

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

December 23, 2015

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Joint Application of Pike County Light and
Power Company, Buyer Corning Natural
Gas Holding Corporation and Seller Orange
and Rockland Utilities, Inc. for a Certificate
of Public Convenience Approving the
Transfer by Sale of 100% of the Stock of
Pike County Light And Power Company
from Seller Orange and Rockland Utilities,
Inc. to Buyer Corning Natural Gas Holding
Corporation
Docket Nos. A-2015-2517036
A-2015-2517111

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Protest and Public
Statement in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Aron J. Beatty".

Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

Attachment

cc: Office of Administrative Law Judge
Office of Special Assistants
Bureau of Technical Utility Services (email only)
Certificate of Service

215110

CERTIFICATE OF SERVICE

Joint Application of Pike County Light and :
Power Company, Buyer Corning Natural :
Gas Holding Corporation and Seller Orange and :
Rockland Utilities, Inc. for a Certificate of : Docket Nos. A-2015-2517036
Public Convenience Approving the Transfer by : A-2015-2517111
Sale of 100% of the Stock of Pike County Light :
And Power Company from Seller Orange and :
Rockland Utilities, Inc. to Buyer Corning :
Natural Gas Holding Corporation :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Protest and Public Statement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 23rd day of December 2015.

SERVICE BY E-MAIL AND INTER-OFFICE MAIL

Johnnie E. Simms, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

Daniel G. Asmus, Esq.
Office of Small Business Advocate
Suite 202, Commerce Building
300 N. Second Street
Harrisburg, PA 17101

John J. Gallagher, Esq.
711 Forrest Road
Harrisburg, PA 17112

John L. Carley, Esq.
Consolidated Edison Company
of New York, Inc.
4 Irving Place, Room 1815-S
New York, NY 10003

Thomas J. Sniscak, Esquire
William E. Lehman, Esquire
Whitney E. Snyder, Esquire
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
*Counsel for Corning Natural
Gas Holding Corp.*

Bohdan R. Pankiw, Chief Counsel
Pennsylvania Public Utility Commission
Office of Law Bureau
Commonwealth Keystone Building
3rd Floor, 4 North Street
Harrisburg, PA 17120



Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

Brandon J. Pierce
Assistant Consumer Advocate
PA Attorney I.D. #307665
E-Mail: BPierce@paoca.org

Counsel for Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

215114

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of Pike County Light and	:	
Power Company, Buyer Corning Natural	:	
Gas Holding Corporation and Seller Orange and	:	
Rockland Utilities, Inc. for a Certificate of	:	Docket Nos. A-2015-2517036
Public Convenience Approving the Transfer by	:	A-2015-2517111
Sale of 100% of the Stock of Pike County Light	:	
And Power Company from Seller Orange and	:	
Rockland Utilities, Inc. to Buyer Corning	:	
Natural Gas Holding Corporation	:	

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) files this Protest in the above-captioned Joint Application pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (Commission), 52 Pa. Code Sections 5.51-5.53, and Chapters 11, 19, 21, and 28 of the Pennsylvania Public Utility Code. This Joint Application filed on December 4, 2015, seeks to transfer control and ownership interests in Pike County Light & Power Company (Pike or Company), and Orange and Rockland Utilities, Inc. (Orange and Rockland or Seller) (collectively the Joint Applicants) to Corning Natural Gas Holding Corporation (CNGHC). By this Application, the Joint Applicants request all necessary authority, approvals and certificates of public convenience from the Pennsylvania Public Utility Commission (Commission), pursuant to Sections 1102(a)(3), 2102(b) and 1901(a) and (c) of the Public Utility Code, 66 Pa. C.S. §§ 1102(a)(3), 2102(b) and 1901(a) and (c), regarding: (1) the transfer of all of Pike affiliate Orange and

Rockland's ownership interests in Pike to CNGHC; (2) the affiliated interest agreement(s); and (3) the securities transactions involving Pike.

The OCA files this Protest in order to ensure that the transfer is approved only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to the Joint Applicants' ratepayers; (3) it does not adversely affect retail electric and gas competition in Pennsylvania; and (4) it is in accordance with the Public Utility Code.

Specifically, the OCA avers as follows:

1. The Protestant is Tanya J. McCloskey, Acting Consumer Advocate, 555 Walnut Street, 5th Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorneys for the purpose of receiving service of all documents in this proceeding are Aron Beatty, Senior Assistant Consumer Advocate, and Brandon Pierce, Assistant Consumer Advocate.

2. The OCA is authorized by law to represent the interests of utility ratepayers in all proceedings before the Commission. 71 P.S. §§ 309-1, *et seq.* This Protest is filed by the OCA to ensure that the interests of Pike's Pennsylvania ratepayers are protected in the proposed transactions.

3. The Joint Application must be examined pursuant to Chapters 11, 19, 21, and 28 of the Public Utility Code.

4. Section 1102 of the Public Utility Code requires that the Commission issue a certificate of public convenience as a legal prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. §1102(a)(1)-(3). It is the position of the OCA that this Commission has jurisdiction over this transaction under Section 1102 of the Public Utility Code and that this transaction must be examined by the Commission.

5. The Code requires that a certificate shall only be granted upon findings that the granting of such certificate is "necessary or proper for the service, accommodation, convenience or safety of the

public.” 66 Pa. C.S. §1103(a). The Supreme Court has construed this section of the Code as requiring a finding that a proposed merger will affirmatively benefit the public and specifically will “affirmatively promote the ‘service, accommodation, convenience or safety of the public’ in some substantial way.” *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1973); *see also Popowsky v. Pennsylvania Public Utility Commission*, 594 Pa. 583; 937 A.2d 1040 (2007).

6. Additionally, Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a certificate of public convenience. 66 Pa. C.S. §1103(a). Section 1103(a) of the Code provides: “The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable.” *Id.* The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the affirmative benefits standard is met.

7. Section 1901 of the Public Utility Code requires that a public utility file a securities certificate prior to issuing or assuming securities. 66 Pa. C.S. § 1901(a),(c).

8. Section 2102 of the Public Utility Code states that prior to any arrangement providing for the furnishing of certain services, e.g., management, supervisory, legal, etc., between a public utility and any affiliated interest, Commission approval must be obtained. 66 Pa. C.S. § 2102.

9. Pursuant to Section 2811 of the Public Utility Code, enacted as a provision of the Electricity Generation Customer Choice and Competition Act, the Commission has responsibility for “monitor[ing] the market for the supply and distribution of electricity to retail customers and to . . . prevent anticompetitive or discriminatory conduct, including the unlawful exercise of market power.” 66 Pa. C.S. §2811(a). In furtherance of this obligation, Section 2811(b) states: “Upon complaint or upon its own motion for good cause shown, the commission shall conduct an investigation of the impact on the proper functioning of a fully competitive retail electricity market,

including the effect of mergers, consolidations, acquisition or disposition of assets or securities of electricity suppliers, transmission congestion and anticompetitive or discriminatory conduct affecting the retail distribution of electricity.” 66 Pa. C.S. §2811(b).

As to approval of mergers, consolidations, acquisitions or dispositions, the Commission “shall consider whether the proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market.” 66 Pa.C.S. § 2811(e)(1).

Section 2811(e)(2) requires that upon request for approval of a merger or acquisition, notice and an opportunity for open, public evidentiary hearing shall be afforded. Section 2811(e)(2) also requires that the Commission only approve such transactions upon terms and conditions it finds necessary to preserve the benefits of a properly functioning and workable competitive retail electricity market.

10. Based upon the OCA’s preliminary review of the Joint Application, the Joint Application raises a number of important issues that must be resolved by the Commission before granting approval of this transfer and issuing certificates of public convenience. The OCA submits that the Joint Application and proposals of the Joint Applicants as filed do not support a conclusion that the merger will provide substantial, affirmative benefits to the public and will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

11. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this transaction. As the proposed transaction is further analyzed, additional issues may arise that warrant review.

a. Affirmative Ratepayer Benefits: The Application and its proposals do not demonstrate that this acquisition will provide substantial, affirmative ratepayer benefits in

accordance with Pennsylvania law. The Application provides limited information or assurances as to how this acquisition will provide substantial, affirmative benefits for all ratepayers, stating that CNGHC's acquisition will benefit from best practices, which will create savings and efficiencies and that it may in the future allow for expansion of natural gas service. Application at 14-15. The request for approval should not be granted unless and until the Applicants can demonstrate that affirmative, substantial ratepayer benefits from this acquisition, such as through rate reductions, rate stability, and enhanced quality of service will be provided.

b. Acquisition Savings/Synergies: The Application provides that, through CNGHC's acquisition of Pike, ratepayers will benefit from best practices which will create savings and efficiencies. Application at 14, 16. The Applicants do not propose to pass savings to ratepayers. The OCA submits that the Commission should examine the proposed transaction to determine if, in fact, the proposed acquisition is in the best interest of the ratepayers considering that the acquisition as proposed may lack any synergies or savings that bring substantial, affirmative benefits to ratepayers.

c. Costs to Achieve: The OCA submits that the costs to achieve this acquisition should be solely borne by the Applicants.

d. Quality of Service: The Joint Applicants state that there will be no adverse effect on service. Application at 15. The Application also states that "CNGHC expects to implement improvements in service over time and to begin to integrate PCL&P's business and operations with CNG and Leatherstocking Gas at the earliest practicable date." Application at 15. However, the Application provides no specific proposal to ensure that quality of electric service will be maintained or improved because of this acquisition. Therefore, the OCA submits that the Commission must, at a minimum, ensure that Pike's quality of service, including reliability,

customer service, and billing service, are maintained and enhanced as a result of the acquisition. This is applicable to both Pike's electric and gas operations.

e. Impact on Rates: The Application provides that the transaction will have no present impact on rates. Application at 16. The Joint Applications have not proposed any type of rate benefit. The OCA submits that both Pike's electric and gas base rates are currently subject to "stay out" provisions pursuant to the Commission's 2014 Order approving the Settlement of Pike's last electric and gas base rate proceedings. As the Commission stated in its Order approving the electric Settlement, "This means that, under normal conditions, the new rates will not become effective until on or before June 1, 2017." See, Pa. PUC v. Pike, Docket No. R-2013-2397237 (Order entered September 11, 2014 at 16). As such, the Applicants' assurances that there will be "no immediate impact" provide no benefit to ratepayers. In addition, the OCA submits that the Commission must examine the impact the proposed acquisition will have on the eventual capital structure of the utilities involved, which may adversely affect rates through high levels of equity.

f. Market Power and Effects on Competitive Markets: Under Section 2811, the Commission must examine the effect of this acquisition on the competitive retail electric market. The Joint Applicants state that due to Pike's small size, there would be no unlawful exercise of market power. Application at 12. The possible impact on the market should be further explored to ensure that the acquisition does not negatively impact the retail electric market.

g. Corporate Structure: The Joint Application states that there will be no change in corporate structure as a result of the transaction. Application at 8. The corporate structure should be explored and any issues should be resolved prior to approval of the transaction. The proposed corporate structure also must be reviewed to assure that there are no adverse tax effects.

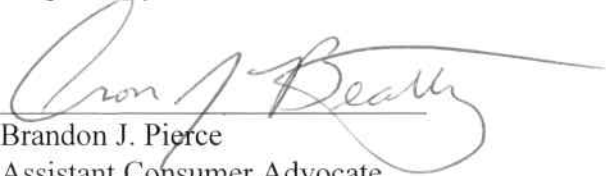
h. Continuation of PUC Jurisdiction: The Joint Application states that there will be no change in the Commission's authority over Pike. Application at 6. Post corporate-restructuring, the Commission must ensure that it retains sufficient jurisdiction, as well as access to appropriate books and records of all subsidiaries, to ensure the continued provision of safe, adequate and reliable service in Pennsylvania, and to ensure against inappropriate cross subsidies at the expense of Pennsylvania consumers.

i. Technical, Legal, and Financial Fitness: CNGHC states that is "financially and legally fit and has now or will have after the Closing the required technical and managerial fitness to operate PCL&P." Application at 7. CNGHC is the parent company of Leatherstocking Gas Co., LLC, a certificated Pennsylvania public utility. However, at a minimum, the Application does not provide sufficient information to determine the extent of CNGHC's fitness to operate an electric utility and to meet Pike's default service obligation. The Application states that Pike and Orange and Rockland will, at the Closing of the transaction, enter into "certain Transitional Agreements," an Electric Supply Agreement, a Gas Service & Transportation Agreement, and an Affiliated Interest Agreement. Application at 9-11. These agreements must be thoroughly reviewed to ensure that CNGHC is technically fit to operate electric and gas utility operations. Most notably, additional information is needed as to CNGHC's technical fitness to operate an electric utility, including its ability to do so after the expiration of the Transition Agreements.

12. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission investigate and hold full hearings in the service territory of Pike County Light & Power Company, regarding the above-captioned Application. The OCA further requests that the Commission not approve this Application unless it finds that: (1) it is in the public interest; (2) it provides substantial, affirmative benefits to the Joint Applicants' ratepayers; (3) it does not adversely affect retail electric and gas competition in Pennsylvania; and (4) it is in accordance with the Public Utility Code. Additionally, the OCA requests that the Commission impose such terms and conditions upon the proposed acquisition as are necessary to ensure that the Application meets the requirements set forth above.

Respectfully Submitted,



Brandon J. Pierce
Assistant Consumer Advocate
PA Attorney I.D. #307665
E-Mail: BPierce@paoca.org

Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: December 23, 2015

00215165.doc

PUBLIC STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. Section 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Protest and Public Statement and participate in proceedings before the Commission involving the Application of Pike County Light & Power Company (Pike or Company), and Orange and Rockland Utilities, Inc. (Orange and Rockland or Seller) (collectively the Joint Applicants).

On December 4, 2015, the Joint Applicants filed an Application to transfer control and ownership interests in Pike from Orange and Rockland to Corning Natural Gas Holding Corporation (CNGHC). By this Application, the Joint applicants hereby request all necessary authority, approvals and certificates of public convenience from the Pennsylvania Public Utility Commission (Commission), pursuant to Sections 1102(a)(3), 2102(b) and 1901(a) and (c) of the Public Utility Code, 66 Pa. C.S. §§1102(a)(3), 2102(b) and 1901(a) and (c), regarding: (1) the transfer of all of Pike affiliate Orange and Rockland's ownership interests in Pike to CNGHC; (2) the affiliated interest agreement(s); and (3) the securities transactions involving Pike. The OCA has determined to intervene and participate in these proceedings in order to protect the interests of Pike's customers. Through its participation in this proceeding, the OCA seeks to ensure that Pike's customers are afforded the protections to which they are entitled under the Public Utility Code and the Commission's regulations.