the pertinent Commission statutory authority regarding the DSIC and the rate base treatment of DSIC eligible plant additions. *See* Statement B at 14. Further, I&E averred that it shared the concerns of the interested Joint Petitioners and played an active role in the settlement negotiations regarding these DSIC issues and monitored the proposals and counter proposals offered by the parties throughout this proceeding. *Id.* Thus, I&E concluded that it does not oppose these settlement terms as they are a full and fair compromise that provides PECO, the Joint Petitioners and the Commission with regulatory certainty and resolution of these issues, which is in the public interest. *Id.*

The OCA stated that it supports these provisions because they will ensure that the Company's DSIC rates continue to be properly calculated to prevent duplicative recovery of DSIC expenditures in future rate-setting proceedings, which in turn will prevent the Company from charging these duplicative costs to ratepayers. *See* Statement C at 11.

The remaining Joint Petitioners did not take a formal position related to DSIC.

The DSIC is a rate mechanism specifically allowed by statute. 66 Pa.C.S. § 1353. I concur with the Joint Petitioners and find these terms of the Settlement resolve questions concerning the implementation of the DSIC in a way that is reasonable and in the public interest.

(f) Gas Safety (Settlement, ¶¶ 28-30)

1. Gas Mapping Program (Settlement, ¶ 28)

Under the Settlement, PECO agrees to accelerate its gas mapping program from its original 20-year commitment to a 15-year commitment, to be completed by December 31, 2032. *See* Statement A at 23.

2. Distribution Integrity Management Program (“DIMP”) (Settlement, ¶¶ 29-30)

Under the Settlement, PECO will continue its comprehensive analysis of its DIMP threat rankings and commits to creating additional threat categories. PECO will communicate its findings and resulting changes to the Commission’s Gas Safety Division. *See* Statement A at 24. In addition, PECO will host a collaborative to update I&E Safety on or before March 1, 2023 regarding the creation of new threat categories in PECO’s DIMP prior to the anticipated 2023 Commission’s DIMP Audit in the spring of 2023. *Id.*

I&E averred that it submitted extensive testimony raising issues regarding PECO’s mapping plan and its DIMP threat analysis and commended PECO with regard to the safety related settlement terms that were agreed to by PECO. *See* Statement B at 15. As a result, I&E stated that it supports these settled upon terms as a full and fair compromise that provides PECO, the Joint Petitioners, ratepayers, and the Commission with a resolution which is in the public interest. *Id.*

The remaining Joint Petitioners did not take a formal position related to the Gas Mapping Program or the DIMP.

The foregoing provisions of the Settlement will help PECO with its ongoing obligation to provide safe and reliable service. Accordingly, I find these terms are reasonable and in the public interest.

(g) Customer Programs (Settlement, Paragraphs 31-32)

1. Gas Energy Efficiency and Conservation (“EE&C”) Program (Settlement, ¶ 31)

Under the Settlement, PECO will maintain the original \$2.008 million budget for Residential rebates under PECO’s Gas EE&C Program along with the two originally proposed additional rebates. *See* Statement A at 25. The Company agrees to perform an analysis of Residential and Small Commercial natural gas EE&C measures in 2023. *Id.* The analysis will include items such as cost effectiveness, projected impact, adoption estimates, costs of incentives, and savings. *Id.* PECO will also retain the ability to add measures and adjust incentive levels and energy efficiency requirements. *Id.*

2. Safe and Efficient Heating Program (“SEHP”) (Settlement, ¶ 32)

Under the Settlement, PECO will withdraw its request to increase the existing SEHP budget. *See* Statement A at 26.

PECO stated that the EE&C terms of the Settlement will ensure that PECO promotes reasonable measures to reduce natural gas use among residential and small commercial customers. Statement A at 25.

I&E attested that it supports the settled upon terms regarding PECO’s customer programs as a full and fair compromise that provides PECO, the Joint Petitioners, affected ratepayers, and the Commission with resolution of the customer programs issues, all of which provides regulatory certainty and is in the public interest. *See* Statement B, pp. 15-16.

The OCA stated that it does not oppose the Settlement terms regarding the Customer Programs. *See* Statement C at 12.

CAUSE-PA asserted that the Settlement terms related to PECO's customer programs are just, reasonable, and in the public interest, and should be approved without modification. *See* Statement E at 8.

The remaining Joint Petitioners did not take a formal position related to the Customer Programs.

I concur with the Joint Petitioners that these Settlement provisions will help maintain availability of assistance to residential consumers to assist in reducing their energy consumption and, in turn, better control their energy costs. Also, by requiring PECO to analyze its gas EE&C measures at reducing consumption and costs for residential and small business commercial natural gas customers, the Settlement provides the parties and the Commission with information critical to assessing the effectiveness of PECO's customer programs. I find these Settlement terms represent a fair and balanced approach which satisfies the many and varied interests of the Joint Petitioners, Commission, and public in a reasonable and just manner. Accordingly, I find these terms are reasonable and in the public interest.

(h) Universal Service Programs (Settlement, Paragraphs 33-43)

1. LIURP (Settlement, ¶¶ 33-36)

Under the terms of the Settlement, PECO will provide an additional \$650,000 in annual LIURP funding, which will increase program costs from the as-filed budget of \$2.5 million to \$3.15 million. *See* Statement A, pp. 26-28. In addition to this overall LIURP budget increase, PECO will also establish a three-year pilot program with an additional \$100,000 annual budget (\$300,000 total) to support health and safety remediation for natural gas customers who are deferred for participation in LIURP due to health and safety issues with their home. *Id.* Also, PECO will share relevant pilot data on an annual basis with its Universal Service Advisory Committee (USAC) regarding participation rates, spending levels, and the extent to which participants were able to receive full LIURP services after receiving health and safety remediation through the pilot. *Id.*

2. Matching Energy Assistance Fund (“MEAF”) (Settlement, ¶37)

Under the terms of the Settlement, PECO agrees to contribute \$300,000 of shareholder funds annually to its MEAF program to provide grant assistance for its customers. *See* Statement A, pp. 28-29. At the end of each program year, PECO will allocate any funds for which it has not received a customer match – up to \$300,000 annually – to the MEAF agencies (in proportion to the number of low-income customers in each county within PECO’s service territory) to support the distribution of additional MEAF grant assistance. *Id.* All MEAF contributions will be used by MEAF agencies for the sole purpose of providing MEAF assistance to PECO customers. *Id.* These provisions do not preclude an order or agreement in another case or context for additional MEAF funding. *Id.*

3. Outcome Objectives (Settlement, ¶¶ 38-40)

Under the terms of the Settlement, beginning in 2025, PECO will provide an annual report to its USAC that will include measurable outcome objectives/metrics aimed at: (1) improving how confirmed low-income customers are identified (as a percentage of estimated low-income customers); and (2) increasing enrollment of confirmed low-income customers into the Company’s Customer Assistance Program (CAP) (by Poverty Level). *See* Statement A, pp. 29-30. These metrics will be measured against calendar year 2024 data as reported to the Commission’s Bureau of Consumer Services. *Id.* PECO will provide an opportunity for parties to respond to and discuss its proposed outcome objectives in the last USAC meeting of 2024. *Id.*

4. Outreach (Settlement, Paragraphs 41-43)

Under the terms of the Settlement, PECO’s Gas Division will continue its simplified application process for Low-Income Home Energy Assistance Program (LIHEAP) recipients seeking to enroll in CAP. *See* Statement A, pp. 30-31. PECO will report annually to its USAC about the number of gas customers who are able to enroll through this process. *Id.*

I&E stated that although it did not submit testimony regarding PECO's low-income usage reduction program, matching energy assistance program, outcome objectives, or outreach program, it shared the concerns of the interested Joint Petitioners. *See* Statement B at 17. Further, I&E averred that it played an active role in the settlement negotiations regarding these programs and monitored the proposals and counter proposals offered by the parties throughout this proceeding. *Id.* Therefore, I&E concluded that it does not oppose these settlement terms as a full and fair compromise that provides PECO, the Joint Petitioners and the Commission with regulatory certainty and resolution of the low-income program issues, which is in the public interest. *Id.*

The OCA averred that the LIURP provisions help to address funding for an anticipated additional 90 LIURP customers per year, protect low-income customers from the anticipated rate impacts of this proceeding, and help additional customers to reduce their usage and bills. *See* Statement C at 14.

The OCA stated that it did not submit Testimony about PECO's MEAF contributions, but it does not oppose this term as a full and fair compromise between Joint Petitioners.

The OCA stated that the provisions regarding Outcome Objectives provide sufficient mechanisms to assess PECO's abilities to identify and enroll low-income customers. *Id.* at 15-16. More specifically, the OCA stated the Outcome Objectives will ensure that PECO: (1) achieves a Confirmed Low-Income identification rate, as a percentage of estimated low-income customers, no less than the Confirmed Low-Income identification rate of Pennsylvania natural gas utilities as a whole (excluding PECO Gas companies); (2) achieves a CAP participation rate, as a percentage of Confirmed Low-Income customers, no less than the CAP participation rate of Pennsylvania natural gas utilities as a whole (excluding the PECO Gas companies), and; (3) achieves a CAP default rate as a percentage of participants in the lowest poverty level range that is no more than the CAP default rate in that poverty level range for Pennsylvania gas utilities as a whole. *Id.*

The OCA stated that the provisions regarding CAP Outreach will operate to continue the high level of enrollment of the Confirmed Low-Income population in the PECO Gas CAP and also allow the USAC to provide input that could further improve the low-income programs brochure, making enrollment in the CAP even more accessible. *Id.* at 17.

CAUSE-PA averred that the LIURP provisions will help improve the ability of low income, high-usage households to access comprehensive usage reduction services through LIURP, help PECO to serve additional homes through LIURP, and will help to ensure that any unused funding will be carried over to support low-income customers in subsequent program years. *See* Statement E, pp. 10-11. Further, CAUSE-PA stated the Settlement will help additional homes who may have health and safety issues and who would otherwise be deferred to receive LIURP services. *Id.* Also, CAUSE-PA asserted these terms will help more specifically assess the need for a reduced high usage threshold for multifamily units to ensure that low-income households who reside in multifamily buildings are equitably served by the program. *Id.*

CAUSE-PA stated that the Settlement provisions related to PECO's MEAF represent a reasonable balance of the varied interest of the parties and help address concerns related to the need for increased funding and accessibility of the MEAF. *See* Statement E, pp. 12-13. Additionally, CAUSE-PA averred these terms will help ensure that additional assistance is available to protect low-income customers facing payment trouble due to the increase in rates – helping shield against increased involuntary termination rates. *Id.*

CAUSE-PA stated that the provisions regarding Outcome Objectives help address the need to improve accurate identification and tracking of PECO's low-income population. *See* Statement E, pp. 14-15. CAUSE-PA also averred that the Settlement helps address PECO's CAP enrollment levels by requiring that PECO work collaboratively with its USAC to provide information on outcome objectives related to increasing enrollment of confirmed low-income customers in CAP. *Id.* Finally, CAUSE-PA asserted that the establishment of a collaborative meeting process for discussing CAP defaults due to failure to recertify, and considering improvements to address the same, will help PECO, the parties, and the Commission to more accurately assess and address barriers to customers maintaining CAP enrollment. *Id.*

CAUSE-PA stated that the provisions regarding CAP Outreach will help streamline CAP enrollment for customers who previously provided certain information necessary to receive LIHEAP, and will help to eliminate barriers to CAP enrollment. *Id.* at 16. CAUSE-PA also averred that by providing for PECO to work with its USAC to develop an outreach brochure in both English and Spanish, the Settlement helps to ensure that customers are aware of available programs and benefits, and will help a greater number of Spanish-speaking customers learn about PECO’s CAP and LIURP. *Id.* Finally, CAUSE-PA pointed out that these Settlement provisions will help further spread information about the availability of CAP and LIURP by providing that this brochure will be provided at outreach events, to new residential customers, as part of the Natural Gas Conversation Program, and upon request. *Id.*

The remaining Joint Petitioners did not take a formal position related to the Universal Service Programs.

LIURP, MEAF, and CAP are critical universal service programs designed to improve bill affordability, reduce arrearages and termination rates, and help mitigate the disproportionate impact of the proposed rate increase on low-income, high usage households. Taken together, the foregoing Settlement terms will help mitigate the impact of the rate increase on households that otherwise are unable to meaningfully reduce their usage as a result of housing conditions. In addition to improving low-income energy costs, these provisions will also help to improve the health and safety in low-income homes and the surrounding community – an essential public policy goal. Moreover, these Settlement provisions reasonably balance the varied interests of the parties, while providing expanded outreach and education related to PECO’s universal service programs. Accordingly, I find that these Settlement provisions are just, reasonable, and in the public interest.

(i) Tariff Changes (Settlement, ¶ 44)

In the Settlement, the Joint Petitioners agree, as shown on Settlement Appendix A, PECO will remove the following language from existing Tariff Rule 17.6: “In the case of fraud, the reconnection charge will also include allocated overheads, all investigative costs and

administrative costs as determined by the Company.” *See* Statement A at 31. Also, PECO agreed to remove the last column of the table in Rule 17.6 titled “Reconnect Fees for Theft/Fraud” to clarify that Rule 17.6 will establish reconnection fees solely for terminations associated with non-payment. *Id.* The Joint Petitioners agree to the Company’s other originally proposed tariff changes set forth in PECO Exhibit JAB-2. *Id.*

I&E stated that although it did not submit testimony regarding PECO’s tariff language changes, it shared the concerns of the interested Joint Petitioners. *See* Statement B at 18. Further, I&E averred that it played an active role in the settlement negotiations regarding these proposals and counter proposals offered by the parties throughout this proceeding. *Id.* Therefore, I&E concluded that it does not oppose these settlement terms as a full and fair compromise that provides PECO, the Joint Petitioners and the Commission with regulatory certainty and resolution of the tariff language issues, which is in the public interest. *Id.*

The OCA averred that including this Tariff change in the Settlement will help to ensure that PECO customers will not be subject to charges for any alleged, unproven fraud. *See* Statement C at 19. The OCA stated that these changes will also help prevent the possibility of PECO collecting reconnection charges from customers twice. *Id.*

The remaining Joint Petitioners did not take a formal position related to the Tariff changes.

I concur with the Joint Petitioners and find the Tariff changes reasonable and in the public interest.

C. Recommendation

The Settlement represents an outcome that is preferable to the time, expense and uncertainty of litigation before the Commission and potentially, appellate courts, the reasonable costs of which may be borne by the ratepayers. Additionally, it is noted that the statutory advocates are part of the Joint Petitioners in full support of the Joint Settlement. When the

statutory advocates fully support a settlement, it is strong evidence that the terms and conditions are just and reasonable and in the public interest. *See Pa. Pub. Util. Comm'n v. T.W. Phillips Gas & Oil Co.*, Docket No. R-2010-2167797 (Order entered Nov. 4, 2010).

Based upon a review of the terms and conditions of the Settlement, the Statements in Support offered by the Joint Petitioners, and the totality of the record, I agree with the Joint Petitioners. This Settlement will give PECO the ability to earn a fair return on its investment while fostering, promoting, and serving the public interest. Accordingly, I recommend the Settlement be approved without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. §§ 1301, 1102.

2. In a rate case, the burden of proof to show that the proposed rates are just and reasonable is on the public utility. 66 Pa.C.S. § 315(a).

3. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. Gas & Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa. Cmwlth. 1975).

4. In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W.V.*, 262 U.S. 679 (1923) and *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944).

5. The policy of the Commission is to promote settlements. 52 Pa. Code §§ 5.231(a) and 69.401.

6. The Commission has recognized that “black box” settlements can serve an important purpose in reaching consensus in rate cases and have permitted their use since 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. *Pa. Pub. Util. Comm’n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered Dec. 19, 2013) (citations omitted).

7. Despite the Commission policy to promote settlements, the Commission’s determination to approve the proposed settlement is whether the proposed terms and conditions foster, promote and serve the public interest. *Pa. Pub. Util. Comm’n v. PECO Energy Co.*, Docket No. R-2018-3000164 (Opinion and Order entered Dec. 20, 2018).

8. The Joint Petition for Full Settlement of Rate Proceeding submitted by PECO, I&E, the OCA, the OSBA, CAUSE-PA, and PAIEUG is in the public interest. *Pa. Pub. Util. Comm’n v. PECO Energy Co.*, Docket No. R-2018-3000164 (Opinion and Order entered Dec. 20, 2018).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That PECO Energy Company – Gas Division shall not place into effect the rates, rules, and regulations contained in Tariff Gas – Pa. P.U.C. No. 5, as filed on March 31, 2022, the same having been found to be unjust, unreasonable, and therefore, unlawful.

2. That the rates, terms and conditions contained in the Joint Petition for Full Settlement of Rate Proceeding submitted by PECO Energy Company – Gas Division, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small

Business Advocate, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and the Philadelphia Area Industrial Energy Users Group, be approved and adopted without modification.

3. That upon the Commission's approval of this Joint Petition for Full Settlement of Rate Proceeding, PECO Energy Company – Gas Division will be permitted to charge the rates for gas service set forth in the proposed Tariff Gas – Pa. P.U.C. No. 5, which is attached to the Joint Petition for Full Settlement of Rate Proceeding as Appendix A.

4. That PECO Energy Company – Gas Division will file a tariff or tariff supplement in substantially the same form as that attached to the Joint Petition for Full Settlement of Rate Proceeding as Appendix A of the Rate Investigation at Docket No. R-2022-3031113 reflecting the rates, rules, and regulations to become effective upon at least one day's notice, upon entry of the Commission Order approving the recommendation to adopt the Joint Petition for Full Settlement of the Rate Proceeding.

5. That the formal Complaint filed by the Office of Consumer Advocate at Docket No. C-2022-3031737 is deemed satisfied.

6. That the formal Complaint filed by the Office of Small Business Advocate at Docket No. C-2022-3031858 is deemed satisfied.

7. That the formal Complaint filed by the West Norriton Township at Docket No. C-2022-3033273 is deemed satisfied.

8. That the formal Complaint filed by Byron L. Goldstein at Docket No. C-2022-3032005 is dismissed.

9. That the formal Complaint filed by Hubert Matthews at Docket No. C-2022-3033921 is dismissed.

10. That the Secretary's Bureau mark Docket Nos. C-2022-3031737, C-2022-3031858, C-2022-3032005, C-2022-3033273, and C-2022-3033921 closed.

11. That upon acceptance of the appropriate compliance filing, the investigation at Docket No. R-2022-3031113 be marked closed.

Date: October 11, 2022

_____/s/
F. Joseph Brady
Administrative Law Judge