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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held September 20, 2018 |
| Commissioners Present: |  |

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| Gladys M. Brown, Chairman | |
| Andrew G. Place, Vice Chairman | |
| Norman J. Kennard | |
| David W. Sweet | |
| John F. Coleman, Jr. | |
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| Tax Cuts and Jobs Act of 2017 – Pike County Light & Power Company  Pike County Light & Power Company (Electric) Request for Reconsideration May 17, 2018 Orders    Tax Cuts and Jobs Act of 2017 | R-2018-3000942    M-2018-2641242 |

**ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) is review of the Petition for Reconsideration (Petition) filed by Pike County Light & Power Company (Pike or Company) on June 1, 2018. On June 1, Pike filed its Petition with the Commission seeking reconsideration of the Commission’s Orders entered May 17, 2018 in the above-captioned proceedings. Pursuant to Rule 1701 of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. Rule 1701, the Commission must act to grant a Petition for Reconsideration within thirty days of the date of entry of the order for which reconsideration is sought, or otherwise lose jurisdiction to do so if a Petition for Review is timely filed with the Pennsylvania Commonwealth Court. The thirty‑day period within which the Commission must have acted upon the Petition in order to preserve jurisdiction was July 2, 2018. Therefore, on June 14, 2018, the Commission granted reconsideration of Pike’s Petition, pending review of, and consideration on, the merits of the Petition and any responses thereto. As such, the instant Order addresses the merits of Pike’s Petition, as well as the Answer of the Pennsylvania Office of Consumer Advocate (OCA) filed on June 11, 2018, in response to the Petition.

In its Petition, Pike requests that the Commission reconsider and amend its May 17, 2018 Orders to exempt Pike from decreasing its distribution rates. Petition at 1. By way of background, the Commission issued several Orders on May 17, 2018. These Orders were issued in response to Public Law No. 115-97 which was signed into law by the President in December of last year. The short title of this law is the Tax Cuts and Jobs Act (TCJA). Pursuant to the TCJA, effective January 1, 2018, various provisions of the Tax Reform Act of 1986 (the governing tax law in the United States prior to the effective date of the TCJA) have been repealed or amended. One of the many modifications to the Tax Reform Act of 1986 resulting from the passage of the TCJA is a reduction in the corporate Federal Income Tax rate.

Specifically, the TCJA reduces the corporate Federal Income Tax rate from 35% to 21%. Therefore, at the start of this year, the Commission undertook the task of determining the effects of the TCJA on the tax liabilities of Commission-regulated public utilities for 2018 and future years and the feasibility of reflecting such impacts in the rates charged to Pennsylvania utility ratepayers. As such, the Commission issued Temporary Rates Orders on March 15, 2018, and May 17, 2018, while also issuing utility-specific Orders on May 17, 2018. These Orders address the manner in which utilities’ reduced tax obligations as a result of the TCJA will be addressed in rates charged to Pennsylvania’s utility customers. For Pike’s utility-specific Order issued on May 17, 2018, the Commission determined that the Company’s “existing rates are producing a return in excess of a fair return upon the fair value of the Respondent’s used and useful utility property, and that it is in the public interest to prescribe temporary rates under 66 Pa. C.S. § 1310(d) to reduce Respondent’s current gross annual intrastate operating revenues by -0.67%.” *See*, *Tax Cuts and Jobs Act of 2017 – Pike County Light & Power Company*, Docket No. R-2018-3000942 at 3.

However, rather than reduce the subject rates by -0.67%, Pike filed its Petition

requesting that the Commission reconsider and amend its May 17, 2018 Orders to exempt Pike from decreasing its rates due to the extraordinary losses and costs incurred in 2018 from winter Storm Riley, which if amortized over five years, shows Pike is not earning a return in excess of 5% of its rate base, but instead approximately 3.93%. Petition at 1. Consequently, in its Petition, Pike asserts that the projected 3.93% return is less than the 5% rate of return standard required to be met under 66 Pa. C.S. § 1310 before the Commission can set temporary rates. *Id*. at 2.

In its Answer filed on June 11, 2018, the OCA requests that the Commission deny Pike’s Petition. Specifically, the OCA states that the Commission should: 1) carefully review Pike’s claimed 3.93% overall rate of return, and 2) decline to recognize the Storm Riley expense as an offset to Pike’s annual operating income. OCA Answer at 5-6.

Prior to the Commission granting reconsideration of its May 17, 2018 Orders, it issued a letter to Pike on June 7, 2018 which stated:

To assist the Commission in conducting its review of the proposed petition for reconsideration, please respond with the information requested in Attachment 1 [Data Request].

*See*, Letter of June 7, 2018 in *Petition of Pike County Light & Power Company (Electric) for Reconsideration of the Commission’s May 17, 2018 Order*, Docket Nos. R‑2018‑3000942 and M-2018-2641242. Attachment 1 [Data Request] to the letter contains seven (7) data requests, including subparts, seeking information which the Commission could consider in deciding the merits of Pike’s Petition. Specifically, the questions referenced the following three filings: (a) Pike’s 2017 Electric Annual Report (Annual Report) submitted on April 27, 2018; (b) Pike’s Public Utility Earnings Report (Quarterly Report) of electric department earnings for the twelve months ended December 31, 2017, filed on May 21, 2018; and, (c) Pike’s Petition (in particular, as the Petition relates to Attachment 1 of Pike’s Petition regarding the Company’s Income Statement for the 12 months ended April 30, 2018).

Within and across the two reports (Annual and Quarterly) and Income Statement, the Commission found numerous inconsistencies and probable errors. As such, the Commission’s data requests revolved around the accuracy of several items and accounts within the two reports and the income statement, as well as the Company’s calculation of its rate of return within the Quarterly Report.  As directed by Attachment 1 [Data Request], the Commission requested that the Company address these various issues and provide additional financial statements within a period of ten days in order to address the merits of Pike’s Petition.

On August 10, 2018 (53 days after the due date set by the Commission), Pike provided responses to the data requests issued on June 7th. Included with its responses, Pike also included a revised Annual Report (filed on August 10th as well). As explained below, based on its review of the financial data and other information submitted by Pike to date, the Commission hereby denies the Company’s Petition.

**Discussion**

Despite submitting its responses to the June 7th data requests nearly two months after the due date requested by the Commission, the information provided by the Company is still internally inconsistent, thereby, raising more questions than answers as the Commission addresses the Company’s Petition on the merits as well as the Company’s overall rate of return. Most importantly, Pike’s revised Income Statement reflects an overall rate of return that is reduced by the inclusion of claimed costs resulting from Storm Riley. However, any treatment of these claimed costs would be more appropriately addressed in the Company’s next base rate proceeding. Similarly, the Income Statement reflects an immediate five-year amortization of the Storm Riley costs and such proposed ratemaking treatment of these costs would also be more appropriately addressed in the Company’s next base rate proceeding.

Further, in its Petition, Pike requests “permission to defer for accounting and financial reporting purposes extraordinary losses that were caused by Storm Riley and to *amortize such losses commencing upon the effective date of changes in rates pursuant to the Commission’s final order in PCL&P’s next general rate proceeding under Section 1308(d) of the Public Utility Code, 66 Pa. C.S. § 1308(d)*”. Petition at 1 (*emphasis added*). As such, the five-year immediate amortization in the revised Income Statement is not even consistent with the Company’s requested implementation date for the recovery of these costs as stated in its Petition. Therefore, the Commission, hereby, rejects Pike’s request that it be exempted from decreasing its rates due to the Company’s claimed expenses associated with Storm Riley. Specifically, Pike has failed to establish that the Company is earning an overall rate of return which warrants such an exemption.

Finally, the Company is mistaken in its assertion that the Commission’s May 17, 2018 Orders are indicative of the fact that the Commission is prohibited from setting temporary rates pursuant to Section 1310 if a utility’s overall rate of return is less than 5%. On the contrary, as set forth in the Commission’s May 17, 2018 Orders, including Pike’s utility-specific Order, temporary rates in this proceeding have been established pursuant to Section 1310(d) of the Public Utility Code, not Section 1310(a). Unlike Section 1310(a), Section 1310(d), pertaining to “excessive rates”, contains no 5% threshold for Commission action. Section 1310(d) of the Code states:

**Excessive rates.** — Whenever the commission, upon examination of any annual or other report, or of any papers, records, books, or documents, or of the property of any public utility, shall be of opinion that any rates of such public utility are producing a return in excess of a fair return upon the fair value of the property of such public utility, used and useful in its public service, the commission may, by order, prescribe for a trial period of at least six months, which trial period may be extended for one additional period of six months, such temporary rates to be observed by such public utility as, in the opinion of the commission, will produce a fair return upon such fair value, and the rates so prescribed shall become effective upon the date specified in the order of the commission. Such rates, so prescribed, shall become permanent at the end of such trial period, or extension thereof, unless at any time during such trial period, or extension thereof, the public utility involved shall complain to the commission that the rates so prescribed are unjust or unreasonable. Upon such complaint, the commission, after hearing, shall determine the issues involved, and pending final determination the rates so prescribed shall remain in effect.

66 Pa. C.S. § 1310(d). Although the Commission, of its own accord, elected to set a 5% threshold for then-current rates of return on rate base, pursuant to 1310(d), so as to exclude public utilities with marginal earnings under current rates, the Commission was not prohibited from establishing temporary rates for utilities even if such then-current rates of return were producing rates of return on rate base of less than 5%. Nevertheless, even if a 5% threshold were applicable, Pike’s overall rate of return is 6.37% based on its August 10th revised financial data;[[1]](#footnote-1) **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration filed by Pike County Light & Power Company is denied.
2. That Pike County Light & Power Company shall immediately comply with all terms and conditions of the Commission’s Orders at Docket Nos. M-2018-2641242 and R-2018-3000942 entered on May 17, 2018.

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**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 20, 2018

ORDER ENTERED: September 20, 2018

1. This 6.37% overall rate of return is based on Pike’s financial data as of December 31, 2017. The Company asserts that, by using financial data as of April 30, 2018, its overall rate of return would be 4.71%. However, the Commission’s May 17, 2018 Orders, including the general Order applicable to all affected Pennsylvania utilities and the utility-specific Orders, were based on December 31, 2017 (or prior) financial data of utilities. Therefore, Pike’s submitted financial data as of December 31, 2017 is appropriate for calculating the Company’s overall rate of return. [↑](#footnote-ref-1)