**PENNSYLVANIA**

**PUBLIC UTLIITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held June 7, 2012

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

Pennsylvania Public Utility Commission R-2011-2267958

Office of Consumer Advocate C-2011-2279111

Office of Small Business Advocate C-2011-2279475

Said Shafik C-2011-2277105

Emilio Rende C-2011-2277113

Rikki Renz C-2011-2277112

Thomas E. Pektas C-2011-2277115

Daniel H. McElreavey C-2011-2277119

Laurence J. Colfer C-2011-2279472

Michael Silvestri C-2011-2279485

William & Kathleen Whiting C-2011-2279476

Linda Palmisano C-2011-2279703

John Dillon C-2011-2279566

Jerome Linden C-2011-2280616

Arnold M. Kring C-2011-2279526

Robert W. Curtius C-2012-2281336

Barry D. Polland C-2012-2282626

Borough of Sayre C-2012-2284238

Stanley Lemond C-2012-2284313

Kenneth W. Reeves C-2012-2285539

Aqua Large Users Group C-2012-2285789

H. N. White C-2012-2286276

Steven Dagowitz C-2012-2288511

v.

Aqua Pennsylvania, Inc.

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Angela T. Jones and Darlene D. Heep, issued on May 18, 2012, relative to the above-captioned general rate increase proceeding, and the Exceptions filed with respect thereto.

Mr. Robert W. Curtius filed Exceptions on May 24, 2012. Five Parties filed Exceptions to the Recommended Decision on May 25, 2012. Those Parties are as follows: (1) Aqua Pennsylvania, Inc. (Aqua or Company); (2) the Office of Consumer Advocate (OCA); (3) the Office of Small Business Advocate (OSBA); (4) the Bureau of Investigation and Enforcement (I&E); and (5) Mr. Jerome Linden. Also on May 25, 2012, the Aqua Large Users Group (Aqua LUG) filed a Letter informing the Commission that it would not be filing Exceptions. Replies to Exceptions were not permitted to be filed.

**I. History of the Proceeding**

On November 18, 2011, the Company filed[[1]](#footnote-1) with the Commission Supplement No. 115 to Tariff Water – Pa. P.U.C. No. 1. Tariff Supplement No. 115 provides an increase in total annual operating water revenues of $38.6 million or approximately 9.4% over the level of revenues anticipated for the future test year ending June 30, 2012.

By entered Order dated January 12, 2012, the Commission instituted a formal investigation to determine the lawfulness, justness and reasonableness of Aqua’s existing and proposed rates, rules and regulations. Consequently, Tariff Supplement No. 115 was suspended until August 18, 2012, by operation of law.

The case was assigned to the Office of Administrative Law Judge for prompt scheduling of hearings and for the issuance of a Recommended Decision. The Commission has received twenty-two Formal Complaints. A Notice dated January 18, 2012, scheduled a Prehearing Conference for January 30, 2012, and noted that ALJs Jones and Heep were assigned to this proceeding. On January 20, 2012, the ALJs filed a Prehearing Conference Order requesting data and notifying the Parties of the procedure to be followed.

The Prehearing Conference convened as scheduled. The following Parties were present and participated in-person in Philadelphia or telephonically from Harrisburg: Aqua, I&E, the OCA, the OSBA, Aqua LUG and Mr. Curtius, *pro se* Complainant, at Docket No. C-2012-2281336.

The above listed Parties are active participants. Mr. Linden, *pro se* Complainant at Docket No. C-2011-2280616, informed the ALJs that he would not be able to attend the Prehearing Conference but would participate in this proceeding actively in compliance with the January 20, 2012 Order. All other complainants are inactive participants as defined in the Prehearing Conference Order.

During the Prehearing Conference, a schedule was set for public input hearings and formal testimony by the Parties. The first in-person public input hearing was held on March 1, 2012, in Wayne, PA at the Radnor Township Administration Building. A public input hearing was also held telephonically on March 2, 2012. The third public input hearing was held in-person on March 5, 2012, at the East Goshen Township Building in West Chester, PA. The fourth public input hearing was held on March 6, 2012, at the Loller Bldg., in Hatboro, PA. The fifth and final in-person public input hearing was held at the Kingston Township Municipal Building in Shavertown, PA, on March 8, 2012.

Hearings to take technical evidence were scheduled to be held from Monday, April 9 through Wednesday, April 11, 2012, in Harrisburg. On February 7, 2012, Mr. Curtius filed the following: (1) an objection to the location of the hearing, requesting instead that the hearing be held in Philadelphia; (2) a Motion to Compel Answers to Interrogatories that he served upon Aqua; and (3) a request for a four week extension of time to file direct testimony. Aqua filed responses to Mr. Curtius’ documents on February 17, 2012. On the same day, I&E filed a Reply in Opposition to the Objection to the Hearing Location.

By Prehearing Order #3, the ALJs took the following actions: (1) overruled Mr. Curtius’ objection to the location of the hearing; (2) granted in part and denied in part Mr. Curtius’ Motion to Compel; and (3) denied his request for additional time to submit rebuttal testimony. The Parties submitted direct and rebuttal testimony in accordance with the procedural schedule**.**

By electronic mail dated March 31, 2010, counsel informed the ALJs that a non-unanimous Joint Petition Settlement (Settlement) in principle among all Parties represented by counsel, including Aqua, I&E, OCA and the Aqua LUG, had been reached. The OSBA did not oppose the Settlement but is not a signatory thereto.

On April 3, 2012, Mr. Linden filed a Motion to Compel Aqua to provide answers to his Set of Interrogatories 1. On April 9, 2012, Aqua filed a Response to the Motion.

The evidentiary hearings convened for one day, April 10, 2012. All signatory Parties, the OSBA and Mr. Curtius appeared. Mr. Linden’s Motion to Compel was also addressed at that time. Aqua’s counsel stated that it had supplied additional information to Mr. Linden and that he was satisfied with that response.

Counsel for the OCA stated that he had spoken with Mr. Linden and that he could confirm that he was satisfied with the additional information provided by Aqua. Mr. Linden also requested that he be permitted to amend his surrebuttal testimony to include the discovery information received or to file comments including the new information. Mr. Curtius was also notified that he could file comments to the Settlement, should he choose to do so. Consequently, it was determined that no post-hearing briefs would be filed.

On April 12, 2012, Mr. Linden filed a data request as Linden Exhibit 4. On April 16, 2012, Mr. Curtius filed a Letter objecting to the Settlement. On April 17, 2012, prior to receiving the proposed Settlement, Mr. Curtius submitted an objection to Settlement. Mr. Curtius asserted that he was not afforded the opportunity to participate in the settlement negotiations. Aqua filed a Reply on April 20, 2012.

The proposed Settlement was submitted to the ALJs on April 20, 2012. Aqua was to issue copies of the proposed Settlement and all attachments to all Parties. Non-signatory and formal Parties were also notified of the proposed Settlement by a Letter from the OCA.[[2]](#footnote-2) In that Letter, the Parties were notified that access to the proposed Settlement was provided through an internet website. The Letter also provided a form through which the Parties could indicate whether they accepted the Settlement, opposed the Settlement or had no position.

On May 2, 2012, Mr. Linden and Mr. Curtius filed objections to the Settlement. On May 3, 2012, Aqua filed a Response to Mr. Curtius’ procedural objection.

The following two Parties support the Settlement: Borough of Sayre, at Docket No. C-2012-2284238, and Rikki Renz, at Docket No. C-2011-2277112.

The following Parties oppose the Settlement: Daniel H. McElreavey, at Docket No. C-2011-2277119; Robert W. Curtius; Jerome Linden; Laurence J. Colfer, at Docket No. C-2011-2279472; Stanley Lemond, at Docket No. C-2012-2284313; Emilio Rende, at Docket No. C-2011-2277113; and Kenneth W. Reeves, at Docket No. C-2012-2285539.

On May 4, 2012, Aqua filed revised tariff pages. The record was closed on May 9, 2012. [[3]](#footnote-3)

The ALJs’ Recommended Decision was issued on May 18, 2012. In their Recommended Decision, the ALJs found, *inter alia*, that the Settlement submitted by the Joint Parties is just and reasonable and should be approved. The ALJs further found that, upon the Commission’s approval of the Settlement, the Company will receive a stipulated increase in annual revenues of $16.7 million, in lieu of the Company’s original base rate increase request for $38.6 million. R.D. at 16, 1.

Exceptions to the Recommended Decision were filed as above noted. As duly noted in our determinations herein, we are adopting the ALJs Recommended Decision, consistent with this Opinion and Order, and, hence, approving the Settlement.

## Description of the Company

Aqua is a regulated Pennsylvania public utility and is a wholly owned subsidiary of Aqua America, Inc. (AA).[[4]](#footnote-4) The Company furnishes water service to more than 1.4 million residents in thirty counties. The service territory includes:

Southeastern Division: Delaware, Montgomery, Chester, Bucks and Berks counties.

Roaring Creek Division: Columbia, Cumberland, Juniata, Northumberland, Schuylkill and Snyder counties.

White Haven Division: Carbon, Lackawanna, Luzerne, Monroe, Schuylkill, Susquehanna and Wyoming counties.

Waymart Division: Lackawanna, Monroe, Pike and Wayne counties.

Susquehanna Division: Bradford County.

Shenango Division: Mercer, Lawrence, Crawford, Clarion, Forest, Venango and Warren counties.

Its principal executive offices are located in Bryn Mawr, Pennsylvania.

1. **Discussion**

1. **Public Input Hearings**

The dates and locations of the public input hearings have been described above. A sampling of the testimony will be provided.[[5]](#footnote-5)

Some testimony concerned the quality of the water. For example, Ms. Nancy Barr testified that she had several concerns about the quality of the water provided by Aqua. She brought in a dish drainer covered with residue and she stated that such residue appears on the kitchen sink and in the bathroom sink as well. Other witnesses complained of poor water pressure.

In addition, some witnesses challenged the rate increase, noting that many of Aqua’s customers are senior citizens who cannot afford to pay the increased rates. Tr. at 163-165. Other people testified that: (1) Aqua was granted a rate increase two years ago, in 2010; (2) Aqua has another mechanism for enhancing its revenues, namely, a Distribution System Improvement Charge (DSIC); and (3) Aqua is, historically, a financially strong company. Several witnesses, however, asserted that Aqua was to be applauded for its efforts in improving the infrastructure and also for generally being a good corporate citizen.

Representative Phyllis Mundy of the 120th District in Pennsylvania opposed the rate increase. She noted that the Company has filed for four rate increases in the past eight years. She also noted that this amount did not include the DSIC charges the Company has collected. She was of the opinion that, should the Company receive both the requested rate increase and the DSIC, it would be “double dipping.” Tr. at 375-378. She further stated that the Company has enjoyed eleven straight years of net income growth and that Aqua is exceeding a “reasonable revenue requirement by 2.6 million dollars.” Tr. at 378.

**B.** **Terms and Conditions of the Joint Settlement**

The Joint Parties agree to the following pertinent terms and conditions for the Settlement regarding Aqua’s proposed rate increase.

* 1. The Settlement consists of the following terms and conditions:[[6]](#footnote-6)
     1. Upon the Commission’s approval of this Settlement, Aqua Pennsylvania, Inc. (AP) will be permitted to charge the rates for water service set forth in the proposed Tariff Supplement annexed hereto as Appendix A (hereafter, the “Settlement Rates”). The Settlement Rates are designed to produce additional annual operating revenue of $16.7 million, as shown on the proof of revenues annexed hereto as Appendix B. The Tariff Supplement set forth in Appendix A has been reviewed by the Joint Petitioners and complies with the terms of the Settlement. The Settlement Rates are designed to produce approximately $425,559,264 in total annual water revenue (including Other Revenue) as shown in Appendix B, page 1, column 6.
     2. The Joint Petitioners agree to exercise best efforts to obtain approval of this Settlement by the Commission on or before June 7, 2012 and the implementation of the Settlement Rates on or before June 8, 2012. Upon the entry of a Commission Order approving this Joint Petition, the Company will be permitted to file a tariff supplement in the form attached hereto as Appendix A to become effective upon one day’s notice.
     3. AP will not file for another general water rate increase under Section 1308(d) of the Public Utility Code prior to November 18, 2013. However, if a legislative body or administrative agency, including the Commission, orders or enacts fundamental changes in policy or statutes which directly and substantially affect the Company’s rates, this Settlement shall not prevent the Company from filing tariff supplements to the extent necessitated by such action. The Joint Petitioners further agree that if AP files a general base rate water case on or after November 18, 2013, but before January 1, 2014, AP will be permitted to utilize historic test year data for the twelve months ended June 30, 2013.
     4. The Company will not make the tax repair election in its federal income tax return filed in 2012 for tax year 2011, unless otherwise directed by rule or regulation. Should the Company decide to make the tax repair election in a return filed after 2012, the Company will so notify the signatories to the Joint Petition for Settlement within 30 days after its return is filed. The Company will utilize flow through accounting for the tax benefits of the repair election; first utilizing the current repair deduction, and only then utilizing any available catch up deduction. However, the Company may only initiate the flow through of the repair catch-up deduction to income upon notification to the signatory parties that it will not file its next water base rate filing in 2013. Following such notification, and annually following the repair election, flow through of the catch-up adjustment will be limited to the amount of the catch-up deduction utilized to offset taxable income in the tax year (i.e. not creating an [a] net operating loss), or 10% of the total catch-up amount, whichever is less. The treatment of the catch-up deduction related to the portion not yet flowed through will be addressed and dealt with in the Company’s next water base rate case.
     5. For the period that the Settlement Rates are in effect, a 10.2% rate of return on common equity shall be used by AP for Distribution System Improvement Charge purposes in lieu of the equity return rates(s) calculated in the Commission’s Quarterly Earnings Reports.
     6. The above revenue increase includes $1,642,246 in expense for the purpose of funding AP’s SFAS 106 post-retirement benefits (OPEB) costs. This amount includes $68,480 (total cost) for the amortization of the SFAS 106 transition and stub period costs. Upon the completion of that amortization on December 31, 2012, this amount will be recognized as being available to fund ongoing post-retirement benefits costs and included in the determination of the regulatory asset or liability on a monthly basis beginning in January 2013.
     7. AP will record the amortization of acquisitions as indicated in AP Statement No. 1-R filed on March 19, 2012, and in the manner set forth on the schedule accompanying AP’s response to Interrogatory BIE-RE-4…
     8. AP agrees that notice of its intention to seek an adjustment to rate base associated with acquisition of a troubled water system, whether positive or negative, will be specifically provided to I&E and the OCA at the same time the Company files and serves its original cost study for each such acquisition with the Commission.
     9. The Joint Petitioners acknowledge and agree that the depreciation rates set forth in AP Exhibit No. 6-A, Part II, are approved for ratemaking purposes and that the Company will use such depreciation rates to calculate the depreciation expense it records on its regulated books of account.
     10. The Settlement Rates set forth in Appendix A reflect the Joint Petitioners’ agreement with regard to rate structure, rate design and the distribution of the increase in revenues in this case, as follows:1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1 Subparagraphs (1)-(12) provide a general description of the rate structure and rate design incorporated in the Settlement Rates. While every effort has been made to ensure that such description is accurate, if any inconsistency exists between such description and the rates set forth in Appendix A, the latter shall take precedence.

* 1. **Main Division**

The 5/8 inch customer charge will be $16.00 per month. The same percentage increase, *i.e.* 6.7%, will be applied to tariff customer charges for all meter sizes.

The fourth public class usage rate will be $0.6668 per hundred gallons.

* 1. **Clarendon**

The 5/8 inch customer charge will be $16.00 per month. The 3/4 inch customer charge will be $27.50 per month. The 1 inch, 1 ½ inch and 2 inch meter customer charges will be $40.00 per month. The 3 inch meter customer charge will be $70.00 per month.

The residential class usage rate will be $0.7208 per hundred gallons for the 1st block usage and $0.8208 per hundred gallons for the 2nd block usage.

The commercial class usage rate for the 1st, 2nd and 3rd usage block is $0.7208 per hundred gallons. The 4th block usage rate is $0.6668 per hundred gallons.

Clarendon will move to Main Division rates in the next rate case.

* 1. **Honesdale**

The 5/8 inch customer charge will be $16.00 per month. The 3/4 inch customer charge will be $27.50 per month. All residential consumption is $0.7980 per hundred gallons.

Residential and commercial rates based on units and allowances will be eliminated from AP’s tariff. All other meter size charges are set forth in Appendix A.

* 1. **Kratzerville**

The following monthly rates for residential customers:

5/8 inch and 1 inch meter are the same as Main Division; $0.8000 per hundred gallons for all consumption.

* 1. **Bensalem**

The 5/8 inch customer charge will be $16.00 per month. All other customer charges to be the same as Main Division. The residential class usage rate will be $0.880 per hundred gallons.

The commercial and industrial class usage rates will be $0.880 per hundred gallons for the first and second blocks. All commercial and industrial class usage over 333,300 gallons will be made the same as the corresponding usage rate in Main Division.

* 1. **Chalfont**

The following monthly rates for residential customers:

5/8 – inch meter**:** $15.00

$0.7100 per hundred gallons for all consumption

* 1. **Country Club Garden**

The 5/8 inch, 3/4 inch and 1 inch customer charges will be $15.00 per month.

The residential usage rate will increase to $0.500 per hundred gallons for the first 2,000 gallons per month and $0.600 per hundred gallons for all usage over 2,000 gallons per month. The commercial class usage rate will be $0.700 per hundred gallons for all usage.

* 1. **Shenango**

The Sales to Other Utility usage rate will be equal to $0.5642 per hundred gallons.

* 1. **Seasonal Customers- Western, Fawn Lake, Tanglewood, Eagle Rock, Thornhurst and Woodledge Village Divisions**

The 5/8 inch and 3/4 inch customer charges will be $26.00 per month.

The usage rate for the first 4,000 gallons per month will be determined by the average bill in the Main Division. All usage over 4,000 gallons per month will be the same as the second usage rate in Main Division.

* 1. **Quasi-Seasonal Customers- Oakland Beach, Lakeside, CS Water, Pinecrest Oakland Beach/Lakeside Acres**

The minimum 5/8 inch and ¾ customer charges will be $23.50 per month.

1st Block usage rate same as Seasonal Customers.

2nd Block usage rate $0.8962 per hundred gallons.

Large meter sizes are the same as seasonal customers.

**CS Water**

The minimum 5/8 inch and ¾ customer charges will be $26.00 per month.

All usage up to 4,000 gallons will be $0.480 per hundred gallons. All usage over 4,000 gallons is $0.8962 per hundred gallons.

Allowances for CS Water will be eliminated from AP’s tariff.

**Pinecrest**

Customers will move to the same rates as Seasonal Customers.

* 1. **Public Fire Service**

As proposed by the Company.

* 1. **Scale Back**

The following rate divisions will be equalized with Main Division Rates as a result of this Settlement as follows:  Hedgerow HOA, Emlenton, Washington Park Development, White Haven, Cove Village, Marienville/Applewood, and Paupacken Lake.

Residential, commercial and industrial classes percentage will be in accordance with Appendix A.

Private fire will receive the decrease proposed by the Company in its Direct Testimony.

**Allocation of Revenues.** The percentage increases to each customer class under the Settlement Rates and a comparison of the class cost of service to class revenues under the Settlement Rates for each customer class are shown in Appendix B.

j. **Quality of Service**

1) AP will investigate whether the distribution line serving Ms. Yost’s residence in Coal Township should be replaced, and if so, will ensure that this line is prioritized in its Coal Township distribution line replacement program.

2) AP will investigate to determine whether the fire hydrants being served by the distribution main also serving Ms. Yost flow at least 500 gpm at 20 psi. If that is not the case, AP will investigate whether fire flow can be provided at a reasonable cost prior to the next base rate filing.

3) AP will provide the OCA with written updates regarding the status of its construction projects contiguous to Wood Street in Hatboro every six months after the PUC order until its next base rate filing. AP will provide contact information in a letter to the customers at least 3 days prior to the start of the main cleaning and lining project. AP will expedite construction to the extent possible to conclude construction-related disturbances as soon as possible.

4) Regarding Country Club Estates, in addition to the action items discussed in AP rebuttal testimony, AP will ensure that storm water drainage along newly installed mains is returned to conditions as they existed prior to main replacement. For example, new main installations shall not produce swales or ditches allowing for the lateral flow of storm water along sod covered portions of the public right of way.

5) AP will provide the OCA with the results of its testing of the samples drawn from Ms. Dicton’s home and sample and test Ms. Dicton’s water again within six months after Settlement approval. Within six months of Settlement approval, AP will investigate whether iron and/or manganese levels exceed secondary mcls for sources serving Ms. Dicton. If secondary mcls are exceeded, AP will develop a treatment plan for those sources and implement that plan prior to the next base rate filing if it can be done at a reasonable and prudent cost.

k**. Automatic Adjustment Mechanisms**

AP agrees that it will withdraw the proposed energy cost adjustment and purchase water adjustment. The Parties agree that this withdrawal is without prejudice.

* + 1. **Customer Assistance**

AP will match the current Helping Hand contribution donated directly by customers, up to a total of $50,000 over the next two years. AP will continue to promote awareness of the program to customers and local agencies for each county within the Company’s service territory.

* + 1. **Increased Usage Best Practices**

AP, in conjunction with interested parties, will explore the development of a best-practices customer usage monitoring and response water industry collaborative. In such collaborative, water utilities may exchange information on managing customer usage inconsistent with historic usage patterns for that customer. The collaborative will occur prior to December 31, 2012, and the results released within 6 months thereafter.

* 1. The Company, I&E, the OCA, and Aqua LUG have each prepared, and attached to this Joint Petition, Statements in Support identified as Appendices C, D, E, and F respectively, made by the parties specifically to settle this case, setting forth the bases upon which they believe that the Settlement, including the Settlement Rates, is fair, just, reasonable, non-discriminatory, lawful and in the public interest.
  2. The Joint Petitioners submit that the Settlement is in the public interest for the following additional reasons:
     1. The Settlement provides for an increase in annual operating revenues of $16.7 million, or approximately 4.08%, in lieu of the $38.6 million, or 9.4%, increase originally requested.
     2. Acceptance of the Settlement will avoid the necessity of further administrative, and possible appellate, proceedings at substantial cost to the Joint Petitioners, the other parties, and the Company’s customers.
     3. The Settlement Rates will allocate the agreed upon revenue requirement to each customer class in a manner which is reasonable in light of the rate structure/cost of service positions of all parties.
     4. The Company’s agreement to a two-year stay-out from the filing date of this rate increase request, subject to the limited exceptions set forth in Paragraph No. 7.c., assures that, if AP’s next general base rate water case were filed at the earliest permitted date and were fully litigated, the Settlement Rates would remain in effect for at least 26 months.

R.D. at 15-24.

Additional Terms and Conditions[[7]](#footnote-7)

* 1. This Settlement is proposed by the Joint Petitioners to settle the instant case and is made without any admission against, or prejudice to, any position which any Joint Petitioner might adopt during subsequent litigation, including further litigation of this case. This Settlement is conditioned upon the Commission’s approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement, or modify the terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within three 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 the Company or any other Joint Petitioner elects to withdraw as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including but not limited to presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.
  2. If the Administrative Law Judges, in their Recommended Decision, recommend that the Commission adopt the Settlement as herein proposed, the Joint Petitioners agree to waive the filing of Exceptions. However, the Joint Petitioners do not waive their right to file Exceptions with respect to any modifications to the terms and conditions of this Settlement, or any additional matters proposed by the Administrative Law Judges in their Recommended Decision. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed.

R.D. at 24-25.

### C. Applicable Law

The purpose of this investigation is to establish rates for Aqua customers which 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. *Pennsylvania Gas and Water Co. v. Pennsylvania 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. Public 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 too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

*Bluefield,* 262 U.S. at 692-3.

Commission policy promotes settlements, 52 Pa. Code §§ 5.231 and 69.401. 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 savings for the company's customers. That is one reason why settlements are encouraged by long-standing Commission policy.

In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Opinion and Order entered October 4, 2004*); Pa. Pub. Util. Comm'n v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

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

§ 315. Burden of proof

(a) Reasonableness of rates.--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public  utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

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

**D. *Pro se* Complainant and Participation in the Settlement Discussions**

**1. Exceptions of Robert Curtius**

One of the *pro se* Complainants, Robert Curtius, filed an Exception to the Recommended Decision complaining generally that he was excluded from the ratemaking process, although the Code is supposed to allow for the participation of ratepayers in that process. Mr. Curtius also complains that the rates reached as a result of the Settlement are not fair for Main Division ratepayers. Curtius Exc. at 1-3.

Mr. Curtius asserted that he was not “kept in the loop” during the Settlement negotiations. He also claimed that “[i]n effect, some of the parties conspired to keep pro se parties from involvement in Settlement discussions because they represented views that were contrary to their interest.” *Id.* at 3. Due to those deficiencies in the process, Mr. Curtius averred that the Settlement should be rejected. *Id.* at 4. Finally, Mr. Curtius asserted that the Settlement is also deficient in that it would assign to residential customers a percentage of the Company’s cost to serve that is, in fact, in excess of the actual cost to serve that class of customers. *Id.*

**2. Disposition**

We find no merit in Mr. Curtius’ Exceptions. His first point was that he was unfairly excluded from the ratemaking process and the Settlement negotiations conducted in this case. Our review of the procedural history does not bear out this assertion. Specifically, we note that Mr. Curtius participated in the Prehearing Conference held on January 30, 2012, and that he also filed several motions and requests during the course of this proceeding, all of which were timely disposed of by the ALJs.

Mr. Curtius also appeared at the evidentiary hearing held on April 10, 2012. Mr. Curtius was subsequently informed that he could file comments to the Settlement, and he chose to do so. In his comments, he asserted that he had been denied “a seat at the table” and was “cut out” of the negotiations that culminated in the Settlement because he did not authorize the use of his e-mail address.

By Letter of May 2, 2012, Aqua responded to Mr. Curtius’ allegations, stating that they were not true. Specifically, Aqua noted that Mr. Curtius had received the initial settlement term sheet that began negotiations in late March, that he had been served with subsequent versions as the settlement talks progressed and, on at least two occasions, provided comments and proposed revisions by e-mail. Aqua’s Letter of May 2, 2012, at 1. Additionally, Aqua contended that the OCA’s counsel advised the ALJs at the April 10 evidentiary hearing as follows: “both pro se complainants have been privy to settlement discussions and have been shown the last draft of the settlement in principle.” *Id.*; Tr. at 402-403. Finally, Aqua asserted that Mr. Curtius was served with a copy of the Joint Petition for Settlement. In short, Mr. Curtius was furnished with the same opportunity to participate in the settlement process as every other active party. Aqua’s Letter of May 2, 2012, at 2.

On review of Mr. Curtius’ allegations on this issue, we conclude that Mr. Curtius was afforded every opportunity to participate in the process and to have his concerns addressed.

Mr. Curtius also asserted that the Settlement is deficient in that it would assign to residential customers a percentage of the Company’s cost to serve that is in excess of the actual cost to serve that class of customers. Mr. Curtius also alleged that there was “geographic unfairness,” in that the Main Division ratepayers are asked to bear a disproportionate percentage of the Company’s cost to serve.

As acknowledged by the ALJs, the Settlement will begin to eliminate this inequity. R.D. at 32. We note additionally that, the amount at issue is small. *Id.* Specifically, the amount was approximately 25 cents per month for the average Main Division residential customer. Tr. at 447. As mentioned above, the Settlement moves other Divisions toward the rates used for Main Division ratepayers. R.D. at 32; Settlement at 7-9. For the above reasons, Mr. Curtius’ Exceptions are denied.

**E. Settlement Agreement Return on Equity (ROE)**

**1. The ALJs’ Recommendation**

Although the Settlement did not assign an ROE, the undersigned ALJs used the method of the OSBA to approximate an ROE with the $16.7 million increase. *See*, Attachment 1 to the R.D.

The ALJs clarified that they cannot correlate the Settlement dollar increase of $16.7 million with any ROE. R.D. at 39. However, the ALJs employed the OSBA’s methodology as a surrogate with his adjustments, assumptions of estimates to future revenue streams and adjustments to the rate base, to determine what the ROE for the increase could possibly yield with those assumptions. *Id.* The ALJs explain that they understand that the Settlement revenue increase is a “blackbox” agreement between the signature parties and does not correlate with the agreed upon ROE 10.2% set for the purposes of the DSIC. *Id.* With that caveat, the ALJs calculated ROE is above the DSIC rate of 10.2%. *Id.* The ALJs assert that the DSIC ROE of 10.2% should not change until the ROE associated with base rates is below 10.2%. *Id.*

**2. Exceptions**

Aqua, the OSBA, the OCA and I&E each filed an Exception on this issue.

Aqua, in its Exception, states that the ALJs erred in making the ROE calculation and that for several reasons it should be disregarded. Aqua Exc. at 3. First, Aqua states that there is no meaningful correlation between the DSIC ROE which is reconciled annually and applies to specific categories of utility plant whereas the ROE applicable to base rates, which is not reconcilable, encompasses a utility’s entire rate base. *Id.* Second, due to regulatory lag and the variability of revenue and expense items, the allowed ROE within a base rate proceeding is seldom achieved. Third, the DSIC rate stipulation is often included in settlements as a single item within the comprehensive settlement. *Id.* Lastly, the ALJs misused the OSBA’s methodology by not recalculating the values for uncollectible accounts expense, PUC assessments and income taxes, which in effect overstates the result. *Id.* at 4.

The OSBA’s Exception asserts that the ALJs used the OSBA witness’ methodology improperly and by using the methodology implies that the OSBA approves of the ALJs approach for calculating the Settlement ROE. OSBA Exc. at 5. Neither of these scenarios is endorsed by the OSBA, and both should be ignored by the Commission. *Id.* Further, the OSBA believes that the agreement reached among the Parties has been altered by the ALJs attempt to approximate the ROE using a methodology propounded by a party that did not join in the Settlement. *Id.* Additionally, the OSBA asserts that in a black box settlement, the underlying ROE is confidential, and publishing an estimate of that ROE, as has been done here, may constitute grounds for the withdrawal of Aqua and/or any of the other Parties from the Settlement. *Id.* at 6.

The OCA stated in its Exception that the ALJs implied ROE calculation is in error, constitutes extra-record evidence and should be disregarded by the Commission. OCA Exc. at 1. The OCA states that, if the Settlement is adopted without modification, the ALJs’ calculation of a settlement ROE would have no substantive effect upon the terms of the Settlement. *Id.* Also, as stated by the OCA, the agreed-upon revenue requirement established by the Settlement resolves the Parties’ issues, on an overall basis, regarding an appropriate ROE, rate base, revenue and expense claims, all without specificity. *Id.*

The OCA notes that the Commission addressed a similar issue in *Pa. PUC v. Aqua PA*, Docket No. R-2009-2132019, (Order entered June 16, 2010), (*June 16 Order*) wherein the Commission found that it was unable to make a determination regarding ROE due to the absence of specific components of the revenue requirement. *June 16 Order* at 27.

In its Exception to this issue, I&E states that the ALJs erred in calculating an overall ROE for Aqua. I&E Exc. at 4. Because the Settlement is a black box Settlement, and did not include details of how specific issues were resolved, I&E believes that the ALJs’ Attachment 1 is inappropriate. *Id.* I&E is of the opinion that the ALJs’ calculation was not needed to determine if the Settlement is in the public interest. *Id.* at 5. Perhaps of greater significance, I&E stated that the computation of a ROE by the ALJs is erroneous and violates the legal concept of a black box settlement. *Id.*

I&E requests that the Commission delete Attachment 1 in which the ROE calculation was presented. Lastly, I&E states that the Settlement revenue is not based on any specific ROE and such a calculation was intentionally excluded from the Settlement. I&E Exc. at 6.

**3. Disposition**

The non-unanimous settlement is silent on the effective ROE as well as all other aspects of Aqua’s capital structure. The ALJs however, mistakenly and improperly attempted to calculate the settlement ROE. R.D. Attachment 1. The ALJs’ Attachment 1 is mistaken because the settlement produces only an agreed-upon revenue requirement, not any specific component thereof, unless as in this proceeding, specifically documented within the settlement terms and conditions. Further, the ALJs’ Attachment 1 is improperly calculated because it did not adjust the uncollectible accounts expense and PUC assessments, state income tax and federal income tax for the higher revenue requirement produced by the settlement compared to the hypothetical increase employed by the OSBA in its computation. OSBA Sch BK-1; R.D. Attachment 1. Since the ALJs did not adjust these components, the calculated ROE of the ALJs’ Attachment 1 is overstated.

In considering the Settlement, we are determining, *inter alia*, whether an increase of $16.7 million in annual operating revenue is in the public interest without making a determination of any specific components that may have led to the calculation of the specific revenue requirement. Consequently, we are unable to make any determination regarding the rate of ROE that Aqua may ultimately realize from the rates adopted under the proposed Settlement. Accordingly, the ALJs’ Attachment 1 may not be used as a benchmark or for comparison purposes to the agreed-upon DSIC ROE, within the context of this proceeding. Additionally, any reference to the ALJs’ ROE calculation should be ignored. Accordingly, based upon the above discussion we shall grant the exceptions on this issue as presented by Aqua, the OSBA, the OCA and I&E.

**F. Mr. Linden’s ROE Calculation Methodology**

**1. The ALJs’ Recommendation**

While adopting the Settlement, the ALJs also accepted the nondisclosure of the actual overall rate of return and the ROE resultant from the settled revenue requirement. The ALJs found Mr. Linden’s calculated ROE for the 2011 calendar year at 12.4% most troubling. R.D. at 34. The ALJs, however, found that Mr. Linden’s calculations are faulty in that they do not consider federal and state income taxes, adjustments for the Commission assessments, uncollectible accounts expense and the rate base. *Id.* Mr. Linden simply divided the net income by the shareholder equity for the calendar year 2011 and stated that result as the ROE. *Id.* The ALJs concluded that, without consideration of the adjustments, they could not find Mr. Linden’s ROE calculation to be accurate. *Id.* Furthermore, Mr. Linden used data from the calendar year 2011 and compared it to data for the future test year ending June 30, 2012. *Id.* The ALJs therefore found that such a comparison is not “apples-to-apples” and cannot be relied upon for accurate conclusions. *Id.* Additionally, implicit in the presentation of a ROE for future earnings is the premise that the current ROE is inadequate. R.D. at 36. Furthermore, the non-Company, public advocate witnesses failed to rebut the statement made by the Company that the current ROE is inadequate and therefore justifies the need for a rate increase. *Id.* Lastly, the ALJs found that the record does not support Mr. Linden’s assertion that Aqua failed to sustain its burden of proof to show that the rate increase is needed.

**2. Exceptions**

In his first Exception, Mr. Linden states that the ALJs erred in finding his calculated ROE cannot be relied upon for accurate conclusions. Linden Exc. at 1. Mr. Linden also states that his computation is adjusted for taxes and other adjustments. *Id.* Mr. Linden further asserts that the Shareholders Equity is the equity portion of rate base, and is the correct value to use in computing ROE. *Id.*

**3. Disposition**

We agree with the ALJs on this issue. Mr. Linden’s ROE is not properly calculated because it uses 2011 calendar year income and shareholders’ equity as of December 31, 2011, which does not represent the future test year employed in this proceeding. Additionally, Mr. Linden has not provided any calculations nor has he provided any evidence to demonstrate that the calculations supplied by the non-Company witnesses or the Company witness are erroneous. We note for clarification only that Mr. Linden’s net income number representing the year ended December 31, 2011, of $107,856,931 is adjusted for taxes other than income and also incorporates a provision for income taxes. Linden Exh. 4, at 5 and 8. However, based upon the above discussion, Mr. Linden’s first exception is denied.

**G. Aqua’s Contribution of Net Income to its Parent Company**

**1. The ALJs’ Recommendation**

The ALJs found the relevancy of Aqua’s parent company’s Price/Earnings (P/E) Ratio[[8]](#footnote-8) to Aqua’s ROE is misguided. R.D. at 36. Aqua is one of sixty subsidiaries contributing to the financials of a common parent company. *Id*. The ALJs understanding of Mr. Linden’s position is that, although many companies contribute to the parent company financials, Aqua is the most influential of these companies on the financials and thus, the financials for the parent company correlate to financials for Aqua. *Id.* Mr. Linden however, did not provide any support for his conclusion. *Id.* The ALJs therefore concluded that the assertions made by Mr. Linden regarding Aqua’s financial contribution to its parent company do not support a finding that Aqua’s current ROE is excessive. *Id.*

**2. Exceptions**

Mr. Linden’s second Exception contends that the ALJs relied upon a false implication regarding his testimony about the high relative contribution of Aqua’s net income to its parent company. Linden Exc. at 2. Mr. Linden further states that it is necessary to examine the relative contribution of net income from Aqua to its parent in determining if Aqua has a reasonable opportunity to attract the additional capital needed to finance future plant improvements. Linden Exc. at 2.

**3. Disposition**

What Mr. Linden has not considered is that Aqua’s base rates are developed using only Aqua’s financial data and that the ROE, or in this proceeding, the settlement revenue level, is specifically attributable to Aqua and not the parent company. Aqua’s net income contribution to its parent company is not considered as a line item expense to be recovered via base rates. Further, should the ROE and thus the overall rate of return be set too low, Aqua’s participation in the capital markets could be inhibited and thus detrimental to improvements of an aging delivery system as well as maintenance of that system on a going forward basis. Based upon the above discussion we agree with the ALJs on this issue and shall deny Mr. Linden’s second exception.

**H. P/E Ratio Time Frame**

**1. The ALJs’ Recommendation**

The ALJs dismissed Mr. Linden’s P/E Ratio analysis as irrelevant to the proceeding. R.D. at 36. Additionally, the ALJs stated that his P/E Ratio represented a ten year period. *Id.*

**2. Exception**

Mr. Linden’s third Exception asserts that the ALJs misread Aqua’s rebuttal to his direct testimony regarding the P/E Ratio, and erred by stating that his analysis represented a ten year time frame. R.D. at 36, n 10; Linden Exc. at 2.

**3. Disposition**

Mr. Linden is correct in noting that the ALJs erred by stating that his P/E ratio represented a ten year period. Attached to Mr. Linden’s direct testimony as Exhibit 3, is a schedule retrieved from Aqua’s parent company website containing key financial ratios, one of which is the P/E Ratio of 22.10, representing a Trailing Twelve Months (TTM) time frame. Accordingly, we shall grant this exception because it represents a factual correction to the ALJs’ Recommended Decision.

**I. Contribution of Aqua to Parent Company P/E Ratio**

**1. ALJs’ Recommendation**

The ALJs found that Mr. Linden did not prove that any prior years’ earnings of Aqua contributed directly to its parent company’s P/E Ratio which is only slightly above the market average. Further, the ALJs stated that Mr. Linden’s attempt to link Aqua’s ROE to the parent company’s P/E is misguided. R.D. at 36.

**2. Exceptions**

In his fourth Exception, Mr. Linden asserts that the ALJs erred in stating that evidence was not provided to support the high relative contribution of Aqua to the parent company. Linden Exc. at 3. As originally presented in his direct testimony, Mr. Linden again states in this Exception, that Aqua contributed 51% of its parent company’s revenue and 73% of its net income for 2010 and that this trend continued for 2011. *Id.* Additionally, Mr. Linden stated that the ALJs did not specifically address the company-prepared shareholder return charts provided as Exhibit 1 to his direct testimony. *Id.*

**3. Disposition**

This Exception addresses the financial contribution of Aqua to its parent company and again asserts that it is possible only because Aqua’s ROE is excessive. While Mr. Linden’s financial statistics are accurate they are not germane to the calculation of Aqua’s ROE. Further, the parent company-prepared shareholder return charts offered by Mr. Linden are not supportive of his position regarding excessive ROE for Aqua. The parent company-prepared shareholder return charts represent the parent company’s financial performance compared with the performance of the Dow Jones Industrial Average and the Standard & Poor’s 500. Further, as noted in the ALJs’ Recommended Decision, Aqua’s witness testified that recent parent company data shows a lower P/E Ratio than that of the other publicly-traded water utilities. R.D. at 36. Based upon the discussion above, we shall deny Mr. Linden’s fourth Exception.

**J. Necessity for Rate Increase**

**1. ALJs’ Recommendation**

Implicit in the presentation of a ROE for future earnings is the premise that the current ROE is inadequate. R.D. at 36. Furthermore, the ALJs noted that the statutory advocate witnesses failed to rebut the statement made by the Company that the current ROE is inadequate and therefore justifies the need for a rate increase. *Id.* Thus, according to the ALJs, the record does not support Mr. Linden’s assertion that Aqua failed to sustain its burden of proof to show that the rate increase is needed. *Id.*

**2. Exception**

In his fifth and final Exception Mr. Linden asserts that the ALJs erred in their conclusion that Aqua’s current rates are inadequate, will not generate a fair rate of return and will not attract additional capital needed to finance future plant improvements. Mr. Linden believes that he has successfully refuted these findings. Linden Exc. at 3. In support of this Exception, Mr. Linden points to the OCA’s original position, which recommended a revenue decrease. Linden Exc. at 4. Mr. Linden then asserts that the burden of proof is on Aqua to show that the investor returns are not due to excessive contributions by Aqua to its parent company. *Id.* Lastly, Mr. Linden asserts that once the ALJs determined that an increase was warranted, there is nothing in the logic provided to determine if the increase is excessive. *Id.*

**3. Disposition**

We agree with the ALJs when they stated there is no testimony from the statutory financial experts stating succinctly that the current rates projected annual earnings through June 30, 2012 with an ROE of 9.49% are adequate. Rather, the statutory financial experts all stated that the testimony originally proposed by the Company with the ROE at 11.75% (See AP Stmt. 4 at 50) is excessive. R.D. at 36. It is also important to note that the statutory financial experts calculated ROEs of 9.56% and 9.75%, which exceed the ROE produced by current rates, support a conclusion that current rates are inadequate and will not garner the interest in financial markets needed by Aqua to secure capital financing for infrastructure improvements and maintenance. Accordingly, the fifth Exception of Mr. Linden is denied.

**K. Aqua’s Current Rate of Return**

**1. ALJs’ Characterization**

In their Recommended Decision, the ALJs stated that the statutory advocate witnesses all provided testimony to calculate an ROE for future earnings. R.D. at 36. The ALJs also stated that, implicit in the presentation of an ROE for future earnings is the premise that the current ROE is inadequate. *Id.* Furthermore, the ALJs found that the statutory advocate witnesses failed to rebut the statement made by the Company that its current ROE is inadequate and therefore justifies the need for a rate increase.

**2**. **Exceptions**

The OSBA excepts to the ALJs’ characterization that its position is that Aqua’s current ROE is inadequate. OSBA Exc. at 3. The OSBA states that its witness never testified or implied that Aqua’s current ROE was inadequate. *Id.* Further, the OSBA did not proffer a specific ROE for Aqua in this proceeding but instead recommended that the Commission-allowed ROE not exceed 10%. *Id.* at 4. According to the OSBA, the fact that Aqua’s current ROE is below the OSBA’s recommended cap says nothing about whether or not Aqua’s current ROE is inadequate. *Id.*

The ALJs also stated that Aqua’s assertion that its current ROE was inadequate was not rebutted by statutory witnesses. R.D. at 36. The OSBA believes that the ALJs erred in reaching this conclusion. OSBA Exc. at 4. The OSBA notes that its witness’ surrebuttal testimony only stated the result of using its recommended ROE cap to calculate the revenue requirement. The OSBA’s witness never commented on Aqua’s current ROE.

**3. Disposition**

We agree with the OSBA’s explanation of this issue. The OSBA did not comment on the adequacy of Aqua’s current ROE within this proceeding. Therefore, as explained above we shall grant the OSBA’s Exceptions on this issue.

**L. Implementation of the DSIC ROE**

**1. The ALJs’ Recommendation**

The ALJs found that the DSIC is linked to the base rate ROE, which will serve as a safeguard against excessive increases and prohibit implementation of the DSIC as long as the base rate ROE is greater than 10.2%. R.D. at 33.

**2. Exceptions**

In its Exceptions I&E states that the ALJs’ statements that the DSIC ROE and the base rate ROE, which is unknown, are linked and that the DSIC surcharge will only be implemented if the base rate ROE, from the settlement, falls below 10.2%, are erroneous. I&E Exc. at 3. I&E states that there is no statutory provision preventing a utility from implementing a DSIC surcharge until its base rate ROE falls to a certain level. *Id.*

Aqua, in its Exceptions agrees with the ALJs. Aqua states that it will not be permitted to reactivate its DSIC unless its otherwise achieved ROE is below the 10.2% DSIC ROE established by the Settlement in this proceeding. Aqua Exc. at 4. Aqua further clarifies that the achieved ROE will be determined by the actual return levels set forth in Aqua’s quarterly earnings reports to the Commission. *Id.*

**3. Disposition**

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 (Act 11), which amends Chapters 3, 13 and 33 of the Code. In particular, Act 11 amends Chapter 13 to allow jurisdictional water and wastewater utilities, electric distribution companies (EDCs), and natural gas distribution companies (NGDCs) or a city natural gas distribution operation to petition for a distribution system improvement charge (DSIC). By Tentative Implementation Order entered on May 11, 2012, at Docket No. M‑2012‑ 2293611 (*May 11 Order*) the Commission proposed procedures and guidelines to carry out the ratemaking provisions of Act 11.

Act 11 further amends Chapter 13 by incorporating a new Subchapter B, Section 1358(b) of the Code, which deals with the resetting of the DSIC charge. *See,* 66 Pa. C.S. §§ 1358-*Consumer Protections.*[[9]](#footnote-9)

As explained in our *May 11 Order*, under certain circumstances, Section 1358(b) requires that a DSIC rate be reset to zero. After a reset, only fixed costs of new eligible property not previously reflected in base rates may be reflected in a quarterly DSIC update.

The DSIC rate is reset to zero if new base rates are established. *See,* 66 Pa. C.S. § 1358(b)(1). For investor-owned utilities, reset is also required if, in any quarter, data filed with the Commission in the utility’s most recent quarterly earnings report show that the utility will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC. *See,* 66 Pa. C.S. § 1358(b)(3).

The Settlement at Paragraph 7e, provides that, for the period Settlement rates are in effect, a 10.2% rate of return on common equity shall be used by Aqua for DSIC purposes, in lieu of the equity return rate(s) calculated in the Commission’s Quarterly Earnings Reports. As the ALJs noted in their Recommended Decision, I&E’s recommended ROE was 9.56% and the OCA’s ROE recommendation was 9.75%. R.D. at 34. Additionally, the Company’s claimed ROE was 11.75%. R.D. at 36. It is clear that the Settlement ROE for future DSIC surcharges is within this range and is reasonable.

We do not agree with I&E’s position that Aqua is not required to wait until the base rate ROE drops below 10.2% to implement a DSIC. I&E’s position is inconsistent with our *May 11 Order*. Based upon that Order, we have established that a DSIC may not be implemented if the actual rate of return pursuant to quarterly reports submitted to the Commission exceeds the authorized DSIC rate of return. Therefore, Aqua may not reactivate its DSIC unless and until a subsequently filed quarterly report demonstrates that its adjusted actual rate of return falls below the 10.2% established in the Settlement. Accordingly, the Exception of I&E is denied and the Exception of Aqua is granted relative to this issue.

1. **Conclusion**

We have reviewed the record as developed in this proceeding, including the ALJs’ Recommended Decision and the Exceptions filed thereto. The Company requested an overall revenue increase of $ 38.6 million, or 9.4%. The ALJs recommended that the Commission adopt the Joint Settlement herein, submitted by the Company, Aqua LUG, the OCA and I&E. R.D. at 51. Adoption of the Joint Settlement would result in the Company receiving a stipulated increase in annual revenues of $16.7 million, without specific identification of adjustments. The ALJs further recommended that the Company be authorized to file a tariff or tariff supplement in substantially the same form as that attached as Appendix “A” to the Joint Settlement Petition of the Rate Investigation to become effective for service on one day’s notice, following the entry of the instant Opinion and Order. *Id.*

Based on our review, evaluation and analysis of the record evidence, we find that the Settlement is in the public interest. Consequently, we shall adopt the ALJs’ recommendations, to the extent consistent with this Opinion and Order. The resulting allowable revenue increase is $16.7 million or a 4.1% increase in revenues. The Exceptions of the various Parties will be granted, in part, and denied, in part, consistent with this Opinion and Order; **THEREFORE;**

**IT IS ORDERED:**

1. That the Exceptions filed by Aqua Pennsylvania, Inc., on May 25, 2012, to the Recommended Decision of Administrative Law Judges Angela T. Jones and Darlene D. Heep are granted.

2. That the Exceptions filed by the Office of Consumer Advocate, on May 25, 2012, to the Recommended Decision of Administrative Law Judges Angela T. Jones and Darlene D. Heep are granted.

3. That the Exceptions filed by the Office of Small Business Advocate, on May 25, 2012, to the Recommended Decision of Administrative Law Judges Angela T. Jones and Darlene D. Heep are granted.

4. That the Exceptions filed by the Bureau of Investigation and Enforcement, on May 25, 2012, to the Recommended Decision of Administrative Law Judges Angela T. Jones and Darlene D. Heep are granted, in part and, denied in part, consistent with this Opinion and Order.

5. That the Exceptions filed by Mr. Jerome Linden, on May 25, 2012, to the Recommended Decision of Administrative Law Judges Angela T. Jones and Darlene D. Heep are granted, in part and, denied in part, consistent with this Opinion and Order.

6. That the Exceptions filed by Mr. Robert W. Curtius, on May 24, 2012, to the Recommended Decision of Administrative Law Judges Angela T. Jones and Darlene D. Heep are denied.

7. That the Recommended Decision of Administrative Law Judges Angela T. Jones and Darlene D. Heep, issued on May 18, 2012, is adopted, to the extent consistent with this Opinion and Order.

8. That Aqua Pennsylvania, Inc. shall not place into effect the rates, rules, and regulations contained in Supplement No. 115 to Tariff Water – Pa. P.U.C. No. 1 as filed on November 18, 2011, the same having been found to be unjust, unreasonable, and therefore, unlawful.

9. That the rates, terms and conditions contained in the Joint Settlement Petition filed by Aqua Pennsylvania, Inc., Aqua Large Users Group, the Office of Consumer Advocate, and the Bureau of Investigation & Enforcement on April 20, 2012, be approved and adopted consistent with the discussion contained herein.

10. That upon entry of this Opinion and Order, Aqua Pennsylvania, Inc. will be permitted to charge the rates for water service set forth in the revised Supplement No. 115 to Tariff Water – Pa. P.U.C. No. 1, which was attached to the Joint Settlement Petition as Appendix A.

11. That upon entry of the instant Opinion and Order, Aqua Pennsylvania, Inc. shall file a tariff or tariff supplement in substantially the same form as that attached as Appendix “A” to the Joint Settlement Petition of the Rate Investigation, at Docket No. R‑2011-2267958, reflecting the rates, rules, and regulations therein, to become effective upon one day's notice, consistent with the discussion contained herein.

12. That, upon acceptance of the appropriate compliance filing, the investigation at Docket No. R-2011-2267958 shall be marked closed.

13. That Aqua Pennsylvania, Inc., shall not file another base rate case, under Section 1308 of the Public Utility Code, prior to November 18, 2013.

14. That the Formal Complaint filed at Docket No. C-2011-2279111, by the Office of Consumer Advocate, is dismissed.

15. That the Formal Complaint, filed at Docket No. C-2011-2279475, by the Office of Small Business Advocate is dismissed.

16. That the Formal Complaint, filed at Docket No. C-2011-2277105, by Said Shafik is dismissed.

17. That the Formal Complaint, filed at Docket No. C-2011-2277113, by Emilio Rende is dismissed.

18. That the Formal Complaint, filed at Docket No. C-2011-2277112, by Rikki Renz is dismissed.

19. That the Formal Complaint, filed at Docket No. C-2011-2277115, by Thomas E. Pektas is dismissed.

20. That the Formal Complaint, filed at Docket No. C-2011-2277119, by Daniel H. McElreavey is dismissed.

21. That the Formal Complaint, filed at Docket No. C-2011-2279472, by Laurence J. Colfer is dismissed.

22. That the Formal Complaint, filed at Docket No. C-2011-2279485, by Michael Silvestri is dismissed.

23. That the Formal Complaint, filed at Docket No. C-2011-2279476, by William & Kathleen Whiting is dismissed.

24. That the Formal Complaint, filed at Docket No. C-2011-2279703, by Linda Palmisano is dismissed.

25. That the Formal Complaint, filed at Docket No. C-2011-2279566, by John Dillon is dismissed.

26. That the Formal Complaint, filed at Docket No. C-2011-2280616 by Jerome Linden, is dismissed.

27. That the Formal Complaint, filed at Docket No. C-2011-2279526, by Arnold M. Kring is dismissed.

28. That the Formal Complaint, filed at Docket No. C-2012-2281336, by Robert W. Curtius is dismissed.

29. That the Formal Complaint, filed at Docket No. C-2012-2282626, by Barry D. Polland is dismissed.

30. That the Formal Complaint filed at Docket No. C-2012-2284238 by the Borough of Sayre is dismissed.

31. That the Formal Complaint, filed at Docket No. C-2012-2284313, by Stanley Lemond is dismissed.

32. That the Formal Complaint, filed at Docket No. C-2012-2285539, by Kenneth W. Reeves is dismissed.

33. That the Formal Complaint, filed at Docket No. C-2012-2285789, by the Aqua Large Users Group is dismissed.

34. That the Formal Complaint, filed at Docket No. C-2012-2286276, by H. N. White is dismissed.

35. That the Formal Complaint, filed at Docket No. C-2012-2288511, by Steven Dagowitz is dismissed.

36. That the Secretary's Bureau shall mark the following Dockets closed: No. C‑2011-2279111; No. C-2011-2279475; No. C-2011-2277105; No. C-2011-2277113; No. C‑2011-2277112; No. C-2011-2277115; No. C-2011-2277119; No. C-2011-2279472; No. C‑2011-2279485; No. C-2011-2279476; No. C-2011-2279703; No. C-2011-2279566; No. C‑2011-2280616; No. C-2011-2279526; No. C-2012-2281336; No. C-2012-2282626; No. C‑2012-2284238; No. C-2012-2284313; C-2012-2285539; No. C-2012-2285789; No. C-2012-2286276; and No. C-2012-2288511.



BY THE COMMISSION,

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: June 7, 2012

ORDER ENTERED: June 7, 2012

1. For a full and complete history, please refer to the Recommended Decision at 1‑6. [↑](#footnote-ref-1)
2. It was later discovered that five of the customer complainants were not served with all settlement documents. The OCA volunteered to issue a second copy of the settlement summary and all proposed settlement documents to those five Parties. As a matter of due process, those Parties were given six additional days to respond to the Settlement. [↑](#footnote-ref-2)
3. Objections and comments were accepted if postmarked on or before May 9, 2012. [↑](#footnote-ref-3)
4. Prior to January 16, 2004, Aqua was known as the Pennsylvania Suburban Water Company (PSW) and, before that, as the Philadelphia Suburban Water Company. [↑](#footnote-ref-4)
5. For a more detailed discussion of the public input hearings, see pages 7-15 of the Recommended Decision. [↑](#footnote-ref-5)
6. The terms and conditions of the Joint Settlement, beginning with Paragraph No. 7 thereof, are recited verbatim from the Joint Settlement. [↑](#footnote-ref-6)
7. The pertinent terms can be found under Roman numeral III of the Joint Settlement. [↑](#footnote-ref-7)
8. The P/E Ratio is the quoted market price, or other determined current value, of a share of common stock divided by the annual earnings per share for the preceding year. [↑](#footnote-ref-8)
9. The separate DSIC provisions in Section 1307(g) providing for a sliding scale of rates for water utilities have been deleted in lieu of the general DSIC provisions established in Act 11. [↑](#footnote-ref-9)