**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

|  |  |
| --- | --- |
|  | Public Meeting held June 11, 2015 |
| Commissioners Present:Gladys M. Brown, ChairmanJohn F. Coleman, Jr., Vice ChairmanJames H. CawleyPamela A. WitmerRobert F. Powelson |  |
| Pennsylvania Public Utility CommissionOffice of Consumer AdvocateRobert L. BeilsteinRichard Bricker James and Karen EurichMarlene HooverBetty LearnWilliam and Leslie MayhughLloyd NybergJoseph RizzoThomas and Kimberly EurichEarl and Sue ChristyEarl and Leetta ChristyLouis and Marie Bauldoff Melissa Phillips  v.Herman Oil & Gas Company, Inc. |  Docket Nos. R-2014-2414379C-2014-2419761C-2014-2422697C-2014-2422758C-2014-2422756C-2014-2427251C-2014-2422753C-2014-2422690C-2014-2427238C-2014-2422703C-2014-2427240C-2014-2430205C-2014-2430206C-2014-2430207C-2014-2430208 |
|  |  |
|  |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: (1) the Joint Petition for Settlement of Rate Proceeding (Joint Petition or Settlement), executed by Herman Oil and Gas Company, Inc. (Herman or Company), the Commission’s Bureau of Investigation and Enforcement (I&E) and the Office of Consumer Advocate (OCA) (collectively, Joint Petitioners); (2) the Recommended Decision of Administrative Law Judge (ALJ) Mark A. Hoyer, issued on April 9, 2015; and (3) the Exceptions to the Recommended Decision filed by Joseph Rizzo[[1]](#footnote-1) on April 22, 2015, and by Kimberly Eurich[[2]](#footnote-2) on May 10, 2015. Herman filed Replies to the Exceptions of Mr. Rizzo on May 11, 2015, and Replies to the Exceptions of Ms. Eurich on May 22, 2015. For the reasons set forth herein, we shall, *inter alia*: (1) approve the Joint Petition; (2) adopt the Recommended Decision; and (3) deny the Exceptions.

# Background

Herman is a certificated public utility that provides natural gas distribution service in Butler County, Pennsylvania to approximately 425 customers. The Company has not had a base rate increase in approximately thirty-two years. The Company initially requested a distribution revenue increase of $762,969, of which $682,521 would be derived from a rate increase on natural gas consumption and $80,448 would be derived from a new Customer Charge. The Joint Petitioners report that, due to various adjustments made or brought to the Company’s attention during the proceeding, the Company subsequently decreased its revenue increase request to approximately $588,000. Joint Petition at 3.

The Joint Petitioners propose that the Company be permitted to file tariffs that will produce additional $420,005 above the *pro forma* annual distribution revenue of $176,816 at present rates. Under the Settlement, the proposed revenue increase would be phased in over three years. Fifty percent of the increase, or approximately $210,000, would be implemented in the first year, and twenty-five percent, or approximately $105,000 would be implemented in each of the two subsequent years.[[3]](#footnote-3) Joint Petition at Appendix B. The Joint Petitioners estimate that the average residential customer using 6.326 Mcf of natural gas per month would experience an increase in average monthly rates from $62.10 under present rates to $136.51, after the full three-year phase-in of the Settlement rates. Joint Petition at 7.

# History of the Proceeding

On March 28, 2014, Herman filed Supplement No. 44 to Tariff-Gas PA. P.U.C. No. 4 (Supplement No. 44) to become effective July 1, 2014, containing proposed changes in rates, rules, and regulations. On July 1, 2014, pursuant to 66 Pa. C.S. § 1308(b), the filing was suspended by operation of law until February 1, 2015.

On April 25, 2014, I&E filed a Notice of Appearance. On May 5, 2014, the OCA filed a Formal Complaint at Docket No. C-2014-2419761 and a Notice of Appearance. Formal Complaints were also filed by the following individuals: Robert L. Beilstein at Docket No. C-2014-2422697; Richard Bricker at Docket No. C‑2014-2422758; James and Karen Eurich at Docket No. C-2014-2422756; Marlene Hoover at Docket No. C-2014-2427251; Betty Learn at Docket No. C-2014-2422753; William and Leslie Mayhugh at Docket No. C-2014-2422690; Lloyd Nyberg at Docket No. C-2014-2427238; Joseph Rizzo at Docket No. C-2014-2422703; Thomas and Kimberly Eurich at Docket No. C-2014-2427240; Earl and Sue Christy, Docket No. C‑2014-2430205; Earl and Leetta Christy, Docket No. C-2014-2430206; Louis and Marie Bauldoff, Docket No. C-2014-2430207; and Melissa Phillips, Docket No. C-2014-2430208. All of the Complaints were consolidated for mediation, hearing and disposition into this base rate proceeding at Docket No. R-2014-2414379.

On June 2, 2014, the Commission received a petition containing approximately 141 signatures opposing the proposed rate increase.

A Public Input Hearing was held on Thursday, August 21, 2014, at 6:00 p.m., at the Winfield Township Municipal Building, Cabot, PA. Notice of the Public Input Hearing was published in the *Butler Eagle* on August 5, 2014 and August 12, 2014. Twelve individuals offered testimony under oath at the Public Input Hearing. Joseph Rizzo submitted four exhibits which were subsequently admitted into the record.

The Company agreed to mediation of this base rate case and on September 30, 2014, the Company filed Tariff Supplement No. 45 to Tariff Gas – Pa. P.U.C. No. 4, extending the effective rate of the proposed tariff until April 2, 2015. On October 23, 2014, the Company contemporaneously filed a Motion for Ninety-Day Extension of the Procedural Schedule and Supplement No. 47[[4]](#footnote-4) to Tariff Gas-Pa. P.U.C. No. 4, extending the effective date an additional ninety days, to August 2, 2015.

On February 2, 2015, the Joint Petition was filed and served on nine of the thirteen individual Complainants whose Complaints were consolidated with this rate proceeding. On February 4, 2015, the ALJ issued a letter to each of the nine Complainants advising them of the Settlement and instructing them how to file and serve objections to the Settlement. Objections were requested to be filed by February 17, 2015. On February 9, 2015, the ALJ discovered there were four Complaints that had not been consolidated with the instant rate proceeding. These four Complaints were consolidated for hearing and disposition with this rate proceeding in the ALJ’s Fourth Interim Order issued February 9, 2015. On February 12, 2015, the ALJ sent a letter to these four Complainants which, *inter alia*, requested that any Objections to the proposed Settlement be filed by February 25, 2015. R.D. at 3-4. Objections to the Settlement were filed by Earl and Sue Christy, Earl and Leetta Christy and Joseph Rizzo between February 23, 2015 and March 6, 2015.

On April 9, 2015, the Commission issued the Recommended Decision which, *inter alia*, recommended that the Joint Petition be approved without modification. Exceptions to the Recommended Decision were filed by Joseph Rizzo on April 22, 2015, and by Kimberly Eurich on May 10, 2015. Herman filed Replies to the Exceptions of Mr. Rizzo on May 11, 2015 (Herman R.E. No. 1), and Replies to the Exceptions of Kimberly Eurich on May 22, 2015 (Herman R.E. No. 2).

# Discussion

##

## Legal Standards

### Burden of Proof

Public utility rates are required to be just and reasonable by virtue of [Section 1301](http://www.lexis.com/research/buttonTFLink?_m=1be499e195bbff92a6a1dedc9f432510&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b157%20Pa.%20Commw.%2086%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=50&_butInline=1&_butinfo=66%20PA.C.S.%201301&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=46056d0013ee20e0d93b3c249715546a) of the Public Utility Code, [66 Pa. C. S. § 1301](http://www.lexis.com/research/buttonTFLink?_m=1be499e195bbff92a6a1dedc9f432510&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b157%20Pa.%20Commw.%2086%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=51&_butInline=1&_butinfo=66%20PA.C.S.%201301&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=a725045f9ab5deeead6b8b16c8691991). Typically in proceedings before the Commission, the public utility has the burden to establish the justness and reasonableness of every element of its rate increase in all proceedings conducted under Section 1308(d) of the Code, [66 Pa. C.S. § 1308(d)](http://www.lexis.com/research/buttonTFLink?_m=6840269e96d866f7def0bd999ce92e73&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b293%20P.U.R.4th%20235%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=14&_butInline=1&_butinfo=66%20PACS%201308&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=464915d2447578a011ff30165eef4e75). The standard of proof which a public utility must meet is set forth in Section 315(a) of the Code, [66 Pa. C.S. § 315(a)](http://www.lexis.com/research/buttonTFLink?_m=6840269e96d866f7def0bd999ce92e73&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b293%20P.U.R.4th%20235%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=15&_butInline=1&_butinfo=66%20PACS%20315&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=a106ff73ba6d63872120ef8ca081a002), which specifies that, “[i]n any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceeding 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.” *See Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc., et al.*, Docket No. R-2010-2215623, *et al*. (Order entered October 14, 2011).

Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654,602 A.2d 863 (1992). The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-ling Hosiery v. Margulies,* 364 Pa. 45.70 A.2d 857 (1950). Because the complaints are against proposed rates, Herman has the burden of proof.[[5]](#footnote-5)

### Settlements

It is the policy of the Commission to encourage settlements. [52 Pa. Code § 5.231](https://www.lexis.com/research/buttonTFLink?_m=419db4e7e025fcd0f6d37a7997bd428d&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2012%20Pa.%20PUC%20LEXIS%201459%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=13&_butInline=1&_butinfo=52%20PA%20CODE%205.231&_fmtstr=FULL&docnum=10&_startdoc=1&wchp=dGLbVzB-zSkAW&_md5=9e11094e7cba6c09553674243a0ba640)(a). 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. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

### Exceptions

Any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also*, *generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

We note at the outset that the Exceptions of Ms. Eurich and Mr. Rizzo are not in strict compliance with Section 5.533(b) of our Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.533(b), which provides that:

(b) Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.

We recognize, however, that the Complainants are appearing *pro se* in this proceeding. Traditionally, we have been hesitant to rule unfavorably against *pro se* litigants based on technical grounds. *See*, *e.g.*, *Destefano v. Peoples Natural Gas Company*, 56 Pa. P.U.C. 489 (1982); *Halpern v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00923950 (October 19, 1992); and *William Schlinder v. The Bell Telephone Company of Pennsylvania*, Docket No. F-00161252 (March 26, 1993).  In our view, it is in the public interest that all litigants, particularly *pro se* litigants**,** be afforded a meaningful opportunity to be heard. We will, therefore, consider the merits of the Complainants’ Exceptions.

In its Reply to the Exceptions of Ms. Eurich, Herman argues that Ms. Eurich’s Exceptions were not timely filed and should be denied. The Company explains that Ms. Eurich’s Exceptions were filed on May 10, 2015, and the Secretarial Letter that was transmitted with the Recommended Decision on April 9, 2015, required that Exceptions be filed by April 29, 2015. Herman R.E. No. 2 at 2.

Our Regulation at Section 1.2(a) states:

 This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

Although Ms. Eurich’s Exceptions were filed after the twenty-day period for filing Exceptions, we note that this is a consolidated proceeding in which another party filed timely Exceptions. As such, considering Ms. Eurich’s Exceptions will not unduly delay the disposition of this proceeding. Moreover, as noted, *supra*, by Secretarial Letter dated May 12, 2015, the Commission’s Secretary served Ms. Eurich’s Exceptions on all the Parties of Record and extended the deadline for Reply Exceptions until May 22, 2015. As such, all other parties to this proceeding had notice of Ms. Eurich’s Exceptions and an opportunity to respond to them. As a result, considering Ms. Eurich’s Exceptions will not affect the substantive rights of any party. Consequently, we will consider those Exceptions in this Opinion and Order.

In its Reply to the Exceptions of Ms. Eurich, Herman also argues that Ms. Eurich has waived the arguments presented in her Exceptions as she failed to raise them in either the public input hearing or in protest to the Settlement before the ALJ. The Company submits that such arguments are improper in this proceeding and should not be considered. Therefore, Herman requests that the Commission deny Ms. Eurich’s Exceptions. Herman R.E. No. 2 at 3.

Since Ms. Eurich is a *pro se* Complainant, and may not have been aware of the proper method of objecting to the settlement submitted to the ALJ, we will reject Herman’s waiver argument. 52 Pa. Code § 1.2(a) and (d). We, therefore, will consider those Exceptions. As discussed, *infra*, however, we are denying Ms. Eurich’s Exceptions to the extent that they oppose the adoption of the Joint Petition.

## The Joint Petition

### Distribution Revenue Increase and Phase-In

#### Terms of the Joint Petition

As noted, *supra*, if the Joint Petition is granted, Herman would be permitted to produce additional annual operating distribution revenue of $420,000, or an increase of approximately 238% above *pro forma* present distribution rates of $176,816. Joint Petition at Appendix B. The Joint Petitioners agreed that the rate increase will be phased in over the next three years as follows: $210,000 during the first year, $105,000 during the second year, and $105,000 during the third year. These proposed increases equate to fifty percent of the annual revenue increase in the first year, twenty-five percent in the second year, and twenty-five percent in the third year. Joint Petition at 6, 9.

#### Positions of the Parties and the Recommended Decision.

The overriding message in the Formal Complaints filed by ratepayers, the testimony at the public input hearing, the Objections to the Joint Petition, the Exceptions and the other letters submitted by the Company’s ratepayers was an opposition to the magnitude of the proposed rate increase and the impact that the rate increase would have on ratepayers, particularly those on fixed incomes. Some of the ratepayers participating in this proceeding opined that the rate increase was not warranted in light of: the quality of service (discussed, *infra*); annual changes in the gas cost rate; and the Company’s failure to seek rate relief sooner.

I&E averred that the increased level of revenue adequately balances the interests of ratepayers and the Company. I&E submitted that the Company 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 Company’s initial proposal. I&E pointed out that the negotiated Settlement represents approximately 53.9% of the Company’s filed request. I&E stated that “[m]itigation of the level of the rate increase benefits ratepayers and results in rates that satisfy the regulatory standard.” I&E Statement in Support at 5. As such, I&E concluded this element supports the standard for approval of a settlement as the resulting rates are just and reasonable and in accordance with the Public Utility Code and all pertinent case law. *Id*.

Based on the OCA’s analysis of the Company’s filing, the proposed increase under the Settlement represents an amount, which in the OCA’s opinion, would be within the range of the likely outcomes in the event of full litigation of the case. The OCA explained that the Settlement provides for this increase to be phased in over a three-year period, which will allow for a more gradual increase and help to ensure the avoidance of rate shock. OCA Statement in Support at 3.

In his Recommended Decision, the ALJ stated as follows:

The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest.” *Pa. Pub. Util. Comm’n v. Philadelphia Electric Company*, 60 Pa. PUC 1, 22 (1985). The Commission has recognized that a settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.” *Pa. Pub. Util. Comm’n v. C S Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

R.D. at 26.

The ALJ recognized that the rate increase contained in the Settlement is a significant increase. R.D. at 27. However, the ALJ concluded that the rate increase agreed to in the Settlement adequately balances the interests of ratepayers and the Company and is in the public interest. The ALJ submitted that the Company 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 Company’s initial proposal. The ALJ opined that the increase contained in the Settlement represents an amount which would be within the range of the likely outcomes in the event of full litigation of the case. The ALJ also noted that the Settlement provides for this increase to be phased in over a three-year period, which will allow for a more gradual increase and help to ensure the avoidance of rate shock. R.D. at 28.

#### Exceptions

In his Exceptions, Mr. Rizzo states that “this decision” hurts all citizens, especially those that survive on Social Security. Rizzo Exc. at 1. Mr. Rizzo submits that the increase in Social Security this year was 1.7 percent and he questions how we can absorb this type of an increase. He explains that he has only been a customer of the Company for eleven years, but that documentation sent to the “consumer advocates” showed that the Company has had other rate increases “throughout the years.” *Id.* Mr. Rizzo observes that the three-year phase-in of the increase in distribution rates does not take into account changes in the GCR. *Id.*

In her Exceptions, Ms. Eurich objects to the proposed rate increase because it is extremely high and will create a hardship for her family and her neighbors. She states that it is unfortunate that the Company was not well managed over the years, but it is not the customers’ responsibility to pay such high, unreasonable rates to make up for this irresponsible behavior and poor business decisions. Ms. Eurich understands that, from time to time, a rate increase is necessary, but not at this magnitude. Ms. Eurich submits that if the rate increase does occur, she will be finding an alternate source of heat because she cannot afford the rate request. Eurich Exc. at 1.

In its Reply to Mr. Rizzo’s and Ms. Eurich’s Exceptions, the Company states, *inter alia*, that their “bare assertion” that the Settlement is unfair or will harm customers ignores the reality that Herman needs to increase revenues to provide safe and reliable service and that such increase has been phased-in to protect customers from the immediate impact of raising rates. Herman R.E. No. 1 at 3; Herman R.E. No. 2 at 2-3. Therefore, Herman avers that the Settlement balances the interests of rate payers and the Company and is not unfair or harmful. *Id*.

In response to Mr. Rizzo’s assertion that the Company has had other rate increases, the Company submits that it has not had a base-rate increase (general rate increase within the meaning of 66 Pa. C. S. § 1308(d) in over thirty years. Herman further explains that the Commission has approved changes in its GCR during this time period, but base rates have not increased since the establishment of the Company. As discussed, *infra*, Herman has agreed to implement a new customer-friendly billing format which will distinguish between gas cost and base rates. Herman opines that clearly defining the GCR and base rates should help resolve any customer confusion between the rates in the future. Herman R.E. No. 1 at 3.

#### Disposition

#### Pursuant to several court decisions, this Commission, as the regulatory authority, must balance competing consumer and investor interests to determine “just and reasonable” rates. *See Pa. Electric Co. v. Pa. PUC*, 509 Pa. 324, 502 A.2d 130 (1985). As noted by I&E, the Joint Petitioners have conducted extensive formal and informal discovery and have participated in numerous settlement conferences. I&E Statement of Support at 1. Consequently, we are confident that the distribution rates proposed in the Settlement are at the lowest level necessary to preserve and enhance the quality of service for the Company’s ratepayers, and therefore, are just and reasonable. We understand that this provides little consolation to customers who are now facing significant rate increases because Herman has neglected to seek distribution rate adjustments over the entire history of the Company. However, Herman has agreed to a three-year phase-in of the rate increase which should provide some relief to customers.

#### As discussed, *infra*, Herman will be providing, *inter alia*, information on its finances, capital improvements and customer contacts on safety and quality of service issues. Therefore, I&E, the OCA and this Commission should be able to assess whether the increased revenue that results from this Settlement is being appropriately applied to preserve and improve the quality of service and that service issues are being addressed in a timely manner. Accordingly, we shall deny the Exceptions and approve the distribution rate increase and the phase-in plan set forth in the Joint Petition as in the public interest

### Customer Charge

#### Terms of the Joint Petition

Under the terms of the Settlement, Herman would be permitted to implement a residential customer charge of $13.50/month and a General Service (GS) customer charge of $175.00/month, effective at the time of the Commission’s Order granting the Joint Petition is adopted. Joint Petition at 7, 11. The Company currently does not collect a customer charge. Joint Petition, Appendix B. The customer charge proposed under the Settlement would result in a decrease from the $16.00/month originally proposed by the Company. Supplement No. 44.

#### Positions of the Parties and the Recommended Decision

I&E submitted that it is important to allow the utility to recover the fixed portion of providing service through the implementation of a proper customer charge. I&E explained that an appropriate customer charge provides the Company the opportunity to address its fixed recurring costs necessary to operate its system through a steady, predictable level of income. I&E averred that this will allow for the proper maintenance and upkeep of Herman’s system and ensure that that the Company will not be overcompensated. I&E Statement in Support at 6.

I&E also opined that moderating the requested increase in the customer charge and shifting the costs to the volumetric portion of a customer’s bill will allow for the immediate realization of the benefit of conservation. I&E opined that designing rates to allow customers to have greater control of their energy bills is in the public interest. I&E Statement in Support at 6.

The ALJ did not submit a recommendation on the customer charge as an individual issue, but recommended the adoption of the overall rates presented in the Joint Petition as discussed *supra*. R.D. at 28-29.

#### Exceptions

In her Exceptions, Ms. Eurich opposes the new customer charge of $13.50/month. She contends that in the twenty years that she received service from Herman, “they have only read [my] meter and many months in a row it was estimated leaving me with an outrageous bill.” Eurich Exc. at 1. Ms. Eurich raised other service issues discussed*, infra*. Ms. Eurich opines that given these service issues, the new customer charge is not warranted. *Id.*

Mr. Rizzo questions why the customer charge of $13.50 is being proposed. He argued that customers receive no benefit from the charge. He also contends that that the Company doesn’t get out of the truck to get an accurate meter reading. Rizzo Exc. at 1.

In its Reply to Mr. Rizzo’s Exceptions, Herman concurs with I&E’s position that it is imperative to have a customer charge that will allow the Company to recover the fixed portion of providing service because it provides Herman with the opportunity to address its fixed recurring costs that are necessary to operate its system through a steady and predictable level of income. The Company adds that this charge will allow for proper maintenance and upkeep of Herman’s system. Herman R.E. No. 1 at 4-5, *citing*, I&E Statement of Support.

#### Disposition

We fully appreciate the reaction of customers who have not had a customer charge throughout the history of the Company and who will now be required to pay a monthly customer charge for the first time. While we realize that this settlement represents a compromise of the litigation positions of the Parties and we do not have the benefit of a rigorous cost-of-service analysis, we concur, *generally*, that the fixed costs of providing service should be included in a fixed customer charge. *See, e.g., Pa. PUC v. Columbia Gas, Inc., supra*. As noted by I&E, the proposed customer charge will send the appropriate price signals to customers. In addition, the capital expenditure report and record keeping requirement established in the Settlement, *infra*, will help to ensure that the revenue generated through the customer charge is appropriately allocated, including the funding of necessary capital improvements. Accordingly, we shall deny the Exceptions and approve the customer charge proposed in the Joint Petition.

### Stay-Out Provision

#### Terms of the Joint Petition

Except under extraordinary circumstances delineated in the Settlement, Herman agreed that it would not file an increase in base rates under 66 Pa. C.S. § 1308(d) for a period of three years. Joint Petition at 10.

**b. Positions of the Parties and the Recommended Decision**

I&E submitted that the stay-out requirement will assure that the rates established by the Settlement would remain in effect for at least three to four years. I&E stated that stability in rates under the Settlement would be a benefit to all impacted parties. I&E explained that the Company will be able to make operational plans based on planned rates while customers will be able to budget their activities knowing that their cost of gas distribution service will not fluctuate for the next several years. I&E Statement in Support at 15. The OCA also noted that the stay-out provision will provide a level of rate stability for Herman’s customers. OCA Statement in Support at 4. The ALJ noted the advantages of the stay-out provision cited by I&E and the OCA. R.D. at 21, 24.

#### Disposition

We concur with I&E and the OCA that the stay-out provision will provide a level of predictability of distribution rates over at least the next three years. In addition, the stay-out provision will also provide I&E, the OCA and this Commission with sufficient time to analyze how the Company is utilizing its increased distribution revenues and the extent to which the Company’s facilities and service are improving. Accordingly, the stay-out provision is clearly in the public interest and should be approved.

### Line Extensions

**a.** Terms of the Joint Petition

Herman has included in its proposed residential tariff a line extension policy agreed to by the Joint Petitioners. Joint Petition at 10. The following language is included in the proposed residential tariff:

The Company will extend its mains for no fee for the first 100 feet from a main line for a new customer. For each additional foot, the Company will charge the new customer $50.00 per foot minimum charge. The customer will be responsible for paying the assigned cost of extending the mains regardless of his or her annual gas consumption. These fees are in addition to any other applicable fee in extending service to a new customer.

Joint Petition, Appendix A at 4.

#### Positions of the Parties and the Recommended Decision

Both I&E and the OCA submitted that the line extension provision is in the public interest because it establishes a policy for extending the Company’s mains, which will ensure consistency in the costs charged to consumers for main extensions. I&E Statement in Support at 4; OCA Statement in Support at 4. The ALJ noted the advantages of the line extension provision cited by I&E and the OCA. R.D. at 21-22, 24.

#### Disposition

We note that a number of customers submitted nearly identical letters to the Commission regarding the proposed rate increase indicating, *inter alia*, that they were all charged and paid $2,500 for line extensions. While these letters were not admitted into the evidentiary record of this proceeding pursuant to 52 Pa. Code §5.402, they do lend support to the recommendation of the Joint Petitioners that the line extension policy be included in the Company’s tariff. In addition, a line extension policy that facilitates the addition of new customers should ultimately benefit all customers since the Company’s fixed costs will be spread over a larger customer base. Accordingly, we conclude that the proposed line extension policy is in the public interest and shall be approved.

### Billing Format

#### **Terms of the Joint Petition**

Under the terms of the Settlement, Herman will modify its current billing format in a manner that is consumer friendly and clearly and accurately labels all customer charges. Under the terms of the Settlement, the Company will present I&E and the OCA with its proposed customer bill modifications before the new rates go into effect. Herman will issue the modified bills during the next billing period following approval by all Parties. Herman shall provide counsel for the OCA and I&E with a copy of a customer bill with all customer information redacted at the time the first bill reflecting the consumer friendly billing format is issued and after the rates in the second and third year go into effect. Joint Petition at 10-11.

**b. Positions of the Parties and the Recommended Decision**

The OCA stated that this provision is in the public interest because it requires the Company to provide its customers with information that is necessary for them to understand the various costs that make up their natural gas bill. OCA Statement in Support at 4. The ALJ noted the benefits of an improved billing format cited by the OCA. R.D. at 24

#### Exceptions

While Mr. Rizzo did not address the Joint Petitioners’ recommendation regarding improvements to customers’ bills, his Exceptions appear to indicate that improvements to the format of the Company’s bills would be desirable. In his Exceptions, Mr. Rizzo appears to dispute the contention that the Company has not had a distribution rate increase in approximately thirty-two years. He submits that he has been a customer for about eleven years and Herman “did have a rate increase throughout the years.” Rizzo Exc. at 1.

In it Reply to Mr. Rizzo’s Exceptions, Herman explains that the Commission has approved changes in the Company’s GCR during the thirty-two year period, but it never increased its base since the establishment of the Company. Herman notes that under the terms of the Settlement it will implement a new customer-friendly billing format which clearly distinguishes between gas cost and base rates. In addition, such distinctions in rates would be included within its tariffs. The Company projects that defining the GCR and base rates should help resolve any customer confusion between the rates in the future. Accordingly, Herman recommends that the Commission reject Mr. Rizzo's “third exception.” Herman R.E. No. 1 at 3.

#### Disposition

Initially, we note that our Regulations at 52 Pa. Code § 56.265 delineate the information that must be included on bills rendered by small gas utilities.[[6]](#footnote-6) This information includes, *inter alia*, the charge for “basic service” and the “energy and fuel adjustment charge.” The new billing format developed in consultation with I&E and the OCA must be in compliance with our regulations.

Clearly, improvements to the Company’s billing format that will enhance its ratepayers’ ability to understand the various costs that make up their natural gas bill and enable them to make informed choices regarding their gas consumption, is in the public interest. However, we believe that the format developed in consultation with I&E and the OCA should be included as part of the Commission’s official file in this proceeding. Therefore, we shall direct Herman to submit a copy of the new billing format to the Commission’s Secretary, I&E and the OCA prior to the implementation of the new billing format.

### **Capital Expenditure Report and Recordkeeping**

**a. Terms of the Joint Petition**

On an annual basis for the three-year period following approval of the Settlement by the Commission, Herman will provide to the OCA and I&E a report containing, at a minimum, the following information: (1) overall customers gained or lost; (2) an overview of customer service issues; (3) the current gas cost rate; and, (4) a list of capital investments and upgrades to the system, and a projection of the same for the following calendar year. In addition, Herman will maintain comprehensive financial records, in which it will record, at a minimum, all costs allocated to Herman, including but not limited to, costs that are incurred by another entity if such costs are incurred for the benefit or purpose of the operations of Herman. Joint Petition at 11.

#### Positions of the Parties and the Recommended Decision

The OCA asserted that this provision is in the public interest, because it will help to ensure that Herman is keeping up-to-date records of important information, such as customer issues and capital expenditures. The OCA explained that, specifically, the report will help the Company to keep track of its capital expenditures, which will aid in future base rate proceedings. OCA Statement in Support at 4-5. Similarly, the ALJ found that these provisions will make it easier to track future capital expenditures and examine the Company’s financial records and customer service records in future proceedings. R.D. at 28.

#### Exceptions

While Ms. Eurich did not except to the proposed capital expenditure report and recordkeeping provision of the Joint Petition, she did raise some service concerns that indicate the importance of this provision. Her Exceptions state, in pertinent part, as follows:

In the 20 years that I have had their service they have only read meter [sic] and many months in a row it was estimated leaving me with an outrageous bill. When they ran the gas lines in front of my property they never came back to fix the mess or plant grass seed. In the back of my property I have gas lines lying above that have never been buried leaving it exposed to my children and my pets which is not safe.

Eurich Exc. at 1.

#### Disposition

We note that in the sworn testimony during the public input hearing and in a ratepayer’s Complaint, customers reported insufficient or inconsistent gas pressure and the smell of gas near the Companies’ facilities. Tr. at 38, 40, 55, and 63; Complaint of William and Leslie Mayhugh, C-2014-2422690. Accordingly, records of customer issues and the capital expenditures to resolve those issues are important tools for I&E, the OCA this Commission to assess whether the Company is taking prudent steps to ensure that customers are receiving safe and reliable service. In addition, we believe that the maintenance and availability of financial and service records will enable the Company to operate more transparently and ensure that all expenditures are prudent and reasonable. Therefore, we shall approve the **c**apital expenditure report and recordkeeping provision as submitted in the Joint Petition.

### Company Contact and Customer Contact Log.

**a. Terms of the Joint Petition**

The Joint Petitioners agree that Herman will, *inter alia*, maintain a working telephone line to answer and respond to customer calls. A Herman employee will make reasonable efforts to be available to take customer calls during its normal business hours and the Company will maintain an answering machine for consumers to leave voice messages. The Settlement indicates that Herman has placed an emergency contact number for customers on the Company’s answering machine. The Joint Petitioners agree that Herman will respond to consumer voice messages within one business day of the consumer leaving a message. Joint Petition at 11-12.

Under the proposed Settlement, Herman shall keep a log of all customer contacts regarding safety and/or quality of service issues. The log is to contain, at a minimum, the date of contact, issue(s) in question, and steps, if necessary, taken to resolve the issue(s). Herman will provide the OCA and I&E with a copy of its customer contact log at the time that it submits its capital expenditure report. Joint Petition at 12.

**b. Positions of the Parties and the Recommended Decision**

The OCA submitted that these provisions are in the public interest because they will ensure that Herman addresses all consumer complaints in a timely manner. The OCA stated that this provision will also ensure that customers, who contact Herman with an emergency situation, are given specific instructions regarding who to contact under these circumstances. The OCA explained that the customer contact log and the report of customer issues, *supra*, will help ensure an adequate resolution of those issues. OCA Statement of Support at 5-6. The ALJ noted the benefits of a report on customer complaints cited by the OCA. R.D. at 25.

#### Disposition

Establishing a formal mechanism to receive and to respond to customer complaints, particularly in emergency situations, is a critical component of improving the quality and safety of the Company’s service. Making the customer contact log available to I&E and the OCA will ensure that Company is adequately responding to service issues as well as making necessary capital improvements. We shall adopt this provision as it is in the public interest.

### Budget Billing

#### Terms of the Joint Petition

Herman has agreed to continue its current budget billing program. The Settlement provides that upon a customer’s request, Herman shall work with such customer to allocate future bills modeled on a monthly average of the customer’s historic billing year. Herman shall include the budget billing policy on the April and May bills each year. Joint Petition at 12. The budget billing policy set forth in the Company’s proposed tariff is as follows:

Residential customers who are current in their account and have a satisfactory credit history in the judgment of the Company are eligible for the budget payment plan based on their past 12 months gas bills adjusted for projected gas costs as determined by the Company or if none exists based on estimates made by the Company applied to current and projected rates.

Joint Petition, Appendix A at 4. The Settlement requires that the placement of the policy on these bills shall be agreed to by the Joint Petitioners before the proposed rate increases go into effect. The budget billing program would not preclude Herman from collecting all charges due from customers. Joint Petition at 12.

#### Positions of the Parties and the Recommended Decision

The OCA stated that it supports the continuation of this program as budget billing can be a useful option for customers. The OCA explained that under the terms of the Settlement, Herman’s customers will be made aware of the option on the April and May bills each year, giving them the opportunity to assess whether it is an appropriate option for them. OCA Statement in Support at 6. The ALJ noted the benefits of the continuation of budget billing as cited by the OCA. R.D. at 26

#### Disposition

We concur that budget billing can be an important tool for some customers to manage the seasonal variations in home heating costs and this provision of the Settlement shall be approved.

### Other Terms of the Joint Petition

Paragraph Nos. 23 through 32 of the Joint Petition contain a number of procedural conditions, including, *inter alia*, the rights of the Joint Petitioners if the ALJ or Commission modify the terms of the Settlement. The Joint Petition also clarifies that the agreement represents a “reasoned compromise for settlement of this particular proceeding and nothing more” and that the Joint Petition may not be citied as a precedent in any future proceedings, except to the extent required to implement or enforce the terms of the Settlement. Joint Petition at 13-15.

We shall accept the other terms of the Joint Petition (Paragraph Nos. 23-32) to the extent that they do not restrict any action of the Commission.

# Conclusion

Consistent with the foregoing discussion, we shall, *inter alia*: (1) deny the Exceptions filed by Mr. Rizzo and Ms. Eurich; (2) adopt Recommended Decision as consistent with the public interest; (3) grant the Joint Petition; and (4) deem the Complaint filed by the OCA as satisfied. We shall also sustain the thirteen ratepayer Complaints delineated herein, to the extent consistent with this Opinion and Order, and otherwise deny those Complaints, **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition for Settlement of Rate Proceeding filed on February 2, 2015, by the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Herman Gas and Oil Company, Inc. is granted without modification.
2. That the Recommended Decision of Administrative Law Judge Mark A. Moyer, issued on April 9, 2015, is adopted.
3. That the Exceptions of Joseph Rizzo filed on April 22, 2015, to the Recommended Decision of Administrative Law Judge Mark A. Moyer are denied.
4. That the Exceptions of Kimberly Eurich filed on May 10, 2015, to the Recommended Decision of Administrative Law Judge Mark A. Moyer are denied.
5. That the Complaint filed by the Office of Consumer Advocate at Docket No. C-2014-2419761 is deemed satisfied.
6. That the following Complaints are sustained to the extent consistent with this Opinion and Order, and otherwise are denied and dismissed:
7. Robert L. Beilstein at Docket No. C-2014-2422697;
8. Richard Bricker at Docket No. C-2014-2422758;
9. James and Karen Eurich at Docket No. C-2014-2422756;
10. Marlene Hoover at Docket No. C-2014-2427251;
11. Betty Learn at Docket No. C-2014-2422753;
12. William and Leslie Mayhugh at Docket No. C-2014-2422690;
13. Lloyd Nyberg at Docket No. C-2014-2427238;
14. Joseph Rizzo at Docket No. C-2014-2422703;
15. Thomas and Kimberly Eurich at Docket No. C-2014-2427240;
16. Earl and Sue Christy, Docket No. C-2014-2430205;
17. Earl and Leetta Christy, Docket No. C-2014-2430206;
18. Louis and Marie Bauldoff, Docket No. C-2014-2430207; and
19. Melissa Phillips, Docket No. C-2014-2430208.
20. That Herman Gas and Oil Company, Inc. shall not place into effect the rates contained in Supplement No. 47 to Tariff Gas-Pa. P.U.C. No. 4, which have been found to be unjust and unreasonable and, therefore, unlawful.
21. That upon the filing of a tariff supplement by Herman Oil and Gas Company, Inc., acceptable to the Commission as conforming with the Joint Petition for Settlement of Rate Proceeding, the gas distribution rates, rules, and regulations established therein shall become effective on one day’s notice after entry of this Opinion and Order.
22. That Herman Oil and Gas Company, Inc. shall submit to the Secretary of the Commission for inclusion in the Commission’s official file in this proceeding the new billing format to be developed in consultation with the Commission’s Bureau of Investigation and Enforcement and the Office of Consumer Advocate. Herman Oil and Gas Company, Inc. shall not implement the new billing format until it has been served on the Commission’s Bureau of Investigation and Enforcement and the Office of Consumer Advocate and filed with the Commission Secretary.
23. That any directive, requirement, disposition, or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: June 11, 2015

ORDER ENTERED: June 11, 2015

1. Mr. Rizzo did not provide service to the other parties of record in this proceeding. By Secretarial Letter dated April 28, 2015, the Commission Secretary served the Exceptions on the parties of record and extended the deadline for Reply Exceptions until May 11, 2015. [↑](#footnote-ref-1)
2. Ms. Eurich did not provide service to the other parties of record in this proceeding. By Secretarial Letter dated May 12, 2015, the Commission Secretary served the Exceptions on the parties of record and extended the deadline for Reply Exceptions until May 22, 2015. [↑](#footnote-ref-2)
3. The other terms of the Joint Petition are discussed, *infra*. [↑](#footnote-ref-3)
4. This supplement was originally filed as Supplement No. 46. However, Supplement No. 46 was already on file with the Commission, reflecting changes in Herman’s gas cost rate (GCR). On November 5, 2014, Herman filed Supplement No. 47 to reflect the extension of the effective date for Supplement No. 44 for an additional ninety days. [↑](#footnote-ref-4)
5. Where a customer is heard to complain concerning a proposed change in rate,theburden of proofis upon the public utility to show the proposed rate is just and reasonable; where the complaint involves an existing rate, however, the burden falls upon the customer to prove that the charge is no longer reasonable. *See, e.g., Schellhammer v. Pa. PUC*, 629 A.2d 186 (Pa. Superior Ct. 1993) and citations. [↑](#footnote-ref-5)
6. Small natural gas distribution utilities subject to these billing requirements are those with annual gas operating revenues less than $ 6 million. 52 Pa. Code § 56.252. We also note that 52 Pa. Code § 56.265(14) requires small gas utilities to also incorporate the requirements of 52 Pa. Code § 62.74 regarding the billing format natural gas choice, if applicable. [↑](#footnote-ref-6)