

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2022-3032764
Office of Consumer Advocate	:	C-2022-3034235
Office of Small Business Advocate	:	C-2022-3033978
	:	
v.	:	
	:	
Leatherstocking Gas Company LLC	:	

RECOMMENDED DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

Table of Contents

I.	INTRODUCTION	1
II.	HISTORY OF THE PROCEEDING	2
III.	FINDINGS OF FACT	9
IV.	TERMS AND CONDITIONS OF SETTLEMENT	16
	A. Revenue Requirement Increase and Phase In	16
	B. Rate Design	17
	C. State Tax Adjustment Surcharge	18
	D. Depreciation	19
	E. Effective Date	20
	F. Reporting	20
	G. Standard Terms	20
V.	DISCUSSION	24
	A. Revenue Requirement Increase and Phase In (Joint Petition ¶ 2)	26
	B. Rate Design (Joint Petition ¶¶ 3-9)	31
	C. State Tax Adjustment Surcharge (Joint Petition ¶¶ 10-12)	36
	D. Depreciation (Joint Petition ¶¶ 13-14)	39
	E. Effective Date (Joint Petition ¶ 15)	41
	F. Reporting (Joint Petition ¶ 16)	43
	G. Standard Terms (Joint Petition ¶¶ 17-24)	45
VI.	CONCLUSIONS OF LAW	48
VII.	ORDER	50

I. INTRODUCTION

This Decision recommends that the Unanimous Joint Petition For Full Settlement Of Rate Proceeding filed on November 23, 2022, be approved without modification, as it is supported by substantial evidence and is in the public interest.

The proposed Settlement will result in an overall increase in annual gas distribution operating revenues of approximately \$520,000 in year 1, effective April 1, 2023, and \$125,000 in year 2, effective April 1, 2024, for a total increase of \$645,000 once fully phased-in. This amounts to an increase of approximately 25.7% in total customer bills and 48.9% in delivery revenues in year 1 and an increase of approximately 4.9% in total customer bills and 7.9% in delivery revenues in year 2.

Under as-filed rates, the monthly bill of a residential customer using 79 CCF per month would have increased from \$95.21 to \$151.58 per month, or by 59.2%, excluding estimated gas costs. Under Year 1 Settlement rates, the monthly bill of a residential customer using 79 CCF per month will increase from \$95.21 to \$141.80 per month, or by 48.9%, excluding estimated gas costs, beginning April 1, 2023; and under Year 2 will result in an increase from \$141.80 to \$153.01 per month, or by 7.9%, excluding estimated gas costs, beginning April 1, 2024.¹

On August 4, 2022, the Pennsylvania Public Utility Commission issued an Order suspending Supplement No. 17 to Tariff Gas -Pa.P.U.C. No. 1 (Supplement No. 17) by operation of law until April 1, 2023, unless permitted by Commission Order to become effective at an earlier date.

¹ A summary of the effect of the Settlement on rates for all customer classes is provided on pages 7-8 of this Decision, and the Addendum to Settlement, Appendix H.

II. HISTORY OF THE PROCEEDING

On July 1, 2022, Leatherstocking Gas Company LLC (Leatherstocking, Company or LGC) filed Supplement No. 17 to Tariff Gas -Pa.P.U.C. No. 1 to become effective September 1, 2022, which proposed changes in rates, rules, and regulations calculated to produce \$701,200 (32.35%) in additional annual revenues.

On July 19, 2022, the Bureau of Investigation & Enforcement (I&E), filed a Notice of Appearance for Carrie B. Wright, Esquire.

On July 22, 2022, the Office of Small Business Advocate (OSBA) filed a Formal Complaint, Public Statement, and Notice of Appearance, which was docketed at C-2022-3033978.

On August 4, 2022, the Office of Consumer Advocate (OCA) filed a Formal Complaint, Public Statement, and Notice of Appearance, which was docketed at C-2022-3034235.

On August 4, 2022, the Pennsylvania Public Utility Commission (Commission) issued an Order suspending Supplement No. 17 by operation of law until April 1, 2023, unless permitted by Commission Order to become effective at an earlier date.

A prehearing conference was held on August 16, 2022, and a prehearing order was entered on August 17, 2022. The prehearing order confirmed the litigation schedule and discovery deadlines for this proceeding. In addition, the Formal Complaint of OCA at Docket No. C-2022-3034235 and OSBA at Docket No. C-2022-3033978 were consolidated with the Leatherstocking filing at R-2022-3032764.

On August 17, 2022, A Telephonic Evidentiary Hearing Notice was issued scheduling the evidentiary hearing for October 26-27, 2022.

On August 19, 2022, A Telephonic Public Input Hearing Notice was issued scheduling the public input hearing for September 19, 2022.

On September 13, 2022, I&E, the OCA, and OSBA served their respective Direct Testimony and Exhibits as described below.

The public input hearing was held on September 19, 2022. No members of the public provided testimony at the hearing.

On October 4, 2022, an Interim Order was entered directing the Parties to exchange all written testimony by October 21, 2022, and a witness matrix by October 25, 2022. The October 4, 2022 Interim Order also directed the Parties to electronically submit all the pre-marked proposed exhibits/testimony and a master list of all the parties' proposed testimonies, evidence and exhibits list of such exhibits and testimonies from all of the Parties, not later than October 25, 2022, at 12:00 p.m.

On October 5, 2022, Leatherstocking, OCA, and I&E served their respective Rebuttal Testimony and Exhibits as described below.

On October 17, 2022, counsel for the Company provided an email to the undersigned presiding officer advising that the Parties had reached a settlement in principle, advising that the Parties intended to enter into a stipulation, and requesting that the evidentiary hearing be cancelled. The undersigned presiding officer provided an email response to the Parties requesting that the stipulation include a list of all of the pre-marked testimony and evidence and exhibits, along with the testimony, verifications, and exhibits/evidence on or before October 24, 2022. In addition, the Parties were requested to confer and agree upon a common outline of issues to be used by all parties in the Settlement and Statements in Support of Settlement submitted by the Parties.

On October 21, 2022, an Interim Order was entered suspending the deadline imposed by the Interim Order entered on December 4, 2022, requiring the Parties to submit and

exchange all written testimonies and exhibits they intend to introduce into evidence at the evidentiary hearing not later than October 21, 2022; suspending the deadline requiring the Parties to submit a witness matrix not later than October 25, 2022; and requiring the Parties to submit their proposed stipulation, to include all pre-marked proposed exhibits/testimonies and a list of such exhibits and testimonies, not later than 4 p.m. on Monday, October 24, 2022.

On October 24, 2022, Leatherstocking, I&E, OCA and OSBA (hereinafter collectively referred to as the Joint Petitioners, Parties or Settling Parties), by their respective counsel, filed a Joint Stipulation for Admission of Testimony and Exhibits into the Evidentiary Record (Joint Stipulation or Stipulation). The Joint Petitioners agreed to the admission into the evidentiary record of this proceeding the previously distributed written testimony and exhibits prepared by Leatherstocking, I&E, the OCA, and OSBA and their witnesses.

In their Stipulation, the Parties stipulated to the admission of the evidence identified below, into the evidentiary record. The Parties also agreed to the admission of certain testimony and exhibits; waiving cross-examination with respect to all of the witnesses of the Joint Petitioners; cancellation of the evidentiary hearings scheduled for October 26-27, 2022; and that a Joint Petition for Settlement would be filed no later than December 1, 2022.

On October 25, 2022, an Interim Order was entered cancelling the evidentiary hearing in this proceeding and approving the Joint Stipulation for Admission of Testimony and Exhibits into the Evidentiary Record.

The following pre-served written testimony statements, accompanying exhibits and appendices, and respective executed verifications were admitted into the formal evidentiary record as evidence:

Leatherstocking Gas Company LLC Testimony and Exhibits:

Rate Case Filing and Direct Testimony

- A. Appendix A – Tariff Leaves;
- B. Appendix B – Impact of the Proposed Rate Change on Total Bill Revenues for the Twelve Months Ended March 31, 2023;
- C. Leatherstocking Statement No. 1 – Direct Testimony of Accounting and Rate Panel Charles Lenns and Richard A. Kane, including Exhibit Nos. G-1 through G-6;
- D. Data Responses to 52 Pa. Code Section 53.52;
- E. Proofs of Notice;
- F. Verification.

Rebuttal Testimony

- A. Leatherstocking Statement No. 1-R - Rebuttal Testimony of Accounting and Rate Panel Charles Lenns and Richard A. Kane, including Appendices A and B and Exhibits G-2 Oct. 2022 Update through G-4 Oct. 2022 Update.

Verifications

- A. Testimony Verification of Charles Lenns;
- B. Testimony Verification of Richard A. Kane.

Bureau of Investigation and Enforcement Testimony and Exhibits:

Direct Testimony

- A. I&E Statement No. 1 – Direct Testimony of Christine Wilson, including I&E Exhibit No. 1;
- B. I&E Statement No. 2 – Direct Testimony of Anthony Spadaccio, including I&E Exhibit No. 2;
- C. I&E Statement No. 3 - Direct Testimony of Eryan Sakaya, including I&E Exhibit No. 3.

Rebuttal Testimony

- A. I&E Statement No. 3-R – Rebuttal Testimony of Eryan Sakaya, including I&E Exhibit No. 3-R.

Verifications

- A. Testimony Verification of Christine Wilson;
- B. Testimony Verification of Anthony Spadaccio;
- C. Testimony Verification of Esyan Sakaya.

The Office of Consumer Advocate Testimony and Exhibits:

Direct Testimony

- A. OCA Statement No. 1 - Direct Testimony of Jennifer Rogers, including Schedules JLR-1 to JLR-12 and a verification.

Rebuttal Testimony

- A. OCA Statement No. 2-R – Rebuttal Testimony of Jerome D. Mierzwa, including a verification.

Office of Small Business Advocate Testimony and Exhibits:

Direct Testimony

- A. OSBA Statement No. 1 - Direct Testimony of Kevin Higgins, including an Appendix, Exhibits KCH-1 through KCH-5, and a verification.

In addition, the Parties were directed to file their Settlement Petition accompanied by Statements in Support of Settlement from each Party, on or before December 1, 2022.

On November 23, 2022, the Joint Petitioners, by their respective counsel, filed a Joint Petition for Full Settlement of Rate Proceeding (Joint Petition or Settlement).

On November 23, 2022, Leatherstocking filed its Statement In Support of the Unanimous Joint Petition for Full Settlement of Rate Proceeding. I&E, OCA, and OSBA each filed their Statement In Support Of Joint Petition For Settlement Of Rate Investigation on November 23, 2022.

On December 2, 2022, an Interim Order was entered closing the record in this proceeding.

On December 6, 2022, the Parties filed a Bill Impact Analysis Addendum To The Unanimous Joint Petition Of Leatherstocking, I&E, OCA, and OSBA For Full Settlement Of Rate Proceeding (Addendum or Addendum to Settlement).

In the Addendum, the Parties stipulated to the averments set forth in the Bill Impact Analysis Addendum to the Settlement. Accompanying the Addendum is **Appendix H**, which is a bill impact analysis demonstrating the average customer bill impacts of the agreed-upon revenue increase as allocated under the terms of the Settlement. Appendix H provides the bill impacts both inclusive and exclusive of purchased gas cost revenues.

In the Addendum, the Parties explained that the Joint Petitioners agreed in the Settlement to allocate the agreed-upon revenue increase based on a uniform percentage increase to the SC-1, SC-2, and SC-3 classes on a distribution revenue basis.² However, the Parties pointed out that the Proposed Findings of Fact in Appendix A present the bill impacts inclusive of purchased gas costs, which gives the appearance that each class is receiving a different percentage increase.³ Accordingly, the Parties submit that, when excluding gas cost revenues from the bill impact analysis, the average SC-1, SC-2, and SC-3 customers receive the same percentage increase in their monthly bills consistent with the terms of the Settlement.⁴

The Parties further stipulated as follows:

Specifically, under as-filed rates, the monthly bill of a residential customer using 79 CCF per month would have increased from \$95.21 to \$151.58 per month, or by 59.2%, excluding estimated gas costs. Under Year 1 Settlement rates, the monthly bill of a residential customer using 79 CCF per month will increase from

² See Settlement ¶ 6.

³ See Settlement, App. A, at 9-10, ¶¶ 25-27.

⁴ See App. H, at 2.

\$95.21 to \$141.80 per month, or by 48.9%, excluding estimated gas costs, beginning April 1, 2023. Under Year 2 Settlement rates, the monthly bill of a residential customer using 79 CCF per month will increase from \$141.80 to \$153.01 per month, or by 7.9%, excluding estimated gas costs, beginning April 1, 2024.

Under as-filed rates, the monthly bill of a general service and non-residential space heating customer using 235 CCF per month would have increased from \$251.95 to \$425.30 per month, or by 68.8%, excluding estimated gas costs. Under Year 1 Settlement rates, the monthly bill of a general service and non-residential space heating customer using 235 CCF per month will increase from \$251.95 to \$375.27 per month, or by 48.9%, excluding estimated gas costs, beginning April 1, 2023. Under Year 2 Settlement rates, the monthly bill of a general service and non-residential space heating customer using 235 CCF per month will increase from \$375.27 to \$404.93 per month, or by 7.9%, excluding estimated gas costs, beginning April 1, 2024.

Under as-filed rates, the monthly bill of a commercial service customer using 5,432 CCF per month would have increased from \$4,917.50 to \$8,378.50 per month, or by 70.4%, excluding estimated gas costs. Under Year 1 Settlement rates, the monthly bill of a commercial service customer using 5,432 CCF per month will increase from \$4,917.50 to \$7,324.19 per month, or by 48.9%, excluding estimated gas costs, beginning April 1, 2023. Under Year 2 Settlement rates, a commercial service customer's monthly bill using 5,432 CCF per month will increase from \$7,324.20 to \$7,902.42 per month, or by 7.9%, excluding estimated gas costs, beginning April 1, 2024.⁵

Based upon a review of the initial filing by the Company, it appears that the initial filing and proposed rate increase projections were based upon distribution revenue, excluding gas costs.

On December 9, 2022, an Interim Order was entered reopening the evidentiary record at Docket Number R-2022-3032764 and approving and admitting the Bill Impact Analysis Addendum To The Unanimous Joint Petition Of Leatherstocking, I&E, OCA, and OSBA For Full Settlement Of Rate Proceeding and the attached Appendix H. In addition, the Settlement was amended to include the Bill Impact Analysis Addendum To The Unanimous

⁵ Addendum to Settlement at 1-3.

Joint Petition Of Leatherstocking, I&E, OCA, and OSBA For Full Settlement Of Rate Proceeding, and attached Appendix H.

On December 13, 2022, an Interim Order was entered closing the record.

The Settling Parties agreed to several proposed findings of fact with citations to the record of admitted evidence. These proposed findings provide the information necessary to support the “Findings of Fact” set forth below.

III. FINDINGS OF FACT

1. Leatherstocking Gas Company, LLC is a “public utility” as that term is defined in Section 102 of the Public Utility Code, 66 Pa. C.S. § 102, subject to the regulatory jurisdiction of the Pennsylvania Public Utility Commission. The Company provides natural gas service to customers located in its certificated service territory.

2. On July 1, 2022, Leatherstocking filed Supplement No. 17 to Tariff Gas – Pa. P.U.C. No. 1 to become effective September 1, 2022, containing proposed changes in rates, rules, and regulations calculated to produce \$701,200 (32.35%) in additional annual revenues.

3. On October 24, 2022, the Joint Petitioners filed a Joint Stipulation for Admission of Testimony and Exhibits into the Evidentiary Record, seeking to admit the previously served testimony and exhibits, along with their accompanying verifications, into the evidentiary record.

4. On October 25, 2022, Administrative Law Judge (ALJ) Jeffrey A. Watson issued an Order Granting the Joint Stipulation for Admission of Testimony and Exhibits into the Evidentiary Record.

5. On October 17, 2022, Leatherstocking informed ALJ Watson that the Joint Petitioners had reached a settlement in principle. The parties requested that they would submit

the joint petition for settlement with statements in support by no later than the previously assigned deadline of December 1, 2022.

6. The Unanimous Joint Petition for Full Settlement of Rate Proceeding is supported by the parties in this case: Leatherstocking, I&E, OCA, and OSBA.

7. I&E is the prosecutorial bureau within the Commission established for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge and for enforcing compliance with the state and federal gas safety laws and regulations.⁶

8. The OCA is authorized to represent the interests of consumers before the Commission.⁷

9. The OSBA is authorized to represent the interests of small business consumers of utility service in Pennsylvania under the provisions of the Small Business Advocate Act.⁸

10. The Settlement reflects a carefully balanced compromise of the interests of all of the Joint Petitioners.⁹

11. The Joint Petitioners agree that the Settlement is in the public interest.¹⁰

⁶ *Implementation of Act 129 of 2008 Organization of Bureau and Offices*, Docket No. M-2008-20071852 (Order entered Aug. 11, 2011).

⁷ Act 161 of 1976, 71 P.S. § 309-2.

⁸ Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50.

⁹ Joint Petition ¶ 25.

¹⁰ *Id.* at ¶ 29.

12. In its rate increase filing, Leatherstocking presented testimony and supporting data demonstrating that it has made significant investments to its plant over the past several years, while at the same time recognizing substantial increases in operating expenses.¹¹

13. In testimony, I&E recommended adjustments and modifications concluding that Leatherstocking should receive an annual increase of approximately \$615,851,¹² the OCA recommended that Leatherstocking receive an annual increase of approximately \$585,327,¹³ and OSBA recommended that Leatherstocking receive an annual increase of approximately \$547,800.¹⁴

14. As set forth in the Joint Petition, Leatherstocking will be permitted to establish rates which will produce an overall increase in annual gas distribution operating revenues of approximately \$520,000 in year 1, effective April 1, 2023, and \$125,000 in year 2, effective April 1, 2024, for a total increase of \$645,000 once fully phased-in.¹⁵

15. Act 53 of 2022 reduces the Pennsylvania Corporate Net Income Tax (CNIT) rate to 8.99% beginning on January 1, 2023, which is the year when Leatherstocking's new rates will take effect.¹⁶

16. The revenue requirement as set forth in the Settlement reflects the 2023 Pennsylvania CNIT rate of 8.99%.¹⁷

¹¹ LGC St. No. 1 at 8:8-9:9; *see also* LGC Exhs. G-3, G-4.

¹² I&E St. No. 1 at 3:3-7.

¹³ OCA St. 1 at 4:21-22.

¹⁴ OSBA St. 1 at 4:1-4, Table KCH-1.

¹⁵ Joint Petition ¶ 2.

¹⁶ *See* I&E St. 1 at 10:9-16; *see also* Leatherstocking St. 1-R at 11:17-12:2.

¹⁷ Joint Petition ¶ 10.

17. Leatherstocking used depreciation rates that are based on those used by other gas utilities assuming that the usefulness and life expectancy of Leatherstocking plant will be similar to other gas utilities that have much older infrastructures.¹⁸ Leatherstocking's depreciation rates do not include any allowance for salvage or removal cost.¹⁹

18. The depreciation rates reflected in Leatherstocking's filings are adopted as part of the settlement.²⁰

19. The agreed upon revenue requirement is a "black box" settlement, under which the parties do not specifically identify or resolve all of the individual rate base, revenue, expenses, and rate of return issues.²¹

20. In its filing, Leatherstocking proposed to roll-in the currently effective Construction Build-Out CIAC²² Fee (CBOCF) into the delivery rates for each customer class on a revenue neutral basis, prior to allocating the proposed increase.²³

21. Leatherstocking proposed to allocate the entire increase to the delivery rate.²⁴

22. I&E recommended that if the Commission grants an increase that is less than requested, rates should be scaled back such that each class other than the contract classes receive the same percentage increase.²⁵

¹⁸ Leatherstocking St. 1 at 35:1-10.

¹⁹ *Id.*, at 35:10-14.

²⁰ Joint Petition ¶ 13; *see also* Leatherstocking St. 1, Exh. G-4, Sch. 6, Pg. 2.

²¹ Joint Petition ¶ 1.

²² Contribution in Aid of Construction.

²³ Leatherstocking St. 1 at 44:9-11.

²⁴ *Id.*, at 44:11-15.

²⁵ I&E St. 3 at 17:23-18:2.

23. OSBA recommended that the SC-1, SC-2, and SC-3 class should be allocated an amount such that each class receives the same percentage increase and recommended that both the customer charge and delivery charge be increased by the same percentage.²⁶

24. OCA recommended that if OSBA’s position relative to the customer charge were adopted, the customer charge for the SC-1 class should remain unchanged.²⁷

25. As part of Settlement, the Joint Petitioners agreed to a rate design that produces the agreed-upon revenue increase. Leatherstocking’s settlement rates as compared to current and as-filed rates are identified in the table below:

<u>Rate Class</u>	<u>Rate</u>	<u>Current</u> ²⁸	<u>As-Filed</u> ²⁹	<u>Settlement (Year 1)</u> ³⁰	<u>Settlement (Year 2)</u> ³¹
SC-1	Customer Charge	\$20.00	\$20.00	\$20.00	\$20.00
	Delivery Rate	\$0.6500	\$1.66207	\$1.53859	\$1.68010
	CBOCF	\$0.3000	\$0.0000	\$0.0000	\$0.0000
SC-2	Customer Charge	\$20.00	\$20.00	\$20.00	\$20.00
	Delivery Rate	\$0.6500	\$1.66207	\$1.45658	\$1.57839
	CBOCF	\$0.3000	\$0.0000	\$0.0000	\$0.0000

²⁶ OSBA St. 1 at 12:10-21; *see also* Exh. KCH-4.

²⁷ OCA St. 2-R at 6:1-7.

²⁸ Joint Petition, App. C-1, at 3.

²⁹ Leatherstocking St. 1, Exh. G-6, Sch. 4.

³⁰ Joint Petition, App. C-1, at 3.

³¹ Joint Petition, App. C-2, at 3.

SC-3	Customer Charge	\$300.00	\$300.00	\$300.00	\$300.00
	Delivery Rate	\$0.5500	\$1.48711	\$1.29303	\$1.39947
	CBOCF	\$0.3000	\$0.0000	\$0.0000	\$0.0000

SC-4	Customer Charge	\$1,220.00	\$1,220.00	\$1,220.00	\$1,220.00
	Delivery Rate	\$0.5000	\$1.39964	\$1.24468	\$1.35157
	CBOCF	\$0.3000	\$0.0000	\$0.0000	\$0.0000

SC-5	Customer Charge	\$300.00	\$300.00	\$300.00	\$300.00
	Delivery Rate	\$0.5500	\$1.48711	\$1.29303	\$1.39947
	CBOCF	\$0.3000	\$0.0000	\$0.0000	\$0.0000

SC-6	Customer Charge	\$1,220.00	\$1,220.00	\$1,220.00	\$1,220.00
	Delivery Rate	\$0.5000	\$1.39964	\$1.24468	\$1.35157
	CBOCF	\$0.3000	\$0.0000	\$0.0000	\$0.0000

26. The CBOCF surcharge rate of \$0.30 per CCF has been rolled into base rates and will now be \$0.000 for all rate codes.³²

27. Under as-filed rates, the monthly bill of a residential customer using 79 CCF per month would have increased from \$160.64 to \$217.01 per month, or by 35.1%, including estimated gas costs. Under Year 1 Settlement rates, the monthly bill of a residential customer using 79 CCF per month will increase from \$160.64 to \$207.24 per month, or by 29.0%, including estimated gas costs, beginning April 1, 2023. Under Year 2 Settlement rates, the monthly bill of a residential customer using 79 CCF per month will increase from \$207.24 to \$218.44 per month, or by 5.4%, including estimated gas costs, beginning April 1, 2024.³³

³² Joint Petition ¶ 4-5.

³³ Leatherstocking Gas Company, LLC., Supplement No. 17 to Tariff-Gas-Pa. P.U.C. No. 1, filed July 1, 2022.

28. Under as-filed rates, the monthly bill of a general service commercial and non-residential space heating customer using 235 CCF per month would have increased from \$453.15 to \$626.50 per month, or by 38.3%, including estimated gas costs and sales tax. Under Year 1 Settlement rates, the monthly bill of a general service commercial and non-residential space heating customer using 235 CCF per month will increase from \$453.15 to \$576.47 per month, or by 27.2%, including estimated gas costs and sales tax, beginning April 1, 2023. Under Year 2 Settlement rates, the monthly bill of a general service commercial and non-residential space heating customer using 235 CCF per month will increase from \$576.47 to \$606.13 per month, or by 5.1%, including estimated gas costs and sales tax, beginning April 1, 2024.³⁴

29. Under as-filed rates, the monthly bill of a commercial service customer using 5,432 CCF per month would have increased from \$9,407.29 to \$12,868.29 per month, or by 36.8%, including estimated gas costs and sales tax. Under Year 1 Settlement rates, the monthly bill of a commercial service customer using 5,432 CCF per month will increase from \$9,407.29 to \$11,813.98 per month, or by 25.6%, including estimated gas costs and sales tax, beginning April 1, 2023. Under Year 2 Settlement rates, a commercial service customer's monthly bill using 5,432 CCF per month will increase from \$11,813.98 to \$12,392.20 per month, or by 4.9%, including estimated gas costs and sales tax, beginning April 1, 2024.³⁵

30. I&E raised a concern with Leatherstocking's increased customer records and collection expense, as well as the increase to injuries and damages expense.³⁶ I&E recommended that Leatherstocking provide documentation demonstrating its efforts to find operating efficiencies or cost control measures to reduce these expenses.³⁷

³⁴ *Id.*

³⁵ *Id.*

³⁶ I&E St. 1 at 5:20-6:11, 8:1-9:12.

³⁷ *Id.*

31. The Settlement provides that in its next base rate filing, Leatherstocking will provide documentation showing efforts made to control customer records/collection expense and manage insurance costs.³⁸

IV. TERMS AND CONDITIONS OF SETTLEMENT

1. The Joint Petitioners explained that the Settlement provided is the product of comprehensive negotiations, representing give-and-take by all Joint Petitioners, and which resulted in a settlement that is in the public interest balancing Leatherstocking's significant investment in its territory and the need for cost-based rates and measures to further enhance service and future performance, while recognizing principles of gradualism when setting rates. The settlement is a typical "black box" settlement;³⁹ that is, without admission on any particular issue though the terms agreed to are enforceable upon approval by the Commission. The Joint Petitioners agree that the Settlement is a reasonable resolution of competing positions and interests in a way that meets and promotes the public interest. It also avoids significant time and expense of all involved, including expensive further testimony, briefing, exceptions and potential appeals. The proposed Settlement consists of the following terms and conditions:⁴⁰

A. Revenue Requirement Increase and Phase In

2. Upon the Commission's approval of the Settlement, Leatherstocking will be permitted to establish rates which will produce an overall increase in annual gas distribution

³⁸ Joint Petition ¶ 16.

³⁹ *Pa. Pub. Util. Comm'n v. Peoples TWP LLC*, 2013 WL 6835105, at *16 (Order entered Dec. 19, 2013) ("We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. See, *Pa. PUC v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. PUC v. Citizens' Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases. For these reasons, we support the use of a "black box" settlement in this proceeding and, accordingly, deny this Exception.").

⁴⁰ Joint Petition at 2-3.

operating revenues of approximately \$520,000 in year 1, effective April 1, 2023, and \$125,000 in year 2, effective April 1, 2024, for a total increase of \$645,000 once fully phased-in, as set forth in the proposed Tariff Supplement attached to the Settlement as **Appendix B** (Settlement Rates), to become effective upon one day's notice. This is an increase of approximately 25.7% in total customer bills and 48.9% in delivery revenues in year 1 and an increase of approximately 4.9% in total customer bills and 7.9% in delivery revenues in year 2.⁴¹

B. Rate Design

3. The parties agree to the rate design reflected in the proof of revenues (Appendix C) and tariff supplement (Appendix B).⁴²

4. CBOCF surcharge rate of \$0.30 per CCF has been rolled into base rates.⁴³

5. CBOCF surcharge rate will be \$0.00 for all rate codes.⁴⁴

6. The Revenue Allocation will be a uniform percentage increase to SC1, SC2, and SC3.⁴⁵

7. The customer charge per month for years 1 and 2 are as follows:

- a. SC1 Residential: \$20.00
- b. SC2 General Service & Non Residential Space Heating: \$20.00
- c. SC3 Small commercial 5,000 – 24,999 MCF annually: \$300.00
- d. SC4 Large Commercial \geq 25,000 MCF annually: \$1,220.00
- e. SC5 Small Transportation 5,000-24,999 MCF Annually: \$300.00
- f. SC6 Large Transportation \geq 25,000 MCF Annually: \$1,220.00⁴⁶

⁴¹ Excludes Contract Transportation Customer in all stated percentages; *see* Joint Petition at 3-4.

⁴² Joint Petition at 4.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*, at 4-5.

8. The Rate per CCF for year 1 delivery rates effective April 1, 2023, is as follows:

- a. SC1 Residential: \$1.53859 per ccf
- b. SC2 General Service & Non Residential Space Heating: \$1.45658 per ccf
- c. SC3 Small commercial 5,000 – 24,999 MCF annually: \$1.29303 per ccf
- d. SC4 Large Commercial \geq 25,000 MCF annually: \$1.24668 per ccf
- e. SC5 Small Transportation 5,000-24,999 MCF Annually: \$1.29303 per ccf
- f. SC6 Large Transportation \geq 25,000 MCF Annually: \$1.24468 per ccf⁴⁷

9. The Rate per CCF for year 2 delivery rates effective April 1, 2024, is as follows:

- a. SC1 Residential: \$1.68010 per ccf
- b. SC2 General Service & Non Residential Space Heating: \$1.57839 per ccf
- c. SC3 Small commercial 5,000 – 24,999 MCF annually: \$1.39947 per ccf
- d. SC4 Large Commercial \geq 25,000 MCF annually: \$1.35157 per ccf
- e. SC5 Small Transportation 5,000-24,999 MCF Annually: \$1.39947 per ccf
- f. SC6 Large Transportation \geq 25,000 MCF Annually: \$1.35157 per ccf⁴⁸

C. State Tax Adjustment Surcharge

10. The revenue requirement reflects the 2023 State Income Tax Rate of 8.99%.⁴⁹

11. No State Tax Adjustment Surcharge (STAS) adjustment will be required for January – March 2023, which is estimated to be approximately \$1,800.⁵⁰

12. For the 2024 and later years, Leatherstocking will calculate the state income tax at the statutory rate for that year and compare it to state income taxes calculated at

⁴⁷ Joint Petition at 4-5.

⁴⁸ *Id.* at 5.

⁴⁹ *Id.*

⁵⁰ *Id.*

8.99%. The difference will be “grossed-up” by using the following formula and will be passed back to customers through the STAS surcharge credit until base rates are reset:⁵¹

<u>2024 Retention Factor Gross-Up Example</u>	
State Tax Savings (8.49% vs. 8.99%)	100.00
Less: 2024 State Income Tax @ 8.49%	8.49
Federal Taxable Income	91.51
Less: Federal Income Tax @ 21%	19.22
Net Income	<u>72.29</u>
Net Income (Retention) /100	0.7229
Gross Up Factor (1 / Retention Factor)	1.3833

D. Depreciation

13. The depreciation of rates reflected in Leatherstocking’s filings and shown below are adopted as part of the settlement:⁵²

<u>Account</u>	<u>Gas - Intangible (Amortization)</u>	<u>Average Service Life</u>	<u>Annual Depr. / Amort. Rate</u>
301	Organization Costs	-	3.21%
302	Franchise / Consents	-	0.28%
<u>Gas - Distribution Plant</u>			
374	Land Rights / Easements	-	-
375	Structures & Improvements (Amort.)	5	20.00%
376	Distribution Mains	60	1.67%
378	Measuring & Regulator Equipment	40	2.50%
380	Services	40	2.50%
381	Meters	35	2.86%
382	Meter Installations	40	2.50%
383	House Regulators	45	2.22%
<u>Gas - General Plant (Amortization)</u>			
391	Office Furniture and Equipment	5	20.00%
392	Transportation Equipment	5	20.00%
394	Tools & Equipment	5	20.00%

⁵¹ *Id.*

⁵² Joint Petition at 6.

14. With the CBOCF surcharge rolled into rates, Leatherstocking will stop accruing economic depreciation effective with new base rates with respect to CBOCF projects.⁵³

E. Effective Date

15. Upon the entry of a Commission Order approving the Joint Petition, Leatherstocking will be permitted to file a tariff for gas service, in the form attached to the Settlement as Appendix B, reflecting the agreed-to additional operating revenue. The Joint Petitioners agree to the implementation of the Settlement Rates no sooner than April 1, 2023 for year 1 and April 1, 2024 for year 2.⁵⁴

F. Reporting

16. In its next base rate filing, Leatherstocking will provide documentation showing efforts made to control customer records/collection expense and manage insurance costs.⁵⁵

G. Standard Terms

17. The Commission's approval of the Settlement shall not be construed as approval of any Joint Petitioner's position on any issue but rather as an agreed-to compromise of the Joint Petitioners' competing positions. It is understood and agreed among the Joint Petitioners that the proposed 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. Accordingly, tis Settlement may not be cited as precedent in

⁵³ Joint Petition at 6.

⁵⁴ *Id.*

⁵⁵ Joint Petition at 7.

any future proceeding, except to the extent required to implement any term specifically agreed to by the Joint Petitioners or to enforce the Settlement.⁵⁶

18. The Settlement is presented without prejudice to the position any of the Joint Petitioners may advance in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to by the Joint Petitioners in this Settlement that would carry forward into subsequent rate cases.⁵⁷

19. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. In reaching the proposed Settlement, the Joint Petitioners thoroughly considered all issues and give and take of positions. As a result of that consideration, the Joint Petitioners believe that the settlement agreement meaningfully addresses all such issues raised and therefore should be approved without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, the Settlement may be withdrawn upon written notice to the Commission and all active parties within five business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or Leatherstocking or any other Joint Petitioner elects to withdraw the Settlement as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.⁵⁸

20. All Joint Petitioners support the Settlement and agree, as a result of the negotiated settlement and the facts and data examined and in view of existing ratemaking law and principles, to make reasonable and good faith efforts to obtain approval of the Settlement by the ALJ and the Commission without modification. If the ALJ, in the Recommended Decision, recommends that the Commission adopt the Settlement as proposed without modification, the

⁵⁶ Joint Petition at 7.

⁵⁷ *Id.*

⁵⁸ *Id.* at 8.

Joint Petitioners agree to waive the filing of Exceptions. However, to the extent any terms and conditions of the Settlement are modified, or additional matters are proposed by the ALJ in the Recommended Decision, the Joint Petitioners do not waive their rights to file Exceptions in support of the Settlement. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed provided such Replies support the Settlement.

21. The Joint Petitioners recognize that the Joint Petition is a settlement of, and binding upon, only the parties signing this document.⁵⁹

22. The Joint Petitioners agree that the Joint Petition document may be signed or executed in separate counterparts or signature pages that shall be binding upon the Joint Petitioners and such counterparts shall be considered as one document.

23. The Joint Petitioners agree and request that if the proposed Settlement is approved, the OCA's Formal Complaint in this matter should be marked satisfied and closed due to the Settlement.⁶⁰

24. The Joint Petitioners agree and request that if the proposed Settlement is approved, the OSBA's Formal Complaint in this matter should be marked satisfied and closed due to the Settlement.⁶¹

Summary of Settlement

The Settlement, which is fully executed by Leatherstocking, I&E, OCA and OSBA, consists of 12 pages and Attachments "A" through and including "G" and the Addendum to Settlement and attached Appendix "H", identified as follows:

⁵⁹ Joint Petition at 8.

⁶⁰ *Id.*

⁶¹ *Id.* at 9.

Appendix A	Procedural History, Proposed Findings Of Fact, Conclusions Of Law, Ordering Paragraphs
Appendix B	Tariff Supplements
Appendix C	Proof Of Revenues
Appendix D	Leatherstocking Statement In Support
Appendix E	I&E Statement In Support
Appendix F	OCA Statement In Support
Appendix G	OSBA Statement In Support
Appendix H	Bill Impact Analysis

The impact of the Settlement of the various customer classes is as follows:

The Settlement will result in an overall increase in annual gas distribution operating revenues of approximately \$520,000 in year 1, effective April 1, 2023, and \$125,000 in year 2, effective April 1, 2024, for a total increase of \$645,000 once fully phased-in, as set forth in the proposed Tariff Supplement attached to the Settlement as Appendix B. This is an increase of approximately 25.7% in total customer bills and 48.9% in delivery revenues in year 1 and an increase of approximately 4.9% in total customer bills and 7.9% in delivery revenues in year 2.⁶²

Under as-filed rates, the monthly bill of a residential customer using 79 CCF per month would have increased from \$95.21 to \$151.58 per month, or by 59.2%, excluding estimated gas costs. Under Year 1 Settlement rates, the monthly bill of a residential customer using 79 CCF per month will increase from \$95.21 to \$141.80 per month, or by 48.9%, excluding estimated gas costs, beginning April 1, 2023. Under Year 2 Settlement rates, the monthly bill of a residential customer using 79 CCF per month will increase from \$141.80 to \$153.01 per month, or by 7.9%, excluding estimated gas costs, beginning April 1, 2024.⁶³

⁶² Excludes Contract Transportation Customer in all stated percentages; see Leatherstocking Gas Company LLC., Supplement No. 17 to Tariff Gas -Pa.P.U.C. No. 1, filed July 1, 2022.

⁶³ Leatherstocking Gas Company LLC., Supplement No. 17 to Tariff Gas -Pa.P.U.C. No. 1, filed July 1, 2022.

Under as-filed rates, the monthly bill of a general service commercial and non-residential space heating customer using 235 CCF per month would have increased from \$251.95 to \$425.30 per month, or by 68.8%, excluding estimated gas costs and sales tax. Under Year 1 Settlement rates, the monthly bill of a general service commercial and non-residential space heating customer using 235 CCF per month will increase from \$251.95 to \$375.27 per month, or by 48.9%, excluding estimated gas costs and sales tax, beginning April 1, 2023. Under Year 2 Settlement rates, the monthly bill of a general service commercial and non-residential space heating customer using 235 CCF per month will increase from \$375.27 to \$404.93 per month, or by 7.9%, excluding estimated gas costs and sales tax, beginning April 1, 2024.⁶⁴

Under as-filed rates, the monthly bill of a commercial service customer using 5,432 CCF per month would have increased from \$4,917.50 to \$8,378.50 per month, or by 70.4%, excluding estimated gas costs and sales tax. Under Year 1 Settlement rates, the monthly bill of a commercial service customer using 5,432 CCF per month will increase from \$4,917.50 to \$7,324.19 per month, or by 48.9%, excluding estimated gas costs and sales tax, beginning April 1, 2023. Under Year 2 Settlement rates, a commercial service customer's monthly bill using 5,432 CCF per month will increase from \$7,324.20 to \$7,902.42 per month, or by 7.9%, excluding estimated gas costs and sales tax, beginning April 1, 2024.⁶⁵

The Settling Parties also express their agreement with respect to six specific and separate issues detailed below.

V. DISCUSSION

The Commission encourages parties in contested on-the-record proceedings to settle cases.⁶⁶ Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate

⁶⁴ Leatherstocking Gas Company LLC., Supplement No. 17 to Tariff Gas -Pa.P.U.C. No. 1, filed July 1, 2022.

⁶⁵ *Id.*

⁶⁶ *See* 52 Pa. Code § 5.231; Joint Petition at 9.

courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.⁶⁷ In their supporting statements, Leatherstocking, I&E, OCA and OSBA conclude, after extensive discovery and discussion, that this settlement resolves all of the issues in this case, it fairly balances the interests of distribution and its ratepayers, is in the public interest, is consistent with the requirements of the Public Utility Code and should be approved.

The issues specifically addressed by the Settling Parties are discussed below.

Settlement Terms and Conditions

The Joint Petitioners explain that the Settlement was achieved after extensive scrutiny of Leatherstocking’s filing and data in support thereof, analysis of voluminous interrogatories answered by Leatherstocking, the submission of testimony by the Joint Petitioners, and extensive settlement negotiations amongst the parties. The Joint Petitioners conclude that the Settlement, together with its terms and conditions, represent a just and reasonable compromise amongst competing positions and is within the range of outcomes that would have resulted had this proceeding been fully litigated and that the Settlement’s provisions, individually and jointly, are in the public interest and should be approved by the Commission, without modification.

⁶⁷ *Pa. Pub. Util. Comm’n v. CS Water and Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

B. Revenue Requirement Increase and Phase In (Joint Petition ¶ 2)

Leatherstocking's Position

The Settlement provides that Leatherstocking will be permitted to establish rates which will produce an overall increase in annual gas distribution operating revenues of approximately \$520,000 in year 1, effective April 1, 2023, and \$125,000 in year 2, effective April 1, 2024, for a total increase of \$645,000 once fully phased-in, as set forth in Appendix B to the Joint Petition.⁶⁸

Leatherstocking explains that it presented testimony and supporting data demonstrating that it has made significant investments to its plant over the past several years, while at the same time recognizing substantial increases in operating expenses.⁶⁹

The Company submits that the other parties to the proceeding made adjustments and recommendations to Leatherstocking's rate increase, but ultimately concluded that a rate increase was warranted.

Leatherstocking concludes that the revenue increase contemplated by the Joint Petition is in the public interest because it provides Leatherstocking with the necessary additional funds to meet Leatherstocking's obligations under the Public Utility Code to provide safe, adequate and reliable service; allows Leatherstocking to produce an adequate return on the Company's invested capital that is dedicated to the service of Leatherstocking's customers; provides sufficient operating revenues to meet operating expenses, taxes and other charges; enables the Company to maintain its creditworthiness at a level sufficient to raise capital necessary to perform its obligations to provide safe, adequate and proper service to its customers; and provides a reasonable rate of return on the Company's investment in its utility property.⁷⁰

⁶⁸ Joint Petition ¶ 2, LGC St. in Support at 2.

⁶⁹ Leatherstocking St. No. 1 at 8:8-9:9; Leatherstocking Exhs. G-3, G-4; Leatherstocking St. in Support at 2.

⁷⁰ Leatherstocking St. in Support at 2-3.

The Company further submits the two-year phase-in of the rate increase reasonably balances Leatherstocking's need to earn an appropriate and fair return on its significant investments, the need for cost-based rates and measures to further enhance service and future performance, and principles of gradualism when setting rates.⁷¹

I&E's Position

I&E explains the proposed Settlement will amount to an increase of approximately 25.7% in total customer bills and 48.9% in delivery revenues in year 1 and an increase of approximately 4.9% in total customer bills and 7.9% in delivery revenues in year 2.⁷²

I&E submits the parties to the Joint Settlement have agreed upon the additional annual revenues as a Black Box settlement, subject to a few specific provisions detailed within the Joint Petition, and that the proposed rate increase represents a result that is within the range of likely outcomes if the case was fully litigated.⁷³

I&E further submits that the agreed upon increased level of Black Box revenue adequately balances the interests of ratepayers and the Company. Leatherstocking will receive sufficient operating funds in order to provide safe and adequate service while ratepayers are protected as the resulting increase minimizes the impact of the initial proposal. Further, the phased-in approach to the rate increase is an important provision that likely would not have been possible in a fully litigated base rate case.⁷⁴

⁷¹ *Id.* at 3-4.

⁷² I&E St. in Support at 5.

⁷³ *Id.*

⁷⁴ *Id.* at 6-7.

OCA's Position

OCA explains that Leatherstocking's filing was the first general rate increase sought by the Company since it began operations in 2013 and that the amount of the rate increase under the proposed Settlement represents a result that is within or below the range of likely outcomes in the event of full litigation of the case.⁷⁵ The OCA's witness, Jennifer L. Rogers, stated in her Direct Testimony that the Company cited infrastructure investments needed to serve new customers in its franchise territory and increases in operating costs as the ongoing drivers of the requested rate increase.⁷⁶ Ms. Rogers concluded the original request by the Company of \$701,200 was not reasonable; however, OCA was able to reach a Settlement which keeps the overall increase at \$645,000, which is \$56,200 less than the amount originally sought by the Company.⁷⁷

OSBA's Position

OSBA submits that the reduction in the overall revenue increase sought by Leatherstocking, provided by the Settlement, will benefit all of Leatherstocking's ratepayers, including the Company's small business customers. While the settlement is a "black box" settlement, without admission on any particular issue, the percentage reduction, and the phase in of the increase over a two-year period reflect a reasonable compromise and general acknowledgment of the competing positions including the OSBA.⁷⁸

Discussion

Pursuant to Sections 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 1301, 1501, Leatherstocking is obligated to operate its natural gas distribution system in an

⁷⁵ I&E St. in Support at 3.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ OSBA St. in Support at 3-4.

efficient and economical manner, to maintain the system in good repair and working order, and to make all necessary and proper additions, improvements, replacements and repairs as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.

The Parties made adjustments and recommendations to Leatherstocking's proposed rate increase, with I&E recommending an annual increase of approximately \$615,851,⁷⁹ OCA recommending an annual increase of approximately \$585,327,⁸⁰ and OSBA recommending that Leatherstocking receive an annual increase of approximately \$547,800.⁸¹

The proposed Settlement will allow Leatherstocking to file new tariff rates designed to provide an overall increase in annual gas distribution operating revenues of approximately \$520,000 in year 1, effective April 1, 2023, and \$125,000 in year 2, effective April 1, 2024, for a total increase of \$645,000 once fully phased-in, instead of the Company's requested \$701,200 per year increase. This amounts to an increase of approximately 25.7% in total customer bills and 48.9% in delivery revenues in year 1 and an increase of approximately 4.9% in total customer bills and 7.9% in delivery revenues in year 2.⁸²

In addition, as the Parties assert, the two-year phase-in of the rate increase reasonably balances Leatherstocking's need to earn an appropriate and fair return on its significant investments, the need for cost-based rates and measures to further enhance service and future performance, and principles of gradualism when setting rates. Therefore, the Company can continue to earn sufficient revenues to provide reasonable and adequate service in a manner that best serves its customers.

⁷⁹ I&E St. No. 1 at 3:3-7; Leatherstocking St. in Support at 3.

⁸⁰ OCA St. 1 at 4:21-22; Leatherstocking St. in Support at 3.

⁸¹ OSBA St. 1 at 4:1-4, Table KCH-1; Leatherstocking St. in Support at 3.

⁸² Leatherstocking St. in Support at 2.

The additional revenue in this proceeding is base rate revenue and has been agreed to in the context of a Black Box settlement. A Black Box agreement does not specifically identify the resolution of any disputed issues. Instead, an overall increase to base rates is agreed to and parties retain all rights to further challenge all issues in subsequent proceedings. As the parties explained, a Black Box settlement benefits ratepayers as it allows for the resolution of a proceeding in a timely manner while avoiding significant additional expenses. The “[d]etermination of a company’s revenue requirement is a calculation that involves many complex and interrelated adjustments affecting revenue, expenses, rate base and the company’s cost of capital. To reach an agreement on each component of a rate increase is an undertaking that in many cases would be difficult, time-consuming, expensive, and perhaps impossible. Black Box settlements are an integral component of the process of delivering timely and cost-effective regulation.”⁸³

The Commission supports the use of black box settlements.⁸⁴ Such settlements significantly reduce the time and expense of all involved, including expensive further testimony, briefing, exceptions and potential appeals, which benefits both Leatherstocking and its customers.

⁸³ See Statement of Commissioner Robert F. Powelson, *Pa. Pub. Util. Comm’n v. Wellsboro Elec. Co.*, Docket No. R-2010-2172662 (Order entered Jan. 13, 2011). See also Statement of Commissioner Robert F. Powelson, *Pa. Pub. Util. Comm’n v. Citizens’ Elec. Co. of Lewisburg, Pa.*, Docket No. R-2010-2172665 (Order entered Jan. 13, 2011); I&E St. in Support at 6-7.

⁸⁴ As stated by the Commission:

We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings.” See *Pa. PUC v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. PUC v. Citizens’ Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011)). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company’s revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company’s cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases. For these reasons, we support the use of a “black box” settlement in this proceeding and, accordingly, deny this Exception.

Pa. Pub. Util. Comm’n v. Peoples TWP LLC, Docket No. R-2013-2355886, at 27-28 (Opinion and Order entered Dec. 19, 2013); See, e.g., *Pa. Pub. Util. Comm’n v. Aqua Pa., Inc.*, Docket No. R-2011-2267958, at 26-27 (Opinion and Order entered June 7, 2012).

Viewed in context with the other provisions to the Settlement, the Parties have concluded that the revenue requirement is reasonable and will provide the Company with the additional revenues necessary to provide safe and reliable service to its customers. It is also within the range of outcomes that would result if this case were fully litigated. As such, the Settlement appropriately balances the need for the Company to have an opportunity to earn a reasonable rate of return with its customers' need for reasonable rates, is in the public interest and should be approved, without modification.

C. Rate Design (Joint Petition ¶¶ 3-9)

Leatherstocking's Position

The Company explains that the Settlement establishes rates designed to produce the agreed-upon revenue increase in a gradual manner over a two-year period, rather than all at once. In particular, the Parties have agreed to roll-in Leatherstocking's CBOCF into Leatherstocking's base rates on a revenue-neutral basis,⁸⁵ and allocate the additional delivery revenue increase to rate classes SC-1, SC-2, and SC-3 on a uniform percentage basis.⁸⁶ For delivery rates effective April 1, 2023, the Settlement provides the following rates shall apply:

- a. SC1 Residential: \$1.53859 per ccf
- b. SC2 General Service & Non Residential Space Heating: \$1.45658 per ccf
- c. SC3 Small commercial 5,000 – 24,999 MCF annually: \$1.29303 per ccf
- d. SC4 Large Commercial >= 25,000 MCF annually: \$1.24668 per ccf
- e. SC5 Small Transportation 5,000-24,999 MCF Annually: \$1.29303 per ccf
- f. SC6 Large Transportation >= 25,000 MCF Annually: \$1.24468 per ccf⁸⁷

⁸⁵ Joint Petition ¶¶ 4-5.

⁸⁶ *Id.* at ¶ 6; Leatherstocking St. in Support at 5.

⁸⁷ Joint Petition ¶ 8; Leatherstocking St. in Support at 5-6.

For delivery rates effective April 1, 2024, the following rates shall apply:

- a. SC1 Residential: \$1.68010 per ccf
- b. SC2 General Service & Non Residential Space Heating: \$1.57839 per ccf
- c. SC3 Small commercial 5,000 – 24,999 MCF annually: \$1.39947 per ccf
- d. SC4 Large Commercial \geq 25,000 MCF annually: \$1.35157 per ccf
- e. SC5 Small Transportation 5,000-24,999 MCF Annually: \$1.39947 per ccf
- f. SC6 Large Transportation \geq 25,000 MCF Annually: \$1.35157 per ccf⁸⁸

The Company notes that currently effective fixed customer charges will not increase under the terms of the Settlement.⁸⁹

Leatherstocking explains, in its initial filing, it proposed to roll-in the currently effective CBOCF into the delivery rates for each customer class on a revenue neutral basis, prior to allocating the proposed increase.⁹⁰ Instead of increasing the fixed customer charge, Leatherstocking proposed to allocate the entire increase to the delivery rate.⁹¹ OSBA witness Higgins testified that the SC-1, SC-2, and SC-3 class should be allocated an amount such that each class receives the same percentage increase and recommended that both the customer charge and delivery charge be increased by the same percentage.⁹² OCA witness Mierzwa recommended that if OSBA's position relative to the customer charge were adopted, the customer charge for the SC-1 class should remain unchanged.⁹³ The Company agreed with OSBA, concluding the most equitable allocation of the revenue increase was to increase the customer charge and delivery rates equally for the SC-1, SC-2, and SC-3 classes.⁹⁴

⁸⁸ Joint Petition ¶ 9; Leatherstocking St. in Support at 6.

⁸⁹ Joint Petition ¶ 7; Leatherstocking St. in Support at 6.

⁹⁰ Leatherstocking St. 1 at 44:9-11; Leatherstocking St. in Support at 6.

⁹¹ Leatherstocking St. 1 at 44:11-15; Leatherstocking St. in Support at 6.

⁹² OSBA St. 1 at 12:10-21; *see also* Exh. KCH-4.

⁹³ OCA St. 2-R at 6:1-7.

⁹⁴ Leatherstocking St. 1-R at 39:9-13.

The Company concludes that the Settlement results in a reasonable compromise among the positions of the Parties. Accordingly, Leatherstocking considers the resulting class allocation to be reasonable in light of its prior rate design, issues raised in other Joint Petitioners' testimony, and the fact that the resulting class allocations were a result of compromise and agreed to by all of the Joint Petitioners.⁹⁵

I&E's Position

I&E notes the allocation of rate increase among the customer classes is important to allow the utility to recover only those direct monthly costs that vary with the addition or loss of a customer through the Customer Charge. I&E explains this charge provides the Company with a steady, predictable level of income that will allow for the proper maintenance and upkeep of the system and protects ratepayers by ensuring that Leatherstocking is not being overcompensated.⁹⁶

I&E submits that moderating the requested increase in this proceeding also benefits ratepayers as it allows them to reap a greater portion of the benefit of conservation, arguing that shifting costs to the volumetric portion of a customer's bill allows for the immediate realization of the benefit of conserving usage.⁹⁷

I&E Witness Sakaya explained, "[c]ustomer charge revenue is considered guaranteed revenue because the revenue a utility receives from customer charges does not vary with usage. If a utility believes that the revenue from present customer charges is sufficient, the utility will not request an increase in its customer charges."⁹⁸ Leatherstocking's current customer charges for SC1 and SC2 will remain at \$20.00 per the terms of the Settlement. This is reasonable because, I&E submits, the customer charge was already set at a level which recovered a sufficient amount of revenue; therefore, there was no need to increase it further. In addition,

⁹⁵ *Id.*

⁹⁶ I&E St. in Support at 7-8.

⁹⁷ *Id.* at 8.

⁹⁸ I&E St. No. 3-R, at 4.

the Settlement explains that the revenue allocation will be a uniform percentage increase to SC1, SC2, and SC3. I&E explains this is consistent with the approach recommended by I&E Witness Sakaya when he stated, “[t]he Company did not provide a COSS [cost -of-service study] to compare the revenue received to the expenses incurred to provide service to each class.”⁹⁹

OCA’s Position

OCA submits, under the proposal, the uniform percentage increase across customer classes and allocated to the residential class is consistent with the percentage recommended by OCA witness, Jerome D. Mierzwa, and is particularly appropriate where an allocated class cost-of-service study was not conducted.¹⁰⁰

In his testimony, OCA witness Mierzwa testified that Leatherstocking’s current residential customer charge is already the highest in the Commonwealth and any increase in the charge would be inconsistent with the Commission’s goal of encouraging energy conservation. Mr. Mierzwa recommended that the existing \$20.00 SC-1 monthly charge should be maintained and which will remain at \$20.00 for years 1 and 2 under the Settlement.¹⁰¹

OCA submits that the agreed upon rate design and structure is reasonable and in the public interest while maintaining the existing \$20.00 SC-1 monthly charge for residential customers.

OSBA’s Position

OSBA submits, at the full revenue requirement, the Company proposed to increase Residential customers non-gas rates by 59.2%, while increasing SC-2 General Service

⁹⁹ I&E St. No. 3, at 18.

¹⁰⁰ OCA St. in Support at 4.

¹⁰¹ *Id.*

customers by 68.8%, and SC-3 Small Commercial customers by 70.4%.¹⁰² Absent a class cost-of-service study, OSBA argues the proposed revenue allocation and rate design assigned an unreasonable portion of cost recovery to small business customers⁵ and that the most reasonable revenue allocation is an equal percentage increase applied to the non-gas costs for these three classes.¹⁰³ OSBA concludes the Settlement adopts this approach, applying a uniform percentage increase to non-gas revenues for all three of these classes in both Year 1 and Year 2.¹⁰⁴

Discussion

As the Parties note, the allocation of rate increase among the customer classes is a significant issue in base rate proceedings and it is important to allow the utility to recover only those direct monthly costs that vary with the addition or loss of a customer through the Customer Charge. The Parties further note that designing rates to allow customers to have greater control of their utility bills is in the public interest.

As the Company explains, the Settlement establishes rates designed to produce the agreed-upon delivery revenue increase in a gradual manner over a two-year period, rather than all at once. Specifically, the Parties have agreed to roll-in Leatherstocking's Construction Build-Out CIAC Fee into Leatherstocking's base rates on a revenue-neutral basis,¹⁰⁵ and allocate the additional delivery revenue increase to rate classes SC-1, SC-2, and SC-3 on a uniform percentage basis.¹⁰⁶

The Parties conclude that the Settlement results in a reasonable compromise among the positions of the Parties, retaining the existing customer charges for each customer

¹⁰² OSBA Statement No. 1 at 4, *citing* Leatherstocking Exhibit G-6, Schedule 5; OSBA Statement No. 1 at 12.

¹⁰³ OSBA Statement No. 1 at 12-13.

¹⁰⁴ OSBA St. in Support at 4.

¹⁰⁵ Joint Petition ¶¶ 4-5.

¹⁰⁶ Joint Petition ¶¶ 6; Leatherstocking St. in Support at 5.

class, which benefits customers by empowering them to manage the cost of their monthly bills and encourages energy conservation, and allocating the agreed-upon delivery revenue increase by way of a uniform percentage increase to the SC-1, SC-2, and SC-3 classes, which ensures that certain customers are not disproportionately affected by the rate increase.¹⁰⁷ These benefits, along with the phase-in of Settlement rates, support the conclusion that these provisions are in the public interest.

Additionally, as the Company did not provide a COSS to compare the revenue received to the expenses incurred to provide service to each class, the revenue allocation and rate design initially proposed by the Company, assigned an unreasonable portion of cost recovery to various customers. Under the circumstances, the most reasonable revenue allocation is an equal percentage increase applied to the non-gas costs for the three classes identified above and there is no justification for proposing a different percentage increase for the classes receiving an increase.

D. State Tax Adjustment Surcharge (Joint Petition ¶¶ 10-12)

Leatherstocking's Position

The Settlement provides that the revenue requirement reflects the 2023 State Income Tax Rate of 8.99%;¹⁰⁸ that no STAS adjustment will be required for January – March 2023, which is estimated to be approximately \$1,800;¹⁰⁹ and that for years 2024 and later, Leatherstocking will calculate the state income tax at the statutory rate for that year and compare it to state income taxes calculated at 8.99% and gross-up the difference to be passed back to customers through the STAS surcharge credit until base rates are reset.¹¹⁰

¹⁰⁷ Leatherstocking St. in Support at 7.

¹⁰⁸ Joint Petition ¶¶ 10-12.

¹⁰⁹ Joint Petition ¶ 11.

¹¹⁰ *Id.* at ¶ 12.

Moreover, Leatherstocking has agreed to refund to customers, revenue impacts related to future reductions to the CNIT as provided in Act 53 of 2022, which is consistent with the Commission’s STAS procedures under 52 Pa. Code §§ 69.51, *et seq.*¹¹¹

I&E’s Position

I&E explains the Settlement revenue requirement reflects the 2023 State Income Tax Rate of 8.99% and that from and after 2024, the Company has agreed that it will calculate the state income tax at the statutory rate for that year and compare it to state income taxes calculated at 8.99%. The difference will be “grossed-up” and will be passed back to customers through the STAS surcharge credit until base rates are reset.¹¹²

OCA’s Position

OCA explains that the revenue requirement reflects the 2023 State Income Tax Rate of 8.99% and that no STAS adjustment will be required for January – March 2023, which is estimated to be approximately \$1,800.¹¹³ For 2024 and later years, OCA explains Leatherstocking will calculate the state income tax at the statutory rate for that year and compare it to state income taxes calculated at 8.99%. The difference will be “grossed-up” by using the following formula and will be passed back to customers through the STAS surcharge credit until base rates are reset:

¹¹¹ Leatherstocking St. in Support at 7-8.

¹¹² I&E St. in Support at 9.

¹¹³ OCA St. in Support at 6-7.

<u>2024 Retention Factor Gross-Up Example</u>	
State Tax Savings (8.49% vs. 8.99%)	100.00
Less: 2024 State Income Tax @ 8.49%	8.49
Federal Taxable Income	91.51
Less: Federal Income Tax @ 21%	19.22
Net Income	72.29
Net Income (Retention) /100	0.7229
Gross Up Factor (1 / Retention Factor)	1.3833

The OCA submits that the Settlement will ensure that known future decreases to state income taxes will flow through rates to the benefit of consumers.¹¹⁴

OSBA’s Position

OSBA took no position on this issue.

Discussion

The Parties recognized that on July 8, 2022, Pennsylvania House Bill 1342 was signed into law as Act 53 of 2022, which will lower the current 9.99% corporate net income tax rate to 8.99% in 2023 and will decrease the tax rate by 0.5% each year until 2031, when the tax rate will be 4.99%.”¹¹⁵ The terms of the Settlement reflect this change. Pursuant to the Settlement, the revenue requirement reflects the 2023 State Income Tax Rate of 8.99% and going forward, the Company has agreed that it will calculate the state income tax at the statutory rate for that year and compare it to state income taxes calculated at 8.99%. The difference will be “grossed-up” and will be passed back to customers through the STAS surcharge credit until base rates are reset. Therefore, under the circumstances, this provision is in the public interest.

¹¹⁴ OCA St. in Support at 7.

¹¹⁵ I&E Exhibit No. 1, Schedule 3, at 1.

E. Depreciation (Joint Petition ¶¶ 13-14)

Leatherstocking’s Position

The Company identified the depreciation rates reflected in Leatherstocking’s filings and shown below as adopted as part of the Settlement:¹¹⁶

<u>Account</u>	<u>Gas - Intangible (Amortization)</u>	<u>Average Service Life</u>	<u>Annual Depr. / Amort. Rate</u>
301	Organization Costs	-	3.21%
302	Franchise / Consents	-	0.28%
	<u>Gas - Distribution Plant</u>		
374	Land Rights / Easements	-	-
375	Structures & Improvements (Amort.)	5	20.00%
376	Distribution Mains	60	1.67%
378	Measuring & Regulator Equipment	40	2.50%
380	Services	40	2.50%
381	Meters	35	2.86%
382	Meter Installations	40	2.50%
383	House Regulators	45	2.22%
	<u>Gas - General Plant (Amortization)</u>		
391	Office Furniture and Equipment	5	20.00%
392	Transportation Equipment	5	20.00%
394	Tools & Equipment	5	20.00%

The Settlement also provides that Leatherstocking will stop accruing economic depreciation effective with new base rates with respect to CBOCF projects now that the CBOCF surcharge has been rolled into rates.¹¹⁷

The Company explained, in its filing, that because most of the Company’s infrastructure is less than ten years old, Leatherstocking has adopted depreciation rates that are based on those used by other gas utilities assuming that the usefulness and life expectancy of

¹¹⁶ Joint Petition ¶ 13; Leatherstocking St. in Support at 7-8.

¹¹⁷ Joint Petition ¶ 14; Leatherstocking St. in Support at 8.

Leatherstocking plant will be similar to other gas utilities that have much older infrastructures.¹¹⁸ Leatherstocking submits its depreciation rates do not include any allowance for salvage or removal cost.¹¹⁹ In addition, as part of rolling in the CBOCF surcharge, Leatherstocking removed the depreciation expense associated with these projects, which lowered Leatherstocking's as-filed rate increase request.¹²⁰

Leatherstocking submits the depreciation rates are fairly established by utilizing the depreciation rates used by other gas utilities with older infrastructures. In addition, removal of the economic depreciation with respect to CBOCF projects results in savings to Leatherstocking's customers. Moreover, none of the other Joint Petitioners raised any issues with the proposed depreciation rates included in Leatherstocking's filing. Thus, the Company submits these provisions should be approved as in the public interest and result in just and reasonable rates.¹²¹

I&E's Position

I&E explains it supports the depreciation rates as set forth in the Settlement.¹²²

OCA's Position

OCA submits that, with the CBOCF surcharge rolled into rates, Leatherstocking will stop accruing economic depreciation effective with new base rates with respect to CBOCF projects. OCA explains the depreciation of rates reflected in Leatherstocking's filings as adopted in the Settlement is reasonable.¹²³

¹¹⁸ Leatherstocking St. 1 at 35:1-10; Leatherstocking St. in Support at 8.

¹¹⁹ Leatherstocking St. 1 at 35:10-14; Leatherstocking St. in Support at 8.

¹²⁰ Leatherstocking St. 1 at 36:9-37:4; Leatherstocking St. in Support at 8.

¹²¹ Leatherstocking St. in Support at 9.

¹²² I&E St. in Support at 9.

¹²³ OCA St. in Support at 7-8.

OSBA's Position

OSBA took no position on this issue

Discussion

The Settlement provides the depreciation rates adopted as part of the Settlement and that Leatherstocking will stop accruing economic depreciation effective with new base rates with respect to CBOCF projects now that the CBOCF surcharge has been rolled into rates.¹²⁴

Leatherstocking argues the depreciation rates are fairly established by utilizing the depreciation rates used by other gas utilities with older infrastructures and that removal of the economic depreciation with respect to CBOCF projects results in savings to Leatherstocking's customers. None of the Parties raised any issues with the proposed depreciation rates included in Leatherstocking's filing and it is reasonable to conclude that the depreciation rates agreed upon by the Parties are in the public interest and result in just and reasonable rates.

F. Effective Date (Joint Petition ¶ 15)

Leatherstocking's Position

The Settlement provides that Leatherstocking will be permitted to file a tariff for gas service, in the form of Appendix B attached to the Joint Petition, to be effective no sooner than April 1, 2023 for year one and April 1, 2024 for year two.¹²⁵

¹²⁴ Joint Petition ¶ 14; Leatherstocking St. in Support at 8.

¹²⁵ Joint Petition ¶ 15.

I&E's Position

I&E submits that implementation of the Settlement Rates, no sooner than April 1, 2023 for year 1 and April 1, 2024 for year 2, is in the public interest and prevents customers from getting the increase at the beginning of the winter heating season.¹²⁶

OCA's Position

OCA submits that the implementation of the Settlement Rates in April 2023 for year 1 is consistent with the Commission's Suspension Order in this case and that the April 2024 increase in year 2 is well-timed to avoid the winter months when gas usage is at its peak.¹²⁷

OSBA's Position

The OSBA took no position on this issue.

Discussion

The effective date of new rates is consistent with the Commission's Order entered August 4, 2022, providing that the rates changes shall not go into effect until April 1, 2023 and allows Leatherstocking to file an additional tariff supplement one year later to phase-in the remaining rate increase consistent with the other provisions to the Settlement. Under the circumstances, this provision is reasonable and in the public interest.

¹²⁶ I&E St. in Support at 9-10.

¹²⁷ OCA St. in Support at 8-9.

G. Reporting (Joint Petition ¶ 16)

Leatherstocking's Position

The Company notes that I&E raised a concern with Leatherstocking's increased customer records and collection expense, as well as the increase to injuries and damages expense¹²⁸ and recommended that Leatherstocking provide documentation demonstrating its efforts to find operating efficiencies or cost control measures to reduce these expenses.¹²⁹

Leatherstocking explained that the cause of the increase to customer records and collections expense is related to Corning Natural Gas Holding Corporation's (CNGH) purchase of Mirabito Regulated Industries' (MRI) fifty percent share of Leatherstocking and assumption of billing processes that were previously handled by MRI.¹³⁰ Leatherstocking also explained that the increase in injuries and damage expense was also related to CNGH's purchase of MRI's stake in Leatherstocking.¹³¹

I&E's Position

I&E Witness Wilson testified that Leatherstocking's claim for customer accounts expense has increased significantly since CNGH bought out MRI's shares of the Company in July 2020.¹³² Witness Wilson recommended that Leatherstocking be required in its next rate case to provide documentation showing how it made efforts to find operating efficiencies to reduce these expense increases for customer accounts expense records/collection between now and its next rate case filing.¹³³

¹²⁸ I&E St. 1 at 5:20-6:11, 8:1-9:12.

¹²⁹ *Id.*

¹³⁰ *Id.* at 5:6-14.

¹³¹ *Id.* at 7:11-16.

¹³² *Id.* at 4-5.

¹³³ I&E St. in Support at 10.

I&E also explained that Leatherstocking's claim for administrative and general expense, injury and damages, had also significantly increased since CNGH bought out MRI's shares of the Company in July 2020. Likewise, I&E recommended the Company provide documentation in its next base rate case to show how the company made efforts to control costs in this area.¹³⁴

I&E notes the Settlement term is consistent with I&E's recommendation.¹³⁵

OCA's Position

OCA submits that the Company's agreement to provide documentation showing efforts made to control customer records/collection expense and manage insurance costs is a reasonable concession to the issues raised by the parties.¹³⁶

OSBA's Position

The OSBA took no position on this issue.

Discussion

I&E provided evidence that Leatherstocking's claim for customer accounts expense has increased significantly since CNGH bought out MRI's shares of the Company in July 2020 and that Leatherstocking's claim for administrative and general expense, injury and damages, had also significantly increased since CNGH bought out MRI's shares of the Company in July 2020. Accordingly, I&E recommended that Leatherstocking be required in its next rate case to provide documentation showing how it made efforts to find operating efficiencies to

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ OCA St. in Support at 9.

reduce these expense increases for customer accounts expense records/collection, and to show how the company made efforts to control costs in this area, between now and its next rate case filing.

The Settlement provides that, in its next base rate filing, Leatherstocking will provide documentation showing efforts made to control customer records/collection expense and manage insurance costs. The commitment to provide documentation is in the public interest and provides a transparent process to demonstrate the Company's efforts to control these costs in the future.

H. Standard Terms (Joint Petition ¶¶ 17-24).

Leatherstocking's Position

The Company notes the Settlement includes several additional terms and conditions, including an agreement that the Settlement represents a compromise that does not represent the position of any one party,¹³⁷ that the Settlement is without prejudice to any party's position,¹³⁸ and that all Joint Petitioners agree to support the negotiated Settlement and to make reasonable and good faith efforts to obtain Commission approval.¹³⁹

OSBA's Position

OSBA explains that the Parties agreed to a "black box" settlement and that the Settlement may not be cited as precedent in any future proceeding except to the extent required to enforce the provisions of the Settlement.¹⁴⁰

¹³⁷ Joint Petition ¶ 17.

¹³⁸ *Id.* at ¶ 18.

¹³⁹ *Id.* at ¶ 20.

¹⁴⁰ OSBA St. in Support at 5.

Discussion

The Settlement contains several additional terms and conditions that typically may accompany a rate case settlement, including an agreement that the Settlement represents a compromise that does not represent the position of any one party, that the Settlement is without prejudice to any party's position, and that all Joint Petitioners agree to support the negotiated Settlement and to make reasonable and good faith efforts to obtain Commission approval. The provisions set forth in the Settlement are just and reasonable and in the public interest.

The Settlement Is In The Public Interest

The Parties have explained that the Settlement was achieved by the Joint Petitioners after an extensive investigation of Leatherstocking's filing, including informal and formal discovery and the submission of direct and rebuttal testimony by the Parties, and extensive settlement negotiations. The Parties explained that, where they agreed, such as the need for certain investigation and reporting, the Settlement adopts those recommendations. The Parties also reached a compromise on all issues that recognize the benefit to Leatherstocking's ratepayers of providing Leatherstocking with the opportunity to receive sufficient revenue to fund the provision of adequate, efficient, safe and reasonable service, while also addressing the need for gradualism in rate changes.

The Settlement is also consistent with Commission policies promoting negotiated settlements. The Parties, including the statutory advocates, have agreed that the Settlement produces just and reasonable rates while still allowing Leatherstocking adequate revenue and rate of return. The Parties arrived at the Settlement, after conducting extensive discovery and negotiations. Furthermore, the Settlement constitutes a reasonably negotiated compromise on the issues addressed, is supported by a substantial record, and is therefore consistent with the Commission's rules and practices encouraging settlements.¹⁴¹

¹⁴¹ 52 Pa. Code §§ 5.231, 69.391, 69.401-406.

In addition, the Settlement will avoid the necessity of further administrative and possibly appellate proceedings regarding the settled issues at what could have resulted in a substantial cost to the Joint Petitioners and Leatherstocking's customers.

Recommendation

The Settlement represents the unanimous agreement of the Parties proposing a resolution of this proceeding. Each party represents a variety of interests in this matter. Leatherstocking advocates on behalf of its corporate interests and its shareholders. The Office of Consumer Advocate is tasked with advocacy on behalf of consumers in matters before the Commission.¹⁴² The Small Business Advocate represents the interests of the Commonwealth's small businesses.¹⁴³ The Bureau of Investigation and Enforcement is tasked with balancing these various interests and concerns on behalf of the general public interest. Not every party advanced a position on every issue raised in this proceeding or every issue raised by the terms of the Settlement. Rather, as described above, each discussed those terms which were of importance to each advocate's particular stakeholders.

In evaluating the terms of the Settlement, my recommendation that the Commission accept the Company's filing as modified by the Settlement is based upon the terms provided by the Parties and the considerable expertise of the statutory advocates. I&E avers that prior to agreeing to the Settlement, I&E conducted a thorough review of the discovery responses and information and contributed to the negotiations amongst the parties during settlement talks. I&E concludes that the Settlement meets all of the legal and regulatory standards necessary for approval. OCA and OSBA similarly represent that after full consideration of the materials submitted by Leatherstocking in discovery and set forth in the testimonies which were admitted into the record, the Settlement is in the public interest.

¹⁴² Section 904-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 309-4.

¹⁴³ Section 399.45 of the Small Business Advocate Act, Act of December 21, 1988, P.L. 1871, 73 P.S. § 399.45.

In sum, I conclude that the Settlement constitutes a fair, just, and reasonable resolution of the Commission’s investigation for the reasons identified and discussed by the Settling Parties above. Therefore, the Settlement is in the public interest and should be approved.

VI. CONCLUSIONS OF LAW

1. Leatherstocking’s rates must be just and reasonable and cannot result in unreasonable rate discrimination. 66 Pa.C.S. § 1301, 1304.

2. Pursuant to the just and reasonable standard, a utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers as well as a reasonable rate of return on its investment.” *City of Lancaster Sewer Fund v. Pa. Pub. Util. Comm’n*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002).

3. While Section 315(a) provides that a utility has the burden to prove that proposed rates are just and reasonable, it “cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose.” *Pa. Pub. Util. Comm’n v. Columbia Gas of Pa., Inc.*, Docket No. R-2020-3018835, at 12 (Opinion and Order entered Feb. 19, 2021).

4. Leatherstocking has sustained its burden of proving that it should be granted an increase in rates. 66 Pa.C.S. § 1308(d).

5. In order to approve a settlement, the Commission must determine that the proposed terms and conditions, viewed in the context of the settlement as a whole, are in the public interest. *See Pa. Pub. Util. Comm’n v. CS Water & Sewer Ass’n*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm’n v. Philadelphia Electric Co.*, 60 Pa.P.U.C. 1 (1985).

6. The Commission has outlined the following general principles for assessing whether a settlement meets the public interest standard:

The purpose of this investigation is to establish distribution rates for [a utility's] customers that are "just and reasonable" pursuant to Section 1301 of the 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. *Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923) (*Bluefield*).

In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield*, supra, 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 too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

Pa. Pub. Util. Comm'n v. PECO Energy Company – Elec. Div., Docket No. R-2015-2468981 (Opinion and Order entered Dec. 17, 2015), at 6-7; see also *Pa. Pub. Util. Comm'n v. Pennsylvania-American Water Co.*, Docket No. R-2020-3019369, at 11-14 (Opinion and Order entered Feb. 25, 2021).

7. The Commission's policy and precedent encourage parties to resolve contested proceedings by settlement. 52 Pa. Code §§ 5.231, 69.401.

8. "The results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding." 52 Pa. Code § 69.401(a).

9. The Unanimous Joint Petition of Leatherstocking, I&E, OCA and OSBA for Full Settlement of Rate Proceeding is in the public interest. 52 Pa. Code §§ 5.231, 69.391, 69.401-406.

10. The rates, terms, and conditions contain the Unanimous Joint Petition of Leatherstocking, I&E, OCA and OSBA for Full Settlement of Rate Proceeding are, until changed as provided in the Public Utility Code, just and reasonable, and in the public interest. 52 Pa. Code §§ 5.231, 69.391, 69.401-406.

VII. ORDER

THEREFORE

IT IS RECOMMENDED:

1. That the Unanimous Joint Petition for Full Settlement of Rate Proceeding filed November 23, 2022, by Leatherstocking Gas Company, LLC, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate be granted, and the Settlement be adopted, in full, without modification.

2. That Leatherstocking Gas Company, LLC be authorized to file tariff supplements containing rates, rules and regulations, consistent with the Unanimous Joint Petition for Settlement, and this Recommended Decision to produce a total increase in revenues of \$645,000 with the rates, rules and regulations set forth in the tariff supplements included in Appendix B of the Settlement.

