**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held December 17, 2015 |
| Commissioners Present:  Gladys M. Brown, Chairman  John F. Coleman, Jr., Vice Chairman  Pamela A. Witmer, Statement  Robert F. Powelson, Statement  Andrew G. Place, Statement |  |
| Pennsylvania Public Utility Commission  Office of Consumer Advocate  Office of Small Business Advocate  Philadelphia Area Industrial Energy Users Group  William B. Kazimer  v.  PECO Energy Company – Electric Division | R-2015-2468981  C-2015-2475585  C-2015-2477974  C-2015-2480912  C-2015-2481825 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Settlement of Rate Investigation (Joint Petition or Settlement) filed on September 10, 2015, by the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Philadelphia Area Industrial Energy Users Group (PAIEUG), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*), the City of Philadelphia (City), the Keystone Energy Efficiency Alliance Energy Education Fund (KEEF), the Clean Air Council (CAC), the Natural Resources Defense Council (NRDC), the Alliance for Solar Choice (TASC), the Environmental Defense Fund (EDF), and PECO Energy Company – Electric Division (PECO or the Company) (collectively, the Joint Petitioners).

Also before the Commission for consideration and disposition are the Exceptions of PECO and PAIEUG filed on November 9, 2015, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Angela T. Jones, which was issued on October 28, 2015, in the above-captioned proceeding. Letters in response to the ALJ’s Recommended Decision were filed by the OSBA, KEEF, CAUSE-PA, TURN and TASC.[[1]](#footnote-1) Replies to Exceptions have not been filed by any Party.

For the reasons stated, *infra,* we shall adopt the Recommended Decision, as modified, consistent with this Opinion and Order, and approve the Joint Petition without modification. Additionally, we shall grant the Exceptions of PECO and PAIEUG and TASC’s request for clarification.

# History of the Proceeding

On March 27, 2015, PECO filed proposed Tariff Electric-Pa. P.U.C. No. 5 to become effective May 26, 2015, containing proposed changes to rates, designed to produce an increase in PECO’s annual distribution revenue of approximately $190 million, or 15.6% above existing distribution revenues. The proposed tariff increase as filed represented a 4.4% increase over the Company’s total present revenues.

A Formal Complaint was filed by the OCA at Docket No. C-2015-2475585 on April 6, 2015. A Notice of Appearance was filed by I&E on April 7, 2015. A Petition to Intervene was filed by CAUSE-PA on April 9, 2015. A Formal Complaint was filed by the OSBA at Docket No. C-2015-2477974 on April 16, 2015. A Notice of Appearance was filed by the OSBA on April 17, 2015. On April 20, 2015, TURN *et al.* filed a Petition to Intervene in this proceeding.

On April 23, 2015, the Commission issued an Order instituting an investigation into the lawfulness, justness and reasonableness of the proposed rate increases in this tariff filing. Pursuant to Section 1308(d) of the Public Utility Code (Code), 66 Pa.C.S. § 1308(d), proposed Tariff Electric-PA. P.U.C. No. 5 was suspended by operation of law until December 26, 2015, unless otherwise directed by Commission Order.

A Petition to Intervene was filed by the City on April 23, 2015. On May 1, 2015, a Petition to Intervene was filed by the CAC. On May 6, 2015, PAIEUG filed a Formal Complaint at Docket No. C-2015-2480912, against the proposed rate increase of PECO. On May 7, 2015, TASC filed a Petition to Intervene, a Motion to Appear *Pro Hac Vice* and a Notice of Appearance.

On May 8, 2015, William B. Kazimer filed a Formal Complaint at Docket No. C-2015-2481825, against the proposed rate increase. Also on May 8, 2015, the U.S. General Services Administration (GSA) filed a Petition to Intervene and a notice of appearance in this proceeding.

On May 12, 2015, the NRDC filed a Petition to Intervene in this proceeding. On May 13, 2015, counsel for GSA filed a Motion for Admission *Pro Hac Vice* for its counsel.

On May 22, 2015, PECO submitted Supplemental Direct Testimony regarding its proposed Capacity Reservation Rider (CRR) which responded to the questions posed by the April 23, 2015, Joint Statement of Chairman Brown and Commissioner Powelson.

On June 1, 2015, the KEEF filed a Petition to Intervene.

By Hearing Notice dated May 22, 2015, five in-person public input hearings were scheduled as follows:

June 8, 2015, at 7 p.m. in Newtown, PA;

June 9, 2015, at 10 a.m. in Center City, Philadelphia, PA;

June 9, 2015, at 7 p.m. in Northeast, Philadelphia, PA;

June 10, 2015, at 7 p.m. in Worcester, PA; and

June 15, 2015, at 7 p.m. in Ridley Park, PA.

The following Parties submitted direct testimony on June 23, 2015: CAC; the City; the EDF; GSA; I&E; the KEEF; the OCA; the OSBA; PAIEUG; TASC and TURN, *et al.*  Rebuttal testimony was submitted on July 21, 2015, by the following Parties: the OCA; the OSBA; PAIEUG and PECO. Surrebuttal testimony was submitted on July 21, 2015, by the following parties: I&E; the KEEF; the OCA; the OSBA; the PAIEUG; PECO and TASC.

On August 11, 2015, PECO communicated to the ALJ that a comprehensive settlement in principle was reached. PECO stated that as a consequence of reaching a settlement in principle, the Company would not be presenting rejoinder testimony, all Parties waived cross-examination of all witnesses and the evidentiary hearings scheduled for August 11-13, 2015, were cancelled. On August 14, 2015, a telephonic hearing was conducted so that the Parties could put into the record testimony that would support the Settlement. On September 10, 2015, the Joint Petition was filed. The Joint Petition consists of the terms and conditions of the Settlement as well as attached Statements in Support and appendices, which include supporting tables, a proposed tariff, outlines of PECO’s in-program arrearage forgiveness program and Capacity Reservation Rider (CRR), and an explanation of the rate effects of the Settlement rates on each customer class. The Joint Petitioners represent that the Settlement is substantiated by sufficient record evidence to satisfy the legal standard for approval. The Joint Petitioners request the adoption of the Settlement without modification. It is noted that GSA, while not a signatory party to the Settlement, provided a letter stating it does not oppose the Settlement. Settlement St. N. It is also noted that Mr. Kazimer sent a letter to counsel for PECO in which he stated that he joins in the Settlement. Consequently, no Party objected to the Joint Petition.

The record for evidence closed on September 11, 2015.

In a Recommended Decision, issued on October 28, 2015, ALJ Jones recommended approval of the Joint Petition with one particular modification to the decoupling collaborative at Settlement J, ¶ 25.

As noted, Exceptions were filed by PECO and PAIEUG on November 9, 2015. Also, as noted, Letters in response to the ALJ’s modification were filed by the OSBA, KEEF, CAUSE-PA, TURN and TASC. Replies to Exceptions have not been filed.

# Introduction

As a preliminary matter, we note that any issue that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also see, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In her Recommended Decision, the ALJ reached four Conclusions of Law. R.D. at 39-40. The Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

1. **Legal Standards**

The purpose of this investigation is to establish distribution rates for PECO’s customers that are “just and reasonable” pursuant to Section 1301 of the Code, 66 Pa. C.S. § 1301. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia,* 262 U.S. 679 (1923) (*Bluefield*).

In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield, supra,* and *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield* the United States Supreme Court stated:

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

*Bluefield,* 262 U.S. at 692-693.

1. **Settlements**

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

Rate increase proceedings are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow 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 replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

With regard to the burden of proof in this matter, Section 315(a) of the Code provides:

**§ 315. Burden of proof**

1. **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, PECO has the burden to prove that the rate increase proposed by the Settlement is just and reasonable. In this case, the Joint Petitioners have reached an accord on all of the issues and claims that arose in this proceeding and submitted the Joint Petition. The Joint Petitioners have the burden to prove that the Settlement is in the public interest.

# The Joint Petition for Settlement of Rate Investigation

1. **Terms and Conditions of the Settlement**

The Joint Petitioners agreed to the Settlement resolving all issues in this proceeding. The Settlement will result in an increase in distribution revenues of $127 million, which is $63 million less than the $190 million originally proposed by PECO. The Joint Petitioners have agreed to a base rate increase, an allocation of that revenue increase to the rate classes, a rate design for each rate class, universal service matters, the establishment of a CRR, a revision to the Company’s interconnection of customer-owned generation terms as well as various reporting requirements.

The Joint Petitioners state that the Settlement was achieved after conducting discovery and engaging in in-depth discussions over several weeks. They further state that the Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed therein. Settlement ¶ 29 at 12. They also state that the Settlement is in the public interest for several reasons including: the reduced base rate increase, the reduced administrative burden and the reasonable revenue allocation. *Id.*

The Settlement consists of the Joint Petition containing the terms and conditions of the Partial Settlement, Appendices A through E and Statements A through N. Appendix A to the Settlement presents the Proposed Tariff at Settlement rates. Appendix B presents the Proof of Revenues. Appendix C presents the in-program arrearage forgiveness. Appendix D sets out the Capacity Reservation Rider. Appendix E sets out the rate effects for typical customers in each major class. Statements A through M represent the Statements in Support filed by PECO, I&E, the OCA, the OSBA, PAIEUG, CAUSE-PA, TURN *et al.,* the City, EDF, KEEF, CAC, NRDC and TASC, respectively. Statement N is the Statement of Non-Opposition to the Joint Petition filed by GSA.

The essential terms of the Settlement are set forth in ¶¶ 14-27. The Joint Petitioners agreed to the following terms and conditions:

1. **Revenue Requirement**

14. PECO will be permitted to charge, effective for service rendered on and after January 1, 2016, the Settlement Rates set forth in Appendix A. The Settlement Rates are designed to produce an annual net increase in electric operating revenue of $127 million as shown in the proof of revenues provided as Appendix B.

15. The Settlement Rates provide for recovery of $7.0 million in annual operating expense ($7.6 million inclusive of Gross Receipts Tax expense) requested by PECO for increased vegetation management. PECO agrees to provide a status report on the enhanced vegetation management initiative at twelve and twenty-four months after its initiation. The status report will be provided to the Commission three months after the close of each reporting period. Such reports will include the locations of circuit sections and CEMI (Customers Experiencing Multiple Interruptions) pockets treated under the enhanced vegetation maintenance program, as well as any associated improvement in reliability of those circuit sections and CEMI pockets. The Company will serve upon the OCA and I&E a copy of the two (2) reports referenced above.

1. **Revenue Allocation And Rate Design**

16. The Settlement Rates reflect the allocation of the annual net increase in electric operating revenue to each rate class agreed to by the Joint Petitioners, as set forth below:

|  |  |  |
| --- | --- | --- |
| **Class(es)** | **Increase (000)** | **Percentage Increase** |
| Residential (R) and Residential Heating (RH) | $84,416 | 10.9% |
| General Service (GS) | $30,617 | 14.9% |
| Primary Distribution (PD) | $1,250 | 13.3% |
| High Tension (HT) | $9,285 | 6.4% |
| Electric Propulsion (EP) | $757 | 8.7% |
| Lighting (L) | $675 | 3.4% |
| Total | $127,000 | 10.9% |

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

|  |  |
| --- | --- |
| Rates R and RH | $8.45 |
| Rate GS: |  |
| Single Phase Service Without Demand Measurement | $14.29 |
| Single Phase Service With Demand Measurement | $18.20 |
| Polyphase Service | $43.54 |

For Rates R, RH and GS, the Variable Distribution Charges were scaled back to produce the class revenues shown in the table in Paragraph 16, above. For all other rate classes, the Fixed Distribution Service Charges under the Settlement Rates were adjusted, and the Variable Distribution Charges were scaled back, to produce the class revenues shown in the table in Paragraph 16, above.[[2]](#footnote-2)

# In-Program Arrearage Forgiveness (IPAF) Cost Recovery

1. The terms of the Joint Petitioners’ agreement on IPAF cost recovery are set forth in Appendix C to this Joint Petition.[[3]](#footnote-3) Additionally, the Joint Petitioners acknowledge and agree that, pursuant to the terms set forth in Appendix C, the Settlement Rates will allow PECO to collect $2 million per year as a transition cost associated with IPAF, which is in lieu of the $5.0 million per year annual amortization initially claimed by PECO.
2. **CRR**
3. The terms of the Joint Petitioners’ agreement with respect to modifications to the Company’s proposed CRR are set forth in Appendix D to this Joint Petition. The Joint Petitioners agree that the revisions to PECO’s initially proposed CRR that are reflected in Appendix D respond to issues raised in the Joint Statement of Chairman Brown and Commissioner Powelson.
4. **Tax Repair Deduction Refund**
5. PECO will continue to refund the reductive effect of the tax repair catch-up deduction through a customer bill credit in the same manner it is currently calculating and refunding such credit, pursuant to Paragraph 7.E. of the Joint Petition for Partial Settlement of Rate Investigation at Docket No. R-2010-2161575, except that, commencing on the effective date of the Settlement Rates, the bill credit will reflect 6% simple interest on the monthly unamortized balance of the tax-effected catch-up deduction.
6. **FPFTY Reports**
7. As provided in I&E Statement No. 3, pages 9-10, on or before April 1, 2016, PECO will provide the Commission’s Bureau of Technical Utility Services (TUS), I&E, OCA, and OSBA an update similar to PECO’s response to I&E Interrogatory (Set V) No. RB-25, which will set forth its electric division’s actual capital expenditures, plant additions, and retirements by month for the twelve months ending December 31, 2015. On or before April 1, 2017, PECO will provide a similar update to the response to I&E Interrogatory (Set V) No. RB-25, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ending December 31, 2016. In PECO’s next base rate proceeding, the Company will prepare a comparison of its actual expenses and rate base additions for the twelve months ended December 31, 2016 to its projections in this case.
8. **Distribution System Improvement Charge (DSIC)**
9. As of the effective date of the Settlement Rates in this proceeding, PECO will be eligible to include plant additions in its proposed DSIC, if approved, once eligible account balances exceed the levels projected by PECO at December 31, 2016. The foregoing provision is included solely for purposes of calculating the DSIC, and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in a FPFTY filing.
10. **Depreciation Rates**
11. The Joint Petitioners agree and acknowledge that the depreciation rates employed by the Company to calculate depreciation expense as set forth in PECO Exhibit SY-1 were not challenged in this case, are appropriate for ratemaking purposes in this case and that the Company will use such depreciation rates to calculate the depreciation expense it records on its regulated books of account.
12. **Smart Meter Costs**
13. The Settlement Rates reflect the roll-in to PECO’s electric base rates of costs recoverable under its Smart Meter Cost Recovery Surcharge (SMCRS), as explained in PECO Statement No. 8, pp. 9-10. The SMCRS will remain in place as the mechanism for refunding or recouping, as applicable, any over collection or under collection balance that may exist as of the effective date of the Settlement Rates.
14. **Revenue Decoupling Collaborative**
15. On or before March 1, 2016, PECO will hold a collaborative open to all interested participants to seek input regarding revenue decoupling. All participants reserve their right to raise any and all arguments and positions in the collaborative, or to the Commission, including opposing the implementation of decoupling in whole or in part.[[4]](#footnote-4)
16. **Interconnection Of Customer-Owned Generation**
17. The Joint Petitioners agree that the Company will revise its terms and conditions for interconnection of customer-owned generation as follows:

Permission to Operate: For Level 1, 2, 3, and 4 interconnection requests, the Company will undertake best efforts to return a fully executed Certificate of Completion, approving the facility for operation, within (i) ten business days from the date of a witness test or inspection that confirms all customer and Company equipment has been properly installed and that all electrical connections meet the Company’s requirements, or (ii) ten days after the witness test has been deemed waived.

1. The Joint Petitioners further agree that PECO will provide reports on interconnection processing timelines to the Commission semi-annually.

In addition to the specific terms to which the Joint Petitioners have agreed, the Settlement contains certain general, miscellaneous terms. The Settlement is conditioned upon the Commission’s approval of the terms and conditions without modification. The Settlement establishes the procedure by which any of the Joint Petitioners may withdraw from the Settlement and proceed to litigate this case, if the Commission should act to modify the Settlement. Settlement ¶ 33 at 13. In addition, the Settlement provides that it is made as the result of compromise and does not necessarily represent the position(s) that would be advanced by any Joint Petitioner in this or any other proceeding, if it were fully litigated. Settlement ¶ 31 at 13.

The Joint Petitioners respectfully requested that the ALJ and the Commission approve the Settlement, including all terms and conditions thereof, find that the Settlement Rates are just and reasonable, and grant the Company permission to file the Tariff attached as Appendix A to become effective for service rendered on and after January 1, 2016. Settlement at 14-15.

1. **ALJ’s Recommendation**

The ALJ found that, based upon the benefits of the Settlement, and considering the totality of the evidence and testimony provided in this proceeding, the majority of the provisions contained in the Settlement were fair, just, reasonable and in the public interest. She further agreed with the Joint Petitioners that the overall revenue requirement as proposed in the Settlement at $127 million is significantly less than the $190 million originally proposed by the Company and mitigates the rate increase borne by the customers of PECO. R.D. at 36-37.

Next, the ALJ stated that the $8.45 per month residential service customer charge provided by the Settlement was markedly less than what was initially proposed by the Company at $12.00 per month. According to the ALJ, with the mitigation of the increase in this fixed charge through the Settlement, customers’ efforts in conservation and efficiency of usage may still be realized. Similarly the ALJ noted that the fixed customer charges for the GS rates in the Settlement are less than what was originally proposed by the Company. R.D. at 37.

The ALJ further found that the creative solution in transitioning from the CAP to the Fixed Credit Option (FCO) cost recover in the Settlement is indicative of an effective compromise that yields a win-win for the Parties concerned. The ALJ concluded that this provision promises to allow CAP eligible customers to affordably pay down on arrearages while maintaining the benefits of a reduced service rate but continues to hold them accountable to pay rather than yielding to no payment which is at risk to debt collection or an uncollectible expense for the Company. R.D. at 37.

However, the ALJ was persuaded by what she believed to be arguments presented by certain Parties against the Settlement provision concerning the revenue decoupling collaborative. According to the ALJ, it would be inefficient to implement a collaborative regarding just PECO when all Pennsylvania electric distribution companies (EDCs) can benefit from the collaborative because it is a policy that has statewide impacts. She opined that it would be futile to address this issue for each EDC and would result in a burdensome effort on the public advocates as well as KEEF, CAC and NRDC because nothing in the record shows that the decoupling issue is unique to any specific EDC’s customer. R.D. at 38.

Next, the ALJ admitted, however, that the Settlement is a balance of issues negotiated and compromised by all Parties involved. She noted that this balance may be disrupted and cause a catastrophic result of no resolution to the case as a whole if the issue regarding the decoupling collaborative is modified. Despite this concern, the ALJ proposed, in the alternative, that the collaborative be directed to include all EDCs and Natural Gas Distribution Companies (NGDCs) in the Commonwealth of Pennsylvania and any other party that has interest in the issue. The ALJ opined that this alternative still provides the advocates the opportunity for the discussion of the policy change regarding the decoupling issue but aligns it more accurately with the appropriate participants so that the collaborative has a chance to be efficient and productive. Therefore, the ALJ recommended that the Joint Petition be modified to direct a collaborative be opened no later than March 1, 2016, to include all EDCs and NGDCs in the Commonwealth of Pennsylvania and any other interested parties to explore the adoption of revenue decoupling as a mechanism to enable EDCs and NGDCs to recover revenues when sales volumes fluctuate. R.D. at 38.

In conclusion, the ALJ noted that perhaps the Office of Competitive Market Oversight (OCMO) can be directed to lead the collaborative and provide a report to the Commission in six month intervals. The ALJ stated that the aforementioned office and timing of reports are merely her suggestions as the appropriate bureau assigned for conducting the collaborative and its reporting intervals are at the discretion of the Commission. R.D. at 39.

1. **Exceptions**

In its Exceptions, PECO submits that to the extent the ALJ’s recommendation that provides an alternative to the revenue decoupling collaborative proposed in ¶ 25 of the Settlement would represent a “modification” of the Settlement’s terms, it takes exception to that recommendation and asserts that the ALJ’s recommendation on this matter should not be adopted. PECO states that the Settlement represents a carefully crafted compromise on a variety of issues and, for that reason, was submitted for approval “without modification” and upon the condition that a modification by the Commission could permit a Joint Petitioner to withdraw from the Settlement. *See* Joint Petition at ¶ 33. PECO avers that the Settlement submitted in its totality for Commission approval is a reasonable, well-balanced resolution of this case and, therefore, is in the public interest. PECO maintains that the Commission should not take any action that could upset the careful balance achieved by the Joint Petitioners and, thereby, create an unwarranted risk that the benefits of the Settlement as a whole could be lost. PECO Exc. at 3-4.

PECO states that ¶ 25 of the Joint Petition embodies the foregoing settlement principles as it represents a compromise of the position taken by several of the Joint Petitioners in their testimony and in pleadings submitted in this case and, as such, was carefully tailored to achieve the agreement, or non-opposition, of all the Parties to this case. PECO asserts that as noted in the ALJ’s Recommended Decision, the witness who submitted testimony jointly on behalf of KEEF, CAC and NRDC offered a broader proposal, which included, as one alternative, a formal, Commission-sponsored investigation of revenue decoupling for EDCs. According to PECO, various Parties submitted testimony in opposition to that proposal. However, PECO avers that through diligent negotiations, with give and take on all sides, the specific language of ¶ 25 was developed as a term which most Parties could support and no Party would oppose. PECO Exc. at 5.

Next, PECO states that ¶ 25 would create a vehicle for all “interested participants” to openly and candidly explore the issue of revenue decoupling outside of a proceeding conducted under the auspices of the Commission. As such, PECO explains that the collaborative contemplated by the Settlement would be able to proceed without requiring participants to divulge their respective positions to the Commission while, through the exchange of information and robust debate in the course of the collaborative, those positions could be evolving over time. PECO opines that the ALJ appears to contemplate a much different kind of “collaborative” that more closely resembles the type of Commission-sponsored proceeding, with mandatory reporting, that garnered substantial opposition in the exchange of written testimony that occurred prior to reaching the Settlement based on the language in ¶ 25. PECO Exc. at 5-6.

PECO asserts that nothing in the language of ¶ 25 would preclude other EDCs or NGDCs, or any other “interested participant,” from participating in the collaborative and providing input as they deem appropriate. However, PECO notes that by the same token, ¶ 25 did not, nor could it, require “all EDCs and NGDCs in the Commonwealth” to participate in that collaborative. In contrast, PECO avers that the Recommended Decision appears to recommend that all EDCs and all NGDCs be expressly “directed’ to participate in a single, statewide collaborative on revenue decoupling conducted under the Commission’s auspices and also appears to contemplate “reporting” by the collaborative to the Commission at regular intervals. PECO claims that the Recommended Decision would impose the kind of state-wide, Commission-sponsored proceeding that the KEEF/CAC/NRDC witness offered as one of his proposed alternatives. PECO explains that this proposal was opposed by a number of Parties to this case, which led to the development of the specific, carefully drafted language in the Joint Petition. PECO Exc. at 7.

PECO asserts that the Commission has authority to open a separate docket to initiate a state-wide proceeding under its own auspices to explore revenue decoupling, should it choose to do so, and certainly could have done so before now. PECO opines it would not be proper for the Commission to attempt to modify a discrete provision in the Settlement of this distribution base rate case to interject matters that are well beyond the jurisdictional scope of this proceeding. According to PECO, simply stated, a single term of a settlement in a single base rate case for a single utility should not be used as the procedural vehicle to launch a state-wide proceeding. PECO Exc. at 8.

Next, PECO states that modifying the terms of the Settlement in the manner recommended by the ALJ would impermissibly stretch the boundaries of lawful administrative authority by requiring non-parties to participate in a collaborative that has its origin in the settlement of a single base rate case. At the same time, PECO claims it would unduly disrupt the terms of a carefully crafted settlement and as such would not be consistent with the Commission’s long-standing policy, practice and precedent, embodied in its regulation at 52 Pa. Code § 5.231 and its Policy Statement on Settlements at 52 Pa. Code § 69.401, strongly encouraging parties to resolve contested proceedings by settlement. PECO maintains that with respect to this Settlement, the Joint Petitioners, through compromise and agreement, were able to craft innovative and creative solutions that unlikely could not have been achieved in the absence of the Settlement. According to PECO, those creative solutions could be threatened by an attempted modification of the Settlement as the ALJ acknowledged in her Recommended Decision. PECO Exc. at 8-9.

In its Exceptions, PAIEUG first notes that it supports the Exception filed by PECO in response to the ALJ’s recommended modification. PAIEUG next states that the ALJ erred in finding that any party argued against ¶ 25 of the Joint Petition. PAIEUG asserts that the ALJ incorrectly suggests that PAIEUG argued against the language set forth in ¶ 25 and opines that this representation appears to reflect confusion arising, in part, from PAIEUG’s Statement in Support. PAIEUG states that it agreed to the inclusion of ¶ 25 in the Joint Petition and offered additional explanation in a Statement in Support to illustrate the compromise achieved by its agreement to not oppose ¶ 25 of the Joint Petition. PAIEUG asserts that the Recommended Decision’s finding inadvertently overlooked the critical import of PAIEUG’s position on ¶ 25. PAIEUG explains that while not joining in support of ¶ 25, it agreed to not oppose its inclusion within the Joint Petition. PAIEUG maintains that in its Statement in Support, it requested approval of the Joint Petition, without modification and, as such, the ALJ’s suggestion that PAIEUG argued against ¶ 25 is therefore incorrect. PAIEUG Exc. at 2-3.

In its second Exception, PAIEUG states that the ALJ’s proposal to modify the Joint Petition would conflict with an unopposed Settlement among a broad group of stakeholders and should be denied. PAIEUG asserts that the Commission should not upset the balance of issues addressed in the Joint Petition by modifying the unopposed Settlement. PAIEUG maintains that the ALJ’s proposal materially differs from the revenue decoupling collaborative agreed to by the Joint Petitioners and requests that the Commission should consider the diversity of stakeholders represented in this proceeding and reject the suggested modification that would undermine the complex and comprehensive agreement of the Joint Petitioners. PAIEUG opines that adoption of the ALJ’s recommendation would shatter the result of intricate and complex negotiations conducted among fourteen Joint Petitioners and GSA, which while declining to sign the Joint Petition, consented to non-opposition. PAIEUG Exc. at 4.

PAIEUG next states that the ALJ’s modification significantly expands the scope of the collaborative agreed to by the Parties pursuant to ¶ 25 and should be denied. PAIEUG explains that ¶ 25 contemplated a voluntary collaborative organized by PECO that would not bind or obligate any party to submit a formal report to the Commission. PAIEUG states that, to the contrary, the ALJ’s modification would appear to mandate participation by all EDCs and NGDCs in the Commonwealth, would involve direction from OCMO and would necessitate a formal report to OCMO. PAIEUG considers these modifications to be material and inconsistent with the Joint Petition and therefore should be denied. Further, PAIEUG asserts that the proposed modification should not be approved out of any intention to address matters raised in Parties’ Statements in Support. PAIEUG explains that while its Statement in Support observed that revenue decoupling issues are appropriately discussed on a statewide basis, this point was made out of concern that such issues exceed the applicable scope of base rate proceedings, a point that PAIEUG would have pursued in litigation, but agreed to withdraw in order to support the Joint Petition. PAIEUG states that the ALJ’s modification overlooks the fact that PAIEUG’s Statement in Support recounted its litigation position opposing any further consideration of revenue decoupling issues by the Commission, which was another position set aside by PAIEUG for purposes of Settlement. PAIEUG Exc. at 5-6.

The OSBA submitted a letter stating that it joins in the Exception filed by PECO and requesting that the Commission grant PECO’s Exception, decline to accept the recommendation to modify the Settlement as set forth in the Recommended Decision and approve the Settlement in accordance with its terms without modification. OSBA Letter at 1.

CAUSE-PA submitted a letter stating that it will not be filing exceptions to the Recommended Decision. However, CAUSE-PA states that it encourages the Commission to adopt the Settlement without modification because it fully resolves all contested issues presented in the proceeding and is the product of good faith negotiation among the Parties. CAUSE-PA states that as a whole, the Settlement is a reasonable compromise of the Parties’ positions and is in the public interest. CAUSE-PA Letter at 1.

KEEF also submitted a letter stating that while it generally supports a statewide revenue decoupling collaborative, it cannot support the ALJ’s recommendation to modify this Settlement. KEEF states that it participated in the negotiations that resulted in a Settlement that reflects a PECO-specific collaborative and therefore supports the Joint Petition. KEEF opines that it does not believe it would be appropriate for the Commission to take action in this proceeding that diverged from this settlement term. KEEF Letter at 1.

TURN *et al.* submitted a letter stating that it will not be filing exceptions, but considering the ALJ’s modification, encourages the Commission to adopt the Settlement without modification because the Settlement fully resolves all contested issues presented in the proceeding and is the product of good faith negotiation among the Parties. TURN *et al.* Letter at 1.

TASC also submitted a letter stating that it does not plan to file any exceptions but wishes to note its disagreement with a sentence in the “Background” section of the Recommended Decision. TASC points out that in a paragraph on page two of the Recommended Decision the following sentence of concern states:

However, the customer growth has been offset by a decline in usage per customer due to energy efficiency and conservation mandates under Act 129 of 2008, which affect the Company’s ability to earn a fair return on its investment.

TASC states that it believes this sentence is not a correct statement of either the record in this case or of the impact of clean energy resources on utility financial health. TASC opines that sales growth, or the lack thereof, is only one factor, among many, that affects the ability of a utility to earn a fair return on its investment. TASC states that other factors include the quality of the utility’s management of capital and O&M costs, allowed rate of return, rate design, expenditures to respond to weather or other system emergencies, shareholder incentives for public policy objectives and many other factors. TASC asserts that the language above, however, appears to directly link energy efficiency to the utility’s ability to earn a fair return on investment. TASC avers that this linkage is inadvertent and believes that a utility service territory can experience strong investment levels in energy efficiency and customer-sited renewable generation without adversely affecting the utility’s return on investment or overall financial health. TASC requests that the Commission not endorse or repeat this language in its final order in this case. TASC Letter at 1-3.

It is important to note that no Replies to the Exceptions of PECO or PAIEUG were filed in this proceeding. Additionally, there were no filed responses to TASC’s letter requesting clarification of the Recommended Decision.

1. **Disposition**

Upon our review of the evidence of record, we will approve the Joint Petition without modification. We note that prior to the evidentiary hearing, the Parties reached a total Settlement in principle for all of the issues presented in this proceeding. At the hearing, the Parties’ pre-served testimony and exhibits were admitted into the record and cross-examination was waived. The Settlement was signed by all the Parties, with the exception of GAS, who stated it did not oppose the Joint Petition. As such, this Settlement is unopposed by any Party in this proceeding. Based upon our review of the Joint Petition, we agree with the ALJ, as well as the filed Statements in Support, that the terms and conditions of the Settlement are in the public interest and should be approved. However, considering the Exceptions of PECO and PAIEUG and the Letters submitted by several Parties in opposition to the ALJ’s recommended modification, we decline to endorse that modification as we conclude it would be inappropriate to do so in conjunction with a full and complete Settlement of complex matters specific to one jurisdictional electric utility. We note that not one Party to this proceeding expressed agreement with the ALJ’s recommended modification. Therefore, we shall reject the ALJ’s recommendation and modify the Recommended Decision consistent with this conclusion.

Additionally, we find that there are a number of settled issues within the Settlement that are beneficial to customers. Among those provisions are: (1) the reduced distribution rate increase of $127 million or about 67% of the originally proposed increase in rates; (2) the agreement to a revenue allocation that is within the range of revenue allocations proposed by the Joint Petitioners which provides for reasonable movement toward the system average rate of return by the various customer classes; (3) the agreement that the residential customer charge will increase to the rate of $8.45 per month in lieu of PECO’s proposed amount of $12.02 per month; (4) the agreement to eliminate the existing kWh-based distribution charges for Rates GS, EP, PD and HT and recover all costs not recovered in the fixed distribution customer charge through a kW demand charge; (5) the agreement to a recovery allocation of in-program CAP program arrearages where PECO has agreed that it will write-off one-third of the in-program arrearages without recovery and that PECO may recover the remaining two-thirds of the arrearages as a transition cost associated with moving to the Fixed Credit Option form of CAP; (6) the agreement to replace the Auxiliary Service Rider with the Capacity Reservation Rider (CRR) with revisions to the Company’s proposal that fully addressed the concerns expressed by the Parties that objected to the CRR; (7) PECO’s commitment to continue to refund the reductive effect of the tax repair “catch up” deduction through customer bill credits, with interest; (8) the agreement by PECO to provide the Parties with updates to its response to I&E Interrogatory No. RB-25, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ending December 31, 2015, and December 31, 2016; (9) the agreement to roll the costs recoverable under PECO’s Smart Meter Cost Recovery Surcharge into base rates; (10) the agreement that, on or before March 1, 2016, PECO will hold a collaborative, open to all interested participants, to seek input regarding revenue decoupling, and (11) the agreement by PECO to implement further enhancements to its terms and conditions for interconnection of customer-owned generation and to provide semi-annual reports to the Commission on its interconnection processing.

The Joint Petition resolves all of the issues raised in this proceeding impacting residential consumers, business customers and the public interest at large and represents a fair balance of the interests of PECO and its customers. The benefits of approving the Settlement are numerous and will result in significant savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, and conserving precious administrative resources. Moreover, the Settlement provides regulatory certainty with respect to the disposition of issues which benefits all parties. For the reasons stated herein and in the Joint Petitioners’ Statements in Support, we agree with the ALJ’s conclusion that the Joint Petition for Settlement of Rate Investigation is in the public interest. However, as previously discussed, we reject the ALJ’s recommended modification to the Joint Petition. Accordingly, we shall grant the Exceptions of PECO and PAIEUG to modify the ALJ’s recommendation by granting the Joint Petition and approving the Settlement, without modification.

Additionally, upon consideration of the clarification requested by TASC, and having received no objections to this request, we find TASC’s request to be reasonable. Thus, we will further modify the ALJ’s Recommended Decision by striking the language in question contained in the “Background” section on page two of the Recommended Decision in this proceeding.

# Conclusion

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Joint Petition for Settlement of Rate Investigation. Based on our review of the record in this case, including the Joint Petition and the Statements in Support thereof, we find that the proposed Joint Petition for Settlement of Rate Investigation between PECO, I&E, the OCA, the OSBA, PAIEUG, CAUSE-PA, TURN *et al.*, the City, KEEF, CAC, NRDC, TASCand EDF, is in the public interest. Accordingly, we shall grant the Exceptions of PECO and PAIEUG, adopt the ALJ’s Recommended Decision, as modified, consistent with this Opinion and Order, and grant the Joint Petition for Settlement of Rate Investigation, without modification. Additionally, we shall grant TASC’s request for clarification of the statement in the “Background” section of the Recommended Decision and further modify the Recommended Decision by striking the language in question; **THEREFORE:**

**IT IS ORDERED:**

1. That the Exceptions filed by PECO Energy Company – Electric Division to the Recommended Decision of Administrative Law Judge Angela T. Jones are granted, consistent with this Opinion and Order.
2. That the Exceptions filed by the Philadelphia Area Industrial Energy Users Group to the Recommended Decision of Administrative Law Judge Angela T. Jones are granted, consistent with this Opinion and Order.
3. That the Recommended Decision of Administrative Law Judge Angela T. Jones, issued on October 28, 2015, is adopted, as modified by this Opinion and Order, consistent with Ordering Paragraph Nos. 4 and 5, below.
4. That the ALJ’s recommendation to expand the revenue decoupling collaborative to include all Electric Distribution Companies and Natural Gas Distribution Companies in the Commonwealth of Pennsylvania and any other interested party, is reversed, and the original terms of the Settlement with regard to the collaborative are retained.
5. That the clarification requested by the Alliance for Solar Choice to the Recommended Decision of Administrative Law Judge Angela T. Jones is granted, consistent with this Opinion and Order, and the Recommended Decision is modified by striking the following language from the “Background” Section on page 2.

However, the customer growth has been offset by a decline in usage per customer due to energy efficiency and conservation mandates under Act 129 of 2008, which affect the Company’s ability to earn a fair return on its investment.

1. That the Joint Petition for Settlement of Rate Investigation filed September 10, 2015, by PECO Energy Company – Electric Division, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Philadelphia Area Industrial Energy Users Group, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia, the City of Philadelphia, the Keystone Energy Efficiency Alliance Energy Education Fund, the Clean Air Council, the Natural Resources Defense Council, the Alliance for Solar Choice and the Environmental Defense Fund is approved without modification.
2. That PECO Energy Company – Electric Division shall not place into effect the rates, rules, and regulations contained in Tariff Electric-PA. P.U.C. No. 5 regarding its cost recovery base rates for electric service revenues within its service territory, the same having been found to be unjust, unreasonable, and therefore, unlawful.
3. That PECO Energy Company – Electric Division shall be permitted to file a tariff supplement incorporating the terms of the Joint Petition for Settlement of Rate Investigation and changes to rates, rules and regulations as set forth in Appendix A, which is attached to the Joint Petition for Settlement of Rate Investigation, to become effective upon at least one (1) days’ notice after the date of entry of this Opinion and Order, for service rendered on and after January 1, 2016, which tariff supplement increases PECO Energy Company – Electric Division’s rates so as to produce an annual increase in base rate operating revenues not in excess of $127,000,000, as shown on the proof of revenues attached to the Joint Petition for Settlement of Rate Investigation in Appendix B.
4. That the Formal Complaint filed by the Office of Consumer Advocate at Docket No. C-2015-2475585 be deemed satisfied and marked closed.
5. That the Formal Complaint of the Office of Small Business Advocate at Docket No. C-2015-2477974 be deemed satisfied and marked closed.
6. That the Formal Complaint of the Philadelphia Area Industrial Energy Users Group at Docket No. C-2015-2480912 be deemed satisfied and marked closed.
7. That the Formal Complaint of William B. Kazimer at Docket No. C‑2015-2481825 be deemed satisfied and marked closed.
8. That upon Commission approval of the tariff supplement filed by PECO Energy Company - Electric Division in compliance with the Commission’s Order, the investigation at Docket No. R-2015-2468981, be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 17, 2015

ORDER ENTERED: December 17, 2015

1. In its Letter, TASC was concerned about and requested a clarification to a statement made by the ALJ’s in the “Background” section of the Recommended Decision. [↑](#footnote-ref-1)
2. Paragraphs 16 and 17 describe the principal elements of the rate structure and rate design incorporated in the Settlement Rates. While every effort has been made to ensure that the description is accurate, if any inconsistency is perceived between that description and the specific rates set forth in Appendix A, the latter shall take precedence. This footnote appears as footnote 5 in the Joint Petition. [↑](#footnote-ref-2)
3. Appendix C also sets forth background information that explains the procedural and factual context for the Joint Petitioners’ agreement on this issue. This footnote appears as footnote 6 in the Joint Petition. [↑](#footnote-ref-3)
4. I&E and PAIEUG are not joining in, but do not oppose, this Settlement term. This footnote appears as footnote 7 in the Joint Petition. [↑](#footnote-ref-4)