**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held June 14, 2018

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

Norman J. Kennard

David W. Sweet

John F. Coleman, Jr.

Focused Management and Operations D-2017-2584891

Audit of Pike County Light and Power D-2017-2584892

Company and Leatherstocking Gas

Company LLC

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Clarification or Reconsideration (Petition), filed by Pike County Light and Power Company (Pike) on March 30, 2018, as amended on April 5, 2018, seeking reconsideration or clarification of our Opinion and Order entered March 15, 2018 (*March 2018 Order*), in the above captioned proceeding. No Answers to the Petition have been filed. For the reasons set forth below, we shall grant Pike’s Petition, in part, and deny it, in part.

**I. Background**

By Order entered August 11, 2016 (*August 2016 Order*), we approved a settlement agreement (Settlement Agreement) between Pike, the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA) regarding Corning Natural Gas Holding Corporation’s (CNGHC) acquisition of the stock of Pike from Orange and Rockland Utilities, Inc. (O&R).[[1]](#footnote-1) O&R and CNGHC closed on the sale of Pike on August 31, 2016. Because Pike had no employees under O&R’s ownership, we also approved a Transition Services Agreement (TSA), which specified the services that O&R would continue to perform on behalf of Pike until Pike could employ the necessary personnel or hire contractors for the services. Namely, Paragraph No. 36, Sections (e), (h), and (i) of the Settlement Agreement stated, in pertinent part, as follows:

e. PCLP and O&R will modify the Transition Services Agreement (TSA) to allow PCLP to extend the 12 month term of the TSA, on a month to month basis, for a maximum of an additional six (6) months. During the term of the Transitional Service Agreement, PCL&P will meet or have a quarterly conference with OCA and OSBA to (a) explain in sufficient detail what services PCL&P is continuing to take under the TSA and what services it no longer requires and (b) to provide sufficient detail of what substitute services from the CNGHC or other vendors has or will occur.

\* \* \*

h. CNGHC fully acknowledges its responsibility to promptly implement a staffing plan for PCL&P after closing that will provide safe, reliable, and responsive gas and electric utility service at reasonable cost to PCL&P customers. To that end, PCL&P/CNGHC's staffing plan will include approximately twelve (12) full time equivalent employees (FTEs) of PCL&P. PCL&P will hire, by no later than three (3) months after closing, as PCL&P employees the following five (5) full time positions: two (2) gas fitter/meter readers, one general manager, one (1) customer service manager/public affairs manager, and one (1) customer service representative. If additional time is required to secure qualified persons for these five (5) positions, PCL&P/CNGHC may take up to nine (9) additional months (for a total of one year from closing) to fill these positions, provided it shows cause for doing so and has exercised its best cost-effective and expeditious efforts to obtain qualified personnel. For the remaining positions in the areas of billing, IT, accounting, and HR/insurance, within 18 months of closing, these positions will be filled, or service provided, by hired PCL&P employees, CNGHC employees, contractors or a combination thereof. For the areas of electric crew persons, electric engineering support, and supply analyst/procurement, the Company will staff these positions within 18 months with PCL&P or CNGHC employees unless the Company demonstrates that staffing some or all of these positions through contractor employees is cost-effective and fulfills PCL&P' s obligation to provide service in accordance with the requirements of the Public Utility Code. If PCL&P determines to use contractors for any of the above positions, it shall provide its demonstration to the Commission for review and approval, which shall occur within 10 days of filing. This review and approval requirement shall expire 18 months after the date of closing.

i. PCL&P/CNGHC shall provide OCA, OSBA, and the Commission with sufficiently detailed quarterly status reports on the progress of retaining an electric and gas utility staff for PCL&P. Each report shall contain information regarding the number of permanent staff retained and the number of contractors still in use.

Additionally, in Ordering Paragraph No. 19 of our *August 2016 Order,* we directed that the quarterly status reports required by Settlement Paragraph 36(i) be filed with the Commission’s Secretary’s Bureau and that they be served upon the Commission’s Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services (TUS). *August 2016 Order* at 4.

Subsequently, the Commission’s Bureau of Audits (Audit Staff) conducted a Focused Management and Operations Audit (Audit) of Pike and Leatherstocking Gas Company LLC (Leatherstocking) (collectively, the Companies). By order entered March 15, 2018 (*March 2018 Order*), the Audit and the Companies’ Implementation Plan, dated December 28, 2017, were made public. In our *March 2018 Order,* we noted that Audit Staff rated nine functional areas or specific issues that were examined during the Audit and identified thirty-three recommendations for improvement. Additionally, we imposed several additional reporting requirements on Pike. *March 2018 Order* at 1, 4-6.

**II. History of the Proceeding**

As noted above, on March 15, 2018, we issued our *March 2018 Order,* which made the Audit and the Companies’ Implementation Plan public and imposed additional reporting requirements on Pike.

On March 30, 2018, Pike filed its Petition.

By Opinion and Order entered on April 5, 2018, we granted Pike’s Petition, pending review of and consideration on the merits.

Also, on April 5, 2018, Pike filed an amended Petition, wherein it updated information regarding the number of employees it hired.[[2]](#footnote-2)

As previously noted, no Answer to the Petition was filed

**III. Discussion**

**A. Standard for Reconsideration**

The Pennsylvania Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982):

A Petition for Reconsideration, under the provisions of

66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard, we agree with the court in the *Pennsylvania Railroad Company* case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considera­tions which appear to have been overlooked by the Commission.

*Duick,* 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)).

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

The Commission has held that a Petition for Clarification must meet the same standard as a Petition for Reconsideration. *Petition of PECO Energy Company for Approval of its Revised POR Program,* Docket No. P-2009-2143607 (Order entered August 24, 2010).

Applying the above standards, we shall address the merits of Pike’s Petition.

We note that any argument, which we do not specifically address herein, 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 Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

**B. Pike’s Petition for Reconsideration**

In its Petition, Pike requests that we clarify, or in the alternative, grant reconsideration of our *March 2018 Order* related to the audit of Pike and Leatherstocking Gas Company, LLC. More specifically, Pike is requesting that we clarify that the *March 2018 Order* was not meant to mandate (1) that Pike must continue holding quarterly meetings pursuant to our *August 2016 Order* approving the acquisition of Pike beyond the required end-point as stated therein. In the alternative, if we do not grant such clarifications, Pike requests reconsideration of the EDI and “end-point” issues; or (2) that Pike institute Electronic Data Interchange (EDI) capabilities prior to engaging in a cost-benefit analysis of whether EDI is prudent or whether other substitute options may be more appropriate and cost efficient. We shall address each of these items in the discussion that follows.

**1. Whether Pike must continue to hold the quarterly meetings and to submit quarterly reports directed by the *August 2016 Order.***

In our *March 2018 Order,* we stated that “Pike is to continue to provide quarterly updates pursuant to the Settlement Agreement that we approved by our *August 2016 Order* related to the sale of Pike to CNGHC to various parties including the Commission.” *March 2018 Order* at 4, citing *August 2016 Order* at 4.

**a. Pike’s Position**

Pike takes issue with the above statement. Namely, Pike points out that our *March 2018 Order* did not specify an end date after which Pike may cease providing such quarterly updates. Therefore, Pike requests that we clarify that we did not intend to mandate that Pike continue to attend the quarterly meetings or to submit quarterly reports beyond the expiration date of the TSA set forth in the *August 2016 Order*. Pike explains that the TSA expired at the end of February 2018, but that Pike extended two provisions of the TSA through April 2018, with the option to extend them through May 2018. Pike also avers that it held its last agreed-upon quarterly meeting with the OCA, OSBA, and TUS in February 2018, during which time the parties acknowledged that this would be the last quarterly meeting pursuant to the Settlement Agreement approved in our *August 2016 Order.* Additionally, Pike notes that it submitted its last quarterly report in February 2018 and that it has complied with all aspects of the *August 2016 Order.* Pike Petition at 2, 4‑6.

On the other hand, Pike submits that it requests reconsideration of our *March 2018 Order* if we intended to use it as a means to amend our *August 2016 Order* by extending the end dates for the requirement that Pike hold the quarterly meetings and submit the quarterly reports beyond the end date of the TSA*.* Pike reasons that if this was our intent, then, as currently written, the *March 2018 Order* runs contrary to the express terms of Section 703(g) of the Code because it did not provide for any opportunity to be heard or to provide comment regarding the issue of amending the *August 2016 Order*. Pike Petition at 2, 6.

**b. Disposition**

On review of the Petition, we note that the above statement from our *March 2018 Order,* to which Pike takes issue, must be read in its proper context. More specifically, in the section of our *March 2018 Order* in which this statement appears, we first expressed the importance of Pike’s management team implementing the recommendations in the Audit as outlined by Audit Staff. We noted that as a result of the Audit, Pike is to provide the Commission with progress reports regarding these recommendations. We further directed that in addition to these reporting requirements, Pike is to continue providing quarterly updates *pursuant to the* *Settlement Agreement* that we addressed and approved in our *August 2016 Order* (emphasis added). Additionally, we summarized paragraphs 36 (e) and (i) of the Settlement Agreement, outlined, *supra,* regarding the quarterly meetings and reports contemplated by the Settlement Agreement. Finally, we imposed additional reporting requirements on Pike based on the significance of some of the deficiencies identified in the Audit. *March 2018 Order* at 4-6.

Based on the above, we hereby clarify that the additional reporting requirements we set forth in our *March 2018 Order* are related to the findings in the Audit and Pike’s Implementation Plan for the Audit findings, and not to the Settlement Agreement we addressed and approved in our *August 2016 Order.* As such, the above statement from our *March 2018 Order* should not be construed as an explicit directive that Pike must continue to attend the quarterly meetings with the OSBA, the OCA, and TUS and submit the quarterly reports to the Commission beyond the date agreed to in the Settlement Agreement. Rather, we simply stated that Pike was to continue complying with the terms of the Settlement Agreement. As Pike points out, no party to the Settlement Agreement has disputed Pike’s assertion that the most recent quarterly meeting held in accordance with the Settlement Agreement was the final meeting required by the Settlement Agreement. Further, in its most recent quarterly status report, which Pike submitted on February 28, 2018, at Docket No. A‑2015-2517036 (*February 2018 Report*),Pike stated that this was the final quarterly report that it must submit pursuant to the *August 2016 Order.* *February 2018 Report* at 1. No opposition to this statement was filed by any party. As the parties to the Settlement Agreement have agreed to an end date for the quarterly meetings and reports outlined in Paragraphs 36 (e) and (i) of the Settlement Agreement, we find no reason to extend this end date, at present.

Before concluding this section, we note that although we find no reason in this instance to extend the end date for which Pike must file the quarterly reports outlined in Paragraph 36 (i) of the Settlement Agreement, we are not barred by the Code from doing so. Namely, pursuant to Section 504 of the Code, 66 Pa. C.S. § 504, we may require a public utility to file periodic special reports, as prescribed by the Commission in form and content, on any matter whatsoever that the we are authorized to inquire or required to enforce. Therefore, as the terms of a settlement agreement cannot override the provisions of the Code, we would not need a modification to the Settlement Agreement, or to our *August 2016 Order*, to request such reports.

**2. Whether Pike must institute EDI capabilities prior to engaging in a cost-benefit analysis of whether EDI is prudent or whether other substitute options may be more appropriate and cost efficient.**

In our *March 2018 Order,* we directed Pike “to file a written monthly status report with our Office of Competitive Market Oversight on [its] Electronic Data Interchange (EDI) capabilities and when [it] expect[s] to have EDI fully available for electronic generation suppliers.” *March 2018 Order* at 6.

**a. Pike’s Position**

In its Petition, Pike avers that it will file the above-referenced monthly status reports. However, Pike submits that the Audit did not address EDI and that Pike’s present EDI waiver was granted in a separate proceeding. Therefore, Pike believes that our *March 2018 Order* is ambiguous as to whether Pike is mandated to implement full EDI capabilities or whether it has the option to request a waiver to fulfill these capabilities by implementing other options. Pike Petition at 7-8.

Pike emphasizes that it fully supports shopping in its service territory and that it wants to ensure that its customers have the full capability to choose an Electronic Generation Supplier (EGS). However, Pike considers it more prudent to implement other less expensive options to provide EGS’s operating in its service territory with the necessary information for customer switching in lieu of fully implementing EDI. For example, Pike notes that it currently has a manual switching process in place which permits for customer switching within a three-business day period. Therefore, Pike submits that it is currently exploring the costs of benefits of fully implementing EDI versus implementing alternative options. Pike asserts that as a small company with only approximately 4,700 electric customers, full EDI implementation could have a significant impact. Namely, Pike estimates that full EDI implementation will cost $400,000 and that averaging this cost per its customer base could result in a monthly cost of $7.09 per customer. Additionally, Pike argues that full implementation will result in ongoing annual costs of approximately $40,000. Thus, Pike argues that given the unique size and configuration of its facilities, a summary determination that full EDI implementation is to occur should not happen, at present, and that no determination should be made until Pike finishes a cost-benefit analysis of its various options. Pike explains that it proposes to provide the Commission with a cost-benefit study of these options by September 1, 2018 and that it will include in this study an analysis of whether modification of its manual switching process could result in a shorter switching period for its shopping customers. Pike Petition at 7-8, 10.

Based on the above, Pike requests clarification that it is not required to implement full EDI capabilities without further reviewing whether full EDI implementation is the most prudent option for its customers. In addition, Pike seeks clarification that it will have Commission approval to incur costs for EDI capability implementation and that full cost recovery thereto will be authorized in a future rate proceeding if the costs are deemed prudent and are appropriately documented. Pike points out that such costs, if incurred, will be for the benefit of its customers. Further, Pike explains that it is not currently seeking approval of any particular recovery mechanism; rather, it is only seeking to be able to recover these costs in a future rate proceeding. Pike Petition at 8-9, 10.

In the alternative, Pike requests that if the above request for clarification is denied, that we grant reconsideration on this issue.[[3]](#footnote-3) Pike reiterates that neither the Audit nor the Implementation Plan contained any information regarding Pike’s EDI capabilities. Therefore, Pike argues that it is not clear what information the Commission utilized in making its decision regarding EDI. Pike submits that because it had no notice that EDI issues would be encompassed within the *March 2018 Order,* it had no opportunity to present any arguments regarding EDI issues or the associated recovery of costs in this proceeding, thereby denying it of its due process rights. Pike Petition at 9‑10.

**b. Disposition**

We shall grant Pike’s request for clarification, in part. As Pike points out, neither the Audit nor the Implementation Plan addressed Pike’s ability to implement full EDI capabilities. Therefore, while we reinforce our directive that Pike submit monthly updates regarding its EDI capabilities, and Pike has agreed in its Petition to submit such updates, we also agree with Pike that our *March 2018 Order*, as written, is ambiguous as to whether Pike is mandated to fully implement EDI. We find Pike’s argument compelling that given its small company size, the unique configuration of its facilities, and the potential cost to its customers, the prudence of Pike fully implementing EDI capabilities should be considered before any express mandate is made. Therefore, in addition to requiring the filing of monthly updates regarding its EDI capabilities, we shall also direct Pike to file with OCMO a cost-benefit study regarding the prudence of full implementation of EDI versus the implementation of other options by its proposed date of September 1, 2018. If, at that time, Pike can provide supporting data indicating that an option other than full EDI implementation is more prudent for its customers, it may submit a further request for waiver of certain of our Regulations at 52 Pa. Code §§ 57.171‑57.180, which concern the standards for changing a customer’s EGS. Moreover, because we are not yet mandating that Pike fully implement EDI, we decline to address Pike’s request that it be permitted to fully recover the costs associated with such full implementation.

**IV. Conclusion**

Based on the foregoing discussion, we shall grant the Petition, in part, and deny it, in part, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration of Pike County Light and Power Company, filed on March 30, 2018, is granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That Pike County Light and Power Company and Leatherstocking Gas Company LLC shall file the status reports at the times prescribed in our Opinion and Order entered on March 15, 2018 at Docket Nos. D-2017-2584891 and D-2017-2584892.

3. That Pike County Light and Power Company shall hold a meeting, during the fourth quarter of 2018, with staff from the Bureau of Technical Utility Services and the Bureau of Audits to review the completed plans required by Recommendations IX-1 through IX-4 of the Focused Management and Operations Audit.

4. That Pike County Light and Power Company shall file a cost-benefit study regarding the prudence of fully implementing Electronic Data Interchange capabilities with the Office of Competitive Market Oversight by September 1, 2018.

5. That this docket shall remain open for the filing of the required reports with the Secretary of the Commission, as prescribed in the Opinion and Order referenced in Ordering Paragraph No. 2.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: June 14, 2018

ORDER ENTERED: June 14, 2018

1. *See 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 No. A‑2015‑2517036 (Order entered August 11, 2016). [↑](#footnote-ref-1)
2. We note that all citations to Pike’s Petition in this Opinion and Order refer to the original version of the Petition which Pike filed on March 30, 2018. The amendment Pike filed to its Petition did not change the substance of the request for relief that Pike sought in the originally filed version of the Petition. [↑](#footnote-ref-2)
3. Conversely, Pike submits that if the requested clarification is granted, it withdraws its request for reconsideration. [↑](#footnote-ref-3)