

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

**Petition of Metropolitan Edison
Company, Pennsylvania
Electric Company,
Pennsylvania Power Company
and West Penn Power Company
for Approval of Distribution
System Improvement Charges**

**Public Meeting April 19, 2018
2508942-OSA
Docket No. P-2015-2508942, et al.**

DISSENTING STATEMENT OF COMMISSIONER DAVID W. SWEET

Before the Commission for consideration is a final order regarding the petitions of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, FirstEnergy) for approval of distribution system improvement charges (DSICs). The issue at hand in these proceedings is the impact, if any, of Act 40 of 2016¹ on the DSICs; specifically, whether Act 40 requires the inclusion of accumulated deferred income taxes in the DSIC calculation. The Office of Consumer Advocate (OCA) argues that the language of the Act is clear that any rate, the DSIC included, now must include income tax deductions and credits related to an expense or investment. FirstEnergy argues that the language is ambiguous, and that the intent of the Act was to address the use of consolidated tax adjustments in base rate proceedings. In reviewing the record in this proceeding and the recommendation before us, which would reverse the Administrative Law Judge's decision on this matter, I find OCA's arguments persuasive and would affirm the ALJ's conclusion. I agree with the ALJ that the language of the statute is clear in its use of the word "rate," and is free from ambiguity.²

Chapter 13 of the Public Utility Code addresses ratemaking generally, and the definition of the term "rates" is broad, and includes but is not limited to base rates. Further, rate base is *not* the same as base rates.³ The reference, therefore, to "rate base" within Section 1301.1 does not render that section ambiguous with regard to its applicability to a DSIC rate calculation, nor does it support the conclusion that the section is limited to base rate calculations only. If it was the intent of the General Assembly to limit this section to base rate calculations in base rate proceedings, they could have so specified.⁴

Therefore, an analysis of legislative intent per the factors outlined in Section 1921(c) of Pennsylvania's Statutory Construction Act⁵ is not appropriate. I disagree with the recommendation before us today, which goes beyond a reading of the clear language of the statute, and respectfully dissent.

Date: April 19, 2018


David W. Sweet, Commissioner

¹ Act 40 was signed into law June 12, 2016, and added Section 1301.1 to the Public Utility Code. See 66 Pa. C.S. § 1301.1(a)-(c).

² See 1 Pa. C.S. § 1921(b).

³ "Rate base" is defined as "the value of the whole or any part of the property of a public utility which is used and useful in the public service." See 66 Pa. C.S. § 102 (definitions).

⁴ See, e.g., 66 Pa. C.S. § 1353(b)(4) and (5), which clearly specifies the role of a base rate case in the DSIC process.

⁵ See 1 Pa. C.S. § 1921(c).