

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2022-3032300
Office of Small Business Advocate	:	C-2022-3032452
Office of Consumer Advocate	:	C-2022-3032533
Larry E. Cole	:	C-2022-3032688
Borough of Athens	:	C-2022-3033209
Borough of South Waverly	:	C-2022-3033210
	:	
v.	:	
	:	
Valley Energy, Inc.	:	

RECOMMENDED DECISION

Before
Eranda Vero
Administrative Law Judge

and

Charece Z. Collins
Administrative Law Judge

INTRODUCTION

This decision recommends approval of the Joint Petition for Settlement between Valley Energy, Inc., the Office of Consumer Advocate, and the Commission’s Bureau of Investigation and Enforcement because it is in the public interest and supported by substantial evidence. The Settlement permits Valley Energy, Inc. to increase its annual distribution base rate revenues by a total of \$958,000 (11.3%). On a total bill basis, under the recommended increase, a typical residential gas customer using 76 Ccf per month will see the total bill increase from \$65.35 to \$72.27 or about 10.6%. This is less than Valley Energy, Inc.’s original proposal, which would have resulted in an overall rate increase of \$999,631 (11.8%) in additional annual

total revenues, resulting in a total bill for a typical residential customer using 76 Ccf increasing from \$65.35 to \$72.57 per month or about 11%.¹

The Settlement also includes agreement as to the \$958,000 increase in overall revenues on a “black box” basis, meaning that the Parties do not specifically identify or resolve individual rate base, revenue, expenses, and rate of return issues. In addition, the Settlement includes agreement on a number of other specific issues addressed by the Parties. We will discuss the revenue requirement and additional specific issues below. The last reasonable Commission Public Meeting before the end of the suspension period is on January 12, 2023.

HISTORY OF THE PROCEEDINGS

On April 29, 2022, Valley Energy, Inc. (Valley or the Company) filed Supplement No. 59 to Tariff Gas Pa. P.U.C. No. 2 (Supplement No. 59). Supplement No. 59 contains proposed changes in rates, rules, and regulations calculated to produce an overall rate increase of \$999,631 (11.8%) in additional annual total revenues, resulting in a total bill for a typical residential customer using 76 Ccf increasing from \$65.35 to \$72.57 per month or about 11%. Valley proposed Supplement No. 59 to become effective on June 28, 2022. Valley also filed Supplement No. 2 to Tariff Gas Pa. P.U.C. No. 1S (Supplement No. 2) to make modifications to its Supplier Tariff.

¹ All bill impact calculations are based on Valley Energy Inc.’s Gas Cost Rate (GCR) of \$0.41748 per Ccf that was effective on April 29, 2022, when the Company filed its proposed rate increase. Valley Energy Inc.’s new GCR rate of \$0.81209 per Ccf became effective on November 1, 2022. (Secretarial Letter dated October 18, 2022, Docket No. M-2022-3034889). Due to the impact of the new GCR rate, after November 1, 2022, the bill of a typical residential gas customer using 76 Ccf of gas per month will be \$95.34. Under the new GCR rate, Valley Energy, Inc.’s original proposal for an overall rate increase of \$999,631 in additional annual total revenues would have resulted in the total bill of a typical residential gas customer increasing from \$95.34 to \$102.56 per month or approximately 7.6%. However, under the recommended increase, a typical residential gas customer will see the total monthly bill increase from \$95.34 to \$102.26 or about 7.3%.

Pursuant to the Public Utility Code, 66 Pa.C.S. § 1308(d), by Order dated June 16, 2022, the Commission suspended the proceeding until January 28, 2023, and referred the matter to the Office of Administrative Law Judge for evidentiary hearings and a Recommended Decision. The Commission also ordered an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Tariffs. Additionally, the Commission ordered an investigation into the reasonableness of Valley's existing rates, rules, and regulations. The matter was assigned to Administrative Law Judge (ALJ) Marta Guhl.

The following Complaints were filed against Valley's rate increase: the Office of Small Business Advocate (OSBA) at Docket No. C-2022-3032452; the Office of Consumer Advocate (OCA) at Docket No. C-2022-3032533; Larry E. Cole at Docket No. C-2022-3032688; the Borough of Athens at Docket No. C-2022-3033209; and the Borough of South Waverly at Docket No. C-2022-3033210. In addition, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance in this matter.

A telephonic prehearing conference in this matter was held on June 30, 2022, wherein the parties discussed, *inter alia*, public input hearings, procedural schedule, and discovery modifications. Counsel for Valley requested that the matter be consolidated with the Citizens' Electric Company of Lewisburg, PA rate case filed under Docket No. R-2022-3032369 (Citizens). None of the other parties objected to Valley's request. ALJ Guhl advised the parties to file a motion to consolidate the two base rate proceedings.

On July 1, 2022, counsel for Valley and Citizens' Electric filed a Motion to Consolidate the two base rate proceedings.

A Judge Change Notice dated July 7, 2022, informed the parties that the Administrative Law Judge assigned to this base rate proceeding was changed from ALJ Guhl to the undersigned Administrative Law Judges Eranda Vero and Charece Z. Collins.

On July 11, 2022, we issued an Order consolidating the Valley and Citizens base rate cases for the limited purposes of discovery and hearing. The Order also established and consolidated the litigation schedules for both cases and set August 11, 2022, as the date for a joint public input hearing.

On August 11, 2022, a joint telephonic public input hearing was held for both the Valley and Citizens base rate cases where two people testified.

On September 6, 2022, the parties informed us by email that they reached a full settlement in principle of all issues in both rate cases and asked that they be allowed to submit testimony and exhibits into the record by verification and joint stipulation. Also, the parties requested that the evidentiary hearings be cancelled.

The parties' request was granted, and, on September 8, 2022, we issued a Hearing Cancellation Notice cancelling the evidentiary hearings scheduled for September 8, 2022, and 12, 2022.

On October 5, 2022, a Joint Petition for Settlement (Joint Petition or Settlement) was filed and served. Signatories to the Joint Petition include Valley, OCA, and I&E (collectively, Settling Parties or Joint Petitioners). Each of the Settling Parties provided a Statement in Support appended to the Joint Petition.

OSBA, the Borough of Athens and the Borough of South Waverly are not Settling Parties but have confirmed non-opposition to the Settlement. See Joint Petition at 1 n.1. By letter dated August 20, 2022, we informed Larry E. Cole² of the Settlement and requested that he indicate, by no later than August 30, 2022, if he wished to join, oppose, or take no position on the proposed Settlement. We also enclosed a signature page that he could sign and return to us if he wished to join in the settlement petition. We have not received a response from Mr. Cole.

² Mr. Cole has enrolled in the Commission's e-Filing Subscription Service and accepts electronic service of documents.

Also on October 5, 2022, Valley, OCA, OSBA, and I&E (Stipulating Parties) filed a Stipulation for Admission of Testimony and Exhibits (Stipulation) in the above captioned proceeding. Each of the Stipulating Parties stipulated to the authenticity of the filings and exhibits listed in the Stipulation, requested that they be admitted into the record of this proceeding on the terms and conditions set forth in the Stipulation, and expressly waived the opportunity for cross-examination of the witnesses sponsoring those statements and exhibits. By Order dated October 11, 2022, we granted the Stipulation.

The record in this matter closed on October 11, 2022. This proceeding is now ready for ruling. For the reasons discussed below, we recommend approval of the Settlement without modification.

PUBLIC INPUT HEARINGS

One telephonic public input hearing was conducted on August 11, 2022. Two witnesses testified in the present proceeding.

Mark Burgess testified in his capacity as the Borough Manager for the Borough of Athens. Mr. Burgess explained that the Council for the Borough of Athens opposes the rate increase proposed by Valley because it will substantially burden the property owners in Athens as well as the Borough of Athens itself. He noted that residents and commercial owners of the borough are trying to recover after the shutdown of non-essential businesses due to COVID-19. In addition, cost-of-living expenses are increasing at a fast pace due to rising energy prices and inflation. According to Mr. Burgess, a large portion of the Borough's population is elderly, retired, and on a fixed income. The gas rate proposed by Valley Energy will further contribute to the burden on the Borough's residents and businesses. Tr. 48-54.

Burdett Porter testified in his capacity as Vice President of the South Waverly Borough Council. Like Mr. Burgess before him, Mr. Porter testified that a large portion of the population of the South Waverly Borough is elderly, retired, and on a fixed income. The gas rate

increase proposed by Valley will represent an excessive burden for these residents who already face increased expenses from the school district, the Borough taxes and the Borough sewer rates. Tr. 56-62.

TERMS OF SETTLEMENT

The principal terms and conditions of the proposed Settlement, contained in Paragraphs 15-24, Section III of the Petition, are set forth *verbatim* as follows:

15. The Settlement Parties agree to a stipulated increase in Valley's annual distribution base rate revenues of \$958,000, with an effective date of January 29, 2023.

16. The Settlement Parties agree that the Pennsylvania Corporate Net Income ("CNI") Tax rate in this proceeding will be set at 8.99%. The Company will reflect actual CNI rates for the post-2023 tax years through the Company's State Tax Adjustment Surcharge, or future base rate proceedings.

17. The Company has withdrawn the request for additional carrying charges related to COVID-19 accounts receivables in excess of those normally experienced and other COVID-19 incremental costs.

18. Other revisions to the proposed revenue requirement shall not otherwise be ascribed to any specific proposed adjustment or position of any Settlement Party.

19. Valley's Gas Plant in Service at the end of the FPFTY^[3] will be set at \$40,520,766 and its Rate Base at the end of the FPFTY will be set at \$19,756,771, which reflects the removal of \$18,028 in CWIP^[4].

20. Valley's Accumulated Depreciation, Accumulated Deferred Income Taxes, Excess Deferred Income Taxes and Accrued Pension/Other Post-Employment Benefit Liability shall be as set forth in Exhibit HSG-1 (CU).

³ Fully Projected Future Test Year (FPFTY).

⁴ Construction Work in Progress (CWIP).

21. The Settlement Parties agree that Valley's revenue requirement increase will be allocated among the Company's rate classes in accordance with the allocation methodology set forth in Attachment A to this Settlement. The distribution rates and fees for each class are set forth in Attachment B. The supplier tariff changes, unmodified from the initial rate filing, are included in Attachment C.

22. Valley will propose the creation of sub-categories within its Distribution Integrity Management Plan ("DIMP") "Regulators/Relief" asset category for its next DIMP update in 2024. Valley will provide I&E with a courtesy copy of its monthly submissions to the Plastic Pipeline Database Committee to include both positive and negative failure reports.

23. The Company will provide an update to Exhibit__(HSG-1), Schedule C3-CU no later than April 1, 2023, under this docket number, which should include actual plant additions, and retirements by month for the twelve months ending December 31, 2022. And an additional update will be provided for actual plant additions and retirements by month through December 31, 2023, no later than April 1, 2024.

24. The Company agrees to cease the recording of any increases to the COVID-19 deferral claimed in this proceeding for uncollectibles and COVID-19 incremental expenses as of the effective date of the new rates. Any future claim for similar costs must be based on Commission action occurring after the effective date of the new rates.

Settlement ¶¶ 15-24.

In addition, the Settlement contains the standard provision in Section V that the settlement agreement is made without prejudice to each party's litigation position, that it is conditioned upon the Commission's approval of the agreement without modification, that if the Commission fails to grant approval of the Joint Petition or modifies any material term or condition of the Settlement any party may elect to withdraw from the Settlement upon written notice to the Commission and the other parties within five business days of the entry of the Commission order, and in that case, the Settlement will be of no force and effect and each party reserves its right to fully litigate the case. *See*, Settlement ¶¶ 28-33.

DISCUSSION

A. Applicable Legal Standard

The purpose of this investigation is to establish rates for Valley's 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 Co. v. Pub. Service Comm'n of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Comm'n v. Hope Natural Gas Co.*, 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 Water Works and Improvement Co. v. Pub. Service Comm'n of West Virginia, 262 U.S. 679, 692-3 (1923).

In analyzing a proposed general rate increase, the Commission determines a rate of return to be applied to a rate base measured by the aggregate value of all the utility's property used and useful in the public service. In determining a proper rate of return, the Commission calculates the utility's capital structure and the cost of the different types of capital during the period in issue. The Commission has wide discretion, because of its administrative expertise, in determining the cost of capital. *Equitable Gas Co. v. Pa. Pub. Util. Comm'n*, 405 A.2d 1055 (Pa. Cmwlth. 1979).

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 hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. 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. That is one reason why 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).

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 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C. S. Water and Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

This recommendation is prepared for the Commission to act in accordance with Section 1308(d) of the Public Utility Code, which states in pertinent part,

Whenever there is filed with the commission by any public utility ... any tariff stating a new rate which constitutes a general rate increase, the commission shall promptly enter into an

investigation and analysis of said tariff filing and may by order setting forth its reasons therefore, upon complaint or upon its own motion, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, and the commission may, at any time by vote of a majority of members of the commission serving in accordance with law, permit such tariff to become effective, except that absent such order such tariff shall be suspended for a period not to exceed seven months from the time such rate would otherwise become effective. Before the expiration of such seven-month period, a majority of members of the commission serving in accordance with law, acting unanimously, shall make a final decision and order, setting forth its reasons therefore, granting or denying, in whole or in part, the general rate increase requested.

66 Pa.C.S. § 1308(d).

Pursuant to Section 315(a) of the Public Utility Code,

§ 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.

66 Pa.C.S. § 315(a). Consequently, in this proceeding Valley Energy has the burden to prove that the rate increase it has proposed through the Settlement is just and reasonable. Furthermore, 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 the Settlement is in the public interest. The Joint Petitioners have the burden to prove that the Settlement is in the public interest.

B. Analysis

It is noted that no party opposed the Settlement. To the contrary, the Joint Petitioners state that the Settlement achieves a reasonable and beneficial result and curtails the costs of litigation in avoiding evidentiary hearings, briefing, further time by the Commission and the parties. Settlement ¶¶ 25-26. The Joint Petitioners advocate that for various reasons 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 statements of support attached to the Joint Petition. These reasons are provided in the analysis below.

1. Revenue Requirement (Settlement at ¶¶ 15-18)

The proposed Settlement provides for an overall distribution base rate increase of \$958,000 for Valley. Settlement ¶ 15. Additionally, Valley agrees to set the Pennsylvania CNI tax rate at 8.99% for this proceeding but will reflect actual CNI rates for the post-2023 tax years through the Company's State Tax Adjustment Surcharge, or future base rate proceedings. Settlement ¶ 16. Moreover, the Company agrees to withdraw its request for additional carrying charges related to COVID-19 accounts receivables in excess of those normally experienced and other COVID-19 incremental costs Settlement ¶ 17. Further, the proposed Settlement provides that any other revisions to the proposed revenue requirement shall not otherwise be ascribed to any specific proposed adjustment or position of any party. Settlement ¶ 18.

Valley supports the Settlement for setting a reasonable balance and appropriate compromise of the Joint Petitioners' positions regarding the Company's need for additional revenue. According to Valley, the agreed upon annual revenue requirement increase of \$958,000 will be sufficient for the Company to continue furnishing safe and reliable service and will provide Valley with the opportunity to earn a fair and reasonable return on the resources invested in the distribution system. Valley St. in Supp. at 3.

In support of its position, Valley explains that since its last base rate increase in May 2020, the costs associated with operating and maintaining the gas system have increased substantially, including labor and benefits cost increases, and material and supply cost increases resulting from the inflationary economic environment following the COVID-19 pandemic. Valley St. in Supp. at 3; Valley St. No. 4 at 3-4. Additionally, the pandemic forced extra costs onto the Company. Valley had to close its office to the public, establish remote payment sites, install protective equipment for its employees, increase cleaning and sanitation, purchase information technology equipment, and implement masking and social distancing requirements. Valley St. in Supp. at 3; Valley St. No. 4 at 5.

Valley further argues that, during this time, it has continued to make significant improvements to its distribution system to enhance service, safety, and reliability. Such improvements include: replacing all bare steel pipe on Valley's system; performing upgrades to its City Gate facility; upgrading transmission mains; adding, replacing, or upgrading 14 district regulator stations; installing over 24 miles of new or replacement plastic gas mains; installing 2,132 new or replacement services; relocating over 100 meters from indoors to outdoors; adding remote pressure monitoring devices; installing additional over-pressure protection equipment on low-pressure systems; and adding or replacing 32 large commercial metering facilities. Valley St. in Supp. at 3-4; Valley St. No. 4 at 6-7. The Company was also required to relocate its facilities as part of the Pennsylvania Department of Transportation's enhancement projects. Valley St. in Supp. at 4; Valley St. No. 4 at 7.

Valley expresses its belief that, had this proceeding been fully litigated, the Commission would have found that the Company is entitled to all or substantially all of the fully requested rate increase. Valley St. in Supp. at 4. However, the Company supports the Settlement arguing that the annual revenue requirement increase of \$958,000 in the Settlement will permit the Company, in the short term, to cope with the enhanced business and financial risks that exist due to the Company's size, operational characteristics, and credit obligations. Valley St. in Supp. at 4.

OCA supports the proposed Settlement provisions for an overall distribution base rate increase of \$958,000 for Valley. Settlement ¶ 15. OCA notes that the revenue increases contained in the Settlement are approximately \$42,000 less than the \$1,000,000 rate increase amount originally requested by Valley, and \$272,000 less than the rate increase that the Company supported in its filing. OCA St. in Supp. at 3. OCA explains that based on its analysis of Valley's filings, discovery and testimony in this case, the rate increases under the proposed Settlement represent a result that would be within the range of likely outcomes in the event of full litigation of the case. *Id.*

I&E explains that, after engaging in extensive discovery and submitting extensive testimony regarding Valley's proposed overall base rate revenue increase, it fully supports the negotiated level of overall base rate revenue increase. I&E St. in Supp at 8. While the overall revenue requirement is a "black box" compromise, I&E maintains that the overall revenue levels are within the levels advanced on the evidentiary record and reflect a full compromise of all revenue-related issues raised by the Joint Petitioners. *Id.* According to I&E, the negotiated level of overall base rate revenue increase represents a full and fair compromise that provides the Company, the affected ratepayers, and the Commission with resolution of these issues, all of which is in the public interest. *Id.*

We agree with the Settling Parties that the provisions of the proposed Settlement concerning revenue requirements are in the public interest. The annual revenue increase agreed upon by the Settling Parties reflects the Company's cost of providing service and, when accompanied by other important provisions contained in the Settlement, yields a result that is just and reasonable.

2. Rate Base (Settlement at ¶¶ 19-20)

The Joint Petitioners agree that Valley's Gas Plant in Service at the end of the FPFTY will be set at \$40,520,766 and its Rate Base at the end of the FPFTY will be set at \$19,756,771, which reflects the removal of \$18,028 in CWIP. Settlement ¶ 19. In addition, the Joint Petitioners agree that Valley's Accumulated Depreciation, Accumulated Deferred Income

Taxes, Excess Deferred Income Taxes and Accrued Pension/OPEB Liability shall be as set forth in Valley Exhibit HSG-1 (CU). Settlement ¶ 20.

I&E supports these settlement terms as a full and fair compromise that provides Valley Energy, the affected ratepayers, and the Commission with resolution of the plant in service and accumulated depreciation issues, all of which provides regulatory certainty and is in the public interest. I&E St. in Supp. at 9-10.

We agree that the certainty established by the agreement between the Settling Parties for the value of plant in service is beneficial. This certainty removes the potential for the value to be disputed in future rate proceedings.

3. Revenue Allocation (Settlement at ¶ 21; Attachment A)

The Joint Petitioners agree that Valley's revenue requirement increase will be allocated among the Company's rate classes in accordance with the allocation methodology set forth in Settlement Attachment A. Settlement ¶ 21.

OCA points out that Valley's original filing allocated an increase of \$580,142, a proposed revenue increase of 21.5%, to residential customers. OCA St. in Supp. at 5; OCA St. No. 3 at 5. However, OCA recommended a uniform allocation of the recommended revenue increase in this case, as no cost-of-service study was conducted by the Company. OCA St. in Supp. at 5; OCA St. 3 at 6.

Under the Settlement, Valley's residential customers will be allocated \$555,980, or 58% of the total increase. Settlement ¶ 21; Settlement Attach. A. According to OCA, this is a 21% increase in distribution rates for residential customers. OCA St. in Supp. at 5; Settlement Attach. A, Sch. B-4. OCA argues that the Settlement allocation reflects a proportional scale back of the Company's proposed allocation consistent with the concerns identified by OCA. OCA St. in Supp. at 5.

I&E also supports the revenue allocation settlement terms as set forth in the Joint Petition. In particular, I&E finds these terms to be in the public interest because they represent a full and fair compromise that provides Valley, the affected ratepayers, and the Commission with an amicable resolution of revenue allocation. I&E St. in Supp. at 9-10.

Due to its small size, Valley was not required to present a cost-of-service study in this proceeding. As a result, a more refined allocation was not possible. However, we agree with OCA and I&E that the revenue allocation contained in the Settlement ensures that each class pays an appropriate portion of the total revenue requirement increase. The allocation agreed to by the parties, based on the record in this proceeding, produces just and reasonable results and should be approved.

4. Rate Design and Fees (Settlement at ¶ 21)

In the Settlement, the Joint Petitioners agree that the disconnection and reconnection fees along with the residential customer charge will be as set forth in Settlement Attachment B. Settlement ¶ 21. In addition, the Joint Petitioners agree that the monthly customer charges for all other rate schedules shall be as proposed by the Company and set forth in Settlement Attachment C. *Id.*

OCA points out that under the Settlement, Valley's monthly residential customer charges will increase from \$11.79 to \$12.35, rather than to \$12.90, as was originally proposed by the Company. Settlement ¶ 21; Settlement Attach. B. OCA argues that the residential customer charge proposed under the Settlement is within a reasonable range relative to other Pennsylvania gas utilities. OCA St. in Supp. at 4. OCA further submits that reducing the customer charge and recovering the remaining revenue through volumetric charges will benefit residential customers and send the appropriate signals to customers regarding energy conservation, a benefit that is not realized through fixed customer charges. OCA St. in Supp. at 4; OCA St. 3 at 11.

In addition, OCA notes that Valley's disconnection and reconnection fees during business hours would increase from \$25 to \$30 under the Settlement, rather than to \$60, as was

originally proposed by the Company. Furthermore, Valley's disconnection and reconnection fees after business hours would increase from \$30 to \$40 in the Settlement, rather than to \$70, as was originally proposed by the Company. OCA St. in Supp. at 4 (*referencing* Settlement at ¶ 21); Settlement Attach. B. OCA supports these provisions as addressing its concern that all disconnection and reconnection fees operate in a regressive manner and that the Company's proposal to increase these fees by 133% to 140% without sufficient documentation that these increases are cost based would be unreasonable. OCA St. in Supp. at 4; OCA St. 2 at 14-15.

I&E agrees with OCA that the agreed upon rate design changes are in the public interest. In its Statement in Support, I&E notes that it reviewed Valley's proposed rate design and fees, conducted its analysis, and reviewed the information presented by all parties. After playing an active role in the settlement negotiations regarding the rate design and fees, and, monitoring the proposals and counter proposals offered by the parties throughout this proceeding, I&E does not oppose these settlement terms. Instead, I&E finds them to be a full and fair compromise that provides Valley, the Joint Petitioners and the Commission with regulatory certainty and resolution of these issues. I&E St. in Supp. at 10.

We find that the residential rate design established through the Settlement is reasonable and consistent with sound ratemaking principles. The rate design changes proposed in the Settlement will result in customer charges that are below the customer charges originally proposed, and the increase in both charges and fees are within the range of the likely outcomes in the event of full litigation of the case. As such, the agreed upon rated design and fees are in the public interest and should be approved.

5. Distribution Integrity Management Plan (DIMP) (Settlement at ¶ 22)

In the Settlement, Valley agrees to propose the creation of sub-categories within its DIMP 'Regulators/Relief' asset category for its next DIMP update in 2024. In addition, Valley will provide I&E with a courtesy copy of its monthly submissions to the Plastic Pipeline Database Committee to include both positive and negative failure reports. Settlement ¶ 22.

During this proceeding, I&E recommended that Valley perform a root cause analysis of the four plastic failures of pipe installed in the six-month period between July and December of 2013 and use that data to determine if any specific pipeline assets outside of vintage plastic could be at an elevated risk of failure. I&E St. No. 4 at 8-9; I&E St. No. 4-SR at 2-3. Further, I&E recommended that Valley incorporate the findings of the root cause analysis into DIMP and this new asset category's risk score being reduced through appropriate mitigative measures. I&E St. No. 4 at 9. In response, Valley stated an analysis for the four failures of non-vintage pipe has previously been performed and the cause of each of the failures is currently being addressed in the current DIMP Plan. Valley St. No. 6-R at 3.

I&E commends Valley for proposing the DIMP settlement terms. I&E supports these settlement terms as a full and fair compromise that addresses its concerns with regard to Valley's DIMP while providing Valley, the affected ratepayers, and the Commission with regulatory certainty and resolution of these issues. I&E St. in Supp. at 11.

We agree with I&E that the Settlement provisions regarding Valley's DIMP are in the public interest because they address safety concerns related to Valley's service and provide a roadmap for the resolution of the issues.

6. Post-Case Reporting of Plant Additions (Settlement at ¶ 23)

In the Settlement, the Company agrees to provide an update to Valley Exhibit_(HSG-1), Schedule C3-CU no later than April 1, 2023, which should include actual plant additions, and retirements by month for the twelve months ending December 31, 2022. An additional update will be provided for actual plant additions and retirements by month through December 31, 2023, no later than April 1, 2024. Settlement ¶ 23.

I&E supports the settlement provision regarding the plant reporting request as being in the public interest and commends Valley for agreeing to provide the requested updates. I&E St. in Supp. at 12. According to I&E, this provision represents a full and fair compromise

of the parties' positions that provides Valley, the affected ratepayers, and the Commission with resolution of this issue. *Id.*

Usage of the FPPTY has become common practice by Pennsylvania utilities, including Valley. Therefore, we agree with I&E that this settlement provision is in the public interest.

7. COVID-19 Deferrals (Settlement at ¶ 24)

In the Settlement, the Company agrees to cease the recording of any increases to the COVID-19 deferrals claimed in this proceeding for uncollectibles and COVID-19 incremental expenses as of the effective date of the new rates. Any future claim for similar costs must be based on Commission action occurring after the effective date of the new rates. Settlement ¶ 24.

I&E argues that the COVID-19 deferrals settlement terms set forth in the Joint Petition serve the public interest because they reflect a full and fair compromise that provides Valley, the Joint Petitioners, affected ratepayers, and the Commission with regulatory certainty and an amicable resolution of this issue. I&E St. in Supp. at 12.

We agree with I&E that this settlement provision produces a result that is just and reasonable and should be approved.

8. Recommendation

This Settlement was achieved by the Settling Parties after an extensive investigation of the Company's base rate filing, including formal and informal discovery and the submission of direct testimony, rebuttal testimony, and surrebuttal testimony by certain of the parties. The Settlement is lawful and supported by the record of this proceeding.

The terms and conditions of the Settlement provide for an overall distribution base rate increase of \$958,000 for Valley. The reductions in the proposed revenue increases, proposed customer charges, proposed reconnection and disconnection fees, the revenue allocations, along with all the other terms and conditions of the Settlement described above, represent a fair and reasonable settlement of this proceeding. Further, the Joint Petition results in base rates that are just, reasonable, and non-discriminatory, while also implementing provisions that result in fair and appropriate treatment of the Company and its customers.

With the approval of the Settlement, the parties and the Commission avoid the time, expense and uncertainty that would occur if the parties were required to fully litigate the issues in this proceeding. Moreover, the Settlement provides regulatory certainty with respect to the disposition of issues and final resolution of this case which benefits the parties' discrete interests.

For these reasons and the ones listed in more detail above, we find that the Joint Petition is in the public interest and recommend its adoption without modification. Consequently, we recommend that the Commission's investigations at Docket No. R-2022-3032300 be marked closed once the Joint Petition is approved and the appropriate documents have been filed in compliance with Commission regulations. We also recommend the Formal Complaints filed by the Office of Small Business Advocate at Docket No. C-2022-3032452; the Office of Consumer Advocate at Docket No. C-2022-3032533; Larry E. Cole at Docket No. C-2022-3032688; the Borough of Athens at Docket No. C-2022-3033209; and the Borough of South Waverly at Docket No. C-2022-3033210 be terminated and marked closed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the Parties to this proceeding. 66 Pa.C.S. §§ 501, 1308(d).
2. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm'n v. CS*

Water & Sewer Assoc., 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Philadelphia Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

3. Valley's proposed base rate increase, retail tariff, and supplier tariff, as modified by the terms of the Settlement comply with the requirements of the Pennsylvania Public Utility Code. 66 Pa.C.S. §§ 1301, 1308(d); 315(a).

4. Approval of the Settlement is in the public interest. *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Philadelphia Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement filed October 5, 2022, by Valley Energy, Inc., the Office of Consumer Advocate, and the Bureau of Investigation and Enforcement, be granted, and the Settlement be adopted, in full, without modification or correction.

2. That Valley Energy, Inc. be authorized to file tariffs, tariff supplements or tariff revisions containing rates, rules and regulations, consistent with the Joint Petition for Settlement, to produce a total increase of \$958,000 in annual distribution base rate revenues, consistent with the rates, rules and regulations set forth in the Joint Petition for Settlement and accompanying Attachments A, B and C.

3. That Valley Energy, Inc. shall be permitted to submit a compliance filing implementing the rate and tariff changes agreed to in this Settlement, to become effective upon at

least one day's notice after entry of the Commission's Order approving the settlement, for service rendered on and after January 29, 2023.

4. That the Complaint of the Office of Small Business Advocate at Docket No. C-2022-3032452 be deemed satisfied and marked closed.

5. That the Complaint of the Office of Consumer Advocate at Docket No. C-2022-3032533 be deemed satisfied and marked closed.

6. That the Complaint of Larry E. Cole at Docket No. C-2022-3032688 be deemed satisfied and marked closed.

7. That the Complaint of the Borough of Athens at Docket No. C-2022-3033209 be deemed satisfied and marked closed.

8. That the Complaint of the Borough of South Waverly at Docket No. C-2022-3033210 be deemed satisfied and marked closed.

9. That upon acceptance and approval by the Commission of the tariffs and allocation of proposed Settlement rate increase filed by Valley Energy, Inc. consistent with this Order, the Commission's investigation at Docket No. R-2022-3032300 shall be terminated, and these dockets shall be marked closed.

Date: November 4, 2022

_____/s/

Eranda Vero
Administrative Law Judge

_____/s/

Charece Z. Collins
Administrative Law Judge