

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**Pennsylvania Public Utility Commission  
Office of Consumer Advocate**

**v.**

**Pine-Roe Natural Gas Company, Inc.**

**Public Meeting held April 19, 2018  
2618332-ALJ**

**Docket Nos. R-2017-2618332,  
C-2017-2629498**

**MOTION OF COMMISSIONER DAVID W. SWEET**

In this matter, the Recommended Decision of the Administrative Law Judge is to approve a Joint Petition for Settlement of a base rate case and the Office of Consumer Advocate's (OCA) formal complaint against the base rate filing without modification. While I have no desire to modify the terms of the Settlement which represent earnest and diligent efforts on the part of the both the OCA and the Commission's Bureau of Investigation & Enforcement (I&E), there is a matter raised in the Recommended Decision that requires clarification.

The Commission's regulations require that a corporation be represented by an attorney in a formal proceeding. Specifically, 52 Pa. Code §1.21(b) states that, for purposes of this section, any request for a general rate increase under § 1307(f) or § 1308(d) of the act shall be considered to be an adversarial proceeding. And in an adversarial proceeding, a corporation must be represented by an attorney.

Pine-Roe, as a very small utility, conducts as much business as possible without the aid of an attorney. It filed the base rate case without an attorney, it negotiated the terms of the Joint Settlement without an attorney, and it signed the Joint Settlement with a corporate officer instead of an attorney.

The ALJ, to his credit, recognized that this was not consistent with the Commission's normal practice and sought to create an exception by explaining that the Commission had allowed an Initial Decision approving a settlement in two formal complaints filed by I&E against Pine-Roe where Pine-Roe had not engaged an attorney.<sup>1</sup> In addition, a number of formal complaints filed by I&E against transportation companies resulted in settlement agreements that were approved by the Commission even though the companies had not been represented by an attorney in the formal proceedings.<sup>2</sup> The reasoning in the Initial Decision was two-fold: the settlement terms and conditions were not overly complex and did not require specialized knowledge of the law but could be easily understood by a layperson familiar with the utility's business; and the settlement was submitted by an attorney for a statutory party.<sup>3</sup>

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<sup>1</sup> Pa. Pub. Util. Comm'n v Pine-Roe Natural Gas Co., Inc., Docket Nos. C-2014-2400485 and C-2017-2582760 (Opinion and Order entered December 21, 2017).

<sup>2</sup> *PA PUC, BI&E v. 903 Rentals, Inc.*, Docket No. C-2013-2371641 (Opinion and Order entered March 6, 2014); *Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Handy Delivery, Inc.*, Docket Nos. C-2011-2223657 and A-00107326 (Opinion and Order entered July 2, 2012); *Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Luxury Limousine Services, Inc.*, Docket No. C-2010-2203671 (Opinion and Order entered September 30, 2011); and *Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. McClymonds Supply & Transit Co., Inc.*, Docket No. C-2010-2091781 (Order entered July 14, 2011).

<sup>3</sup> It is the finding that a particular action is the practice of law which determines whether the action can be carried out by a non-lawyer, not the sophistication of the non-lawyer.

However, there is a difference between a formal complaint brought against a utility that is settled prior to a formal hearing, and a base rate case that is actually brought by the utility, especially when it falls squarely under the Commission's regulation that states unequivocally that a base rate case is an adversarial proceeding.<sup>4</sup> An important step has been skipped here that should not be overlooked.

The Commission's regulations regarding the practice of law are, in large part, a reflection of the existing law that has developed under Pennsylvania case law and the rules developed by the Pennsylvania Supreme Court, which has jurisdiction over the practice of law in Pennsylvania. In deference to the Court, the Commission continues to find that in an adversarial proceeding, a corporation must be represented by counsel.

The regulation of the Commission finds that the filing of a base rate case creates an adversarial proceeding, which requires the utility to proceed with the benefit of counsel. But that particular finding in the Commission's regulation is not based upon black letter law, it is only in the regulation of the Commission. As such, under very limited circumstances, such as those presented here, where the utility is very small and where the settlement has been managed under the vigilant eyes of both OCA and I&E, which has already taken the utility to task in a prior complaint case and the utility is still bound by the agreement to improve its performance there as well, the Commission can consider waiving that portion of the regulation that states that a base rate filing is always adversarial, thereby permitting a non-lawyer to be a signatory on behalf of its corporation. Moreover, the Commission's regulations expressly provide for waivers of such requirements under circumstances like these.<sup>5</sup>

The situation must be addressed, the facts must support a waiver, and the waiver must be granted, before a settlement signed by a non-lawyer can be approved by this Commission.

THEREFORE,  
I MOVE:

1. That the Recommended Decision of Administrative Law Judge Conrad A. Johnson is adopted as modified by this Motion.
2. That the Commission's regulation at 52 Pa. Code §1.21(b), stating that the filing of a base rate case is an adversarial proceeding, is waived under 52 Pa.Code § 1.91.
3. That the Office of Special Assistants prepare an appropriate order consistent with this Motion.

April 19, 2018  
DATE



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David W. Sweet  
Commissioner

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<sup>4</sup> 52 Pa. Code §1.21(b).

<sup>5</sup> 52 Pa. Code §1.91.