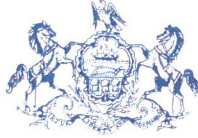


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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July 22, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission
v.
Valley Energy, Inc. – Supplement No. 49
to Tariff Electric – Pa. P.U.C. No. 2
Docket Nos. R-2019-3008209

Dear Secretary Chiavetta:

Attached for electronic filing please find the Motion of The Joint Statutory Advocates to Reject The Base Rate Filing in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Christy M. Appleby".

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CApplby@paoca.org

Enclosures:

cc: Office of Administrative Law Judge (OALJ)
Office of Special Assistants (email only: ra-OSA@pa.gov)
Certificate of Service

*276258

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :
v. :
Valley Energy, Inc. – Supplement No. 49 to : Docket No. R-2019-3008209
Tariff Electric – Pa. P.U.C. No. 2 :

I hereby certify that I have this day served a true copy of the following document, the Motion of The Joint Statutory Advocates to Reject The Base Rate Filing, 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 22nd day of July 2019.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

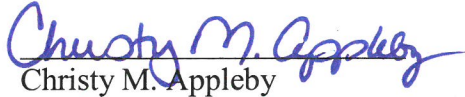
John M. Coogan, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

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Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: July 22, 2019
*276260

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,	:	
	:	
v.	:	Docket No. R-2019-3008209
	:	
Valley Energy, Inc.	:	

NOTICE TO PLEAD

TO: VALLEY ENERGY, INC.

Pursuant to Section 5.103(b), the Joint Statutory Advocates (JSA) have requested expedited treatment and hereby provides notice that a written responsive pleading, if any, must be filed within 20 days of the date of service of the enclosed Motion of the Joint Statutory Advocates to Reject the Base Rate Filing. 52 Pa. Code § 5.103(b). As identified in the attached Motion, the JSA have requested expedited treatment and respectfully request that Valley Energy, Inc. provide responsive pleadings within ten (10) days of the date of service. Failure to answer may allow the Public Utility Commission or presiding officer to decide the JSA’s Motion to Reject the Base Rate Filing against you. Any response to the JSA’s Motion to Reject the Base Rate Filing must be filed with the Secretary of the Public Utility Commission, at the address below, with a copy served on counsel for the JSA, and where applicable, the Administrative Law Judge presiding over the proceeding.

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg.
400 North St., Second Fl.
Harrisburg, PA 17120

Respectfully Submitted,

/s/ Christy M. Appleby
Christy M. Appleby, Esquire
Darryl A. Lawrence, Esquire
J.D. Moore, Esquire
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923

/s/ Sharon E. Webb
Sharon E. Webb, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

/s/ John M. Coogan
John M. Coogan, Esquire
PA Public Utility Commission
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265

DATE: July 22, 2019

I. MOTION TO REJECT

On July 1, 2019, Valley Energy, Inc. (Valley or Company) filed Supplement No. 49 to Tariff Electric – Pa. P.U.C. No. 2 (Supplement No. 49). The Company proposes an overall net distribution increase of \$1,034,186, or 20.6% on a distribution revenue basis. The proposed rate increase would become effective August 30, 2019. Also on July 1, 2019, Valley and Wellsboro Electric Company (Wellsboro) filed a Petition for Waiver of Filing Requirements Under 52 Pa. Code Section 53.53 for Valley Energy, Inc. and Wellsboro Electric Company's July 1, 2019 Rate Increase Requests Exceeding \$1,000,000 (Petition). The Petition has been separately docketed at Docket Nos. P-2019-3011478 for Valley and P-2019-3011479 for Wellsboro. On July 22, 2019, the Joint Statutory Advocates filed a Joint Answer in Opposition to the Petition.

Instead of including the materials required for a filing in excess of \$1,000,000 pursuant to Section 53.53 of the Commission's regulations, the Companies included in their filings only the materials required under Section 53.52 of the Commission's regulations and at the same time requested a waiver of the requirements of Section 53.53. See, 52 Pa. Code ¶¶ 53.52, 53.53. For distribution base rate increases over \$1 million, Section 53.53 of the Commission's regulations requires that additional information be provided and notice requirements be met beyond what the Companies have provided. 52 Pa. Code § 53.53; see also, Petition at ¶ 9. Section 53.53 sets forth a bright line test regarding the information to be provided for rate increase requests over \$1 million. 52 Pa. Code § 53.53.

In their Petition, Wellsboro and Valley argued that waiver is appropriate because Section 53.53's \$1 million threshold was established over 40 years ago in 1977, and that if inflation-adjusted, the threshold would now be over \$4 million in 2019 dollars. Petition at ¶¶ 11-13; 52 Pa. Code § 53.53. The Companies also argued that the filing requirements would unreasonably burden

the Companies. Petition at ¶ 15. In order to meet the threshold, Valley stated that it would need to reduce its requested increase by approximately \$34,000, and Wellsboro stated that it would need to reduce its request by approximately \$420,000. Petition at 15-16. The Companies argued that instead of requiring the Companies to reduce their request, the “more equitable result would be to waive the \$1 million threshold in recognition of its limited applicability to today’s economic environment.” Petition at ¶ 17. The Companies also argued that they have never prepared a rate filing pursuant to the requirements in Section 53.53 and do not have the experience to produce the information required. Petition at ¶¶ 18-19. Moreover, the Companies argued that the waiver would allow the Companies to “preserve the filing process from the Companies’ prior rate cases.” Petition at ¶ 21.

As the JSA identified in the separately filed Answer to the Petition, the JSA submits that the Petition is untimely and not justified under the law. The Companies should have filed their Petition in advance of their rate filings in order to allow the Commission to appropriately determine the information that should have been included in their respective base rate filings. Once the Companies filed their request on July 1, 2019, the 270 day statutory deadline for base rate proceedings began to run. The Companies have acknowledged that they have not included the required information in their filings and have indicated in their Petition that they have not even compiled this information. Petition at ¶¶ 16, 18-24. The Companies only filed their request for waiver at the time of their filings. If the Companies’ Petition is granted, the JSA will be unfairly prejudiced as the information needed to fully assess the Companies’ proposed rate increases will have to be developed through discovery. As a practical matter, it should be noted that the additional information required under Section 53.53 will most certainly be asked for in discovery. As such, the practical effect of the Companies’ Petition is to force intervenors to propound

discovery on this information and then wait for the Companies to potentially answer. In the meantime, the statutory time frame for this matter is ticking away all to the detriment of the JSA and other intervenors.

The parties are prejudiced by the Companies' failure to provide the required information at the time of the filing. The 270 day statutory deadline provides a limited timeframe to review the Companies' filings. The required data under Section 53.53 provides necessary foundational information to fully evaluate the Companies' requested increase. If this information is provided at some undetermined point in the future, the parties will be limited in their ability to evaluate the Companies' respective filings and rate increase. The Companies have indicated in their Petition that compiling the materials would be "time-intensive." Petition at ¶ 20. This presumably means that it will be sometime before the Companies can even provide the information, let alone provide the opportunity to evaluate the information.

The issue of what information should be included in the filing should have been determined prior to the Companies filing with the Commission. The Companies identified that they knew in early June that they would be filing for an increase in excess of \$1 million, and yet, they did not choose to file a Petition at that time. Petition at ¶ 26. In the Petition, the Companies stated that they received a waiver of the 120 days of the Historic Test Year filing until July 1, 2019 and needed to file by no later than July 1, 2019 pursuant to the waiver. Petition at ¶¶ 26-27. The Companies, however, have provided no reason why the Companies could not have filed a further request for waiver of the Historic Test Year filing in early June in order to meet the additional filing requirements for a request in excess of \$1 million.

For the reasons set forth above, filing the Petition concurrent with the base rate filings without the required information has unduly prejudiced the JSA. The JSA submits that pursuant

the Section 1.38 of the Commission's regulations, the Company's filing should be rejected because it is not compliant with the filing requirements set forth Section 53.53 of the Commission's regulations. See, 52 Pa. Code §§ 1.38, 53.53. The Company may refile once the Commission issues a determination on the Company's Petition. Alternatively, the Company may reduce its request below \$1 million to come into compliance with the regulations. In no event, however, should the 270 day statutory period begin to run until a fully compliant filing has been made. The JSA respectfully request that given the time-sensitive nature of the issues presented in this Motion that the time period for Answers be shortened to ten (10) days and that the Commission rule on this Motion on an expedited basis.

II. CONCLUSION

The Joint Statutory Advocates submits that the Company's proposed distribution base rate filing in excess of \$1 million does not comply with the requirements set forth in 52 Pa. Code Section 53.53. Pursuant to Section 1.38 of the Commission's regulations, the Company's filing should, therefore, be rejected until such time that the Company provides the required materials. The JSA respectfully request that given the time-sensitive nature of the issues presented in this Motion that the time period for Answers be shortened to ten (10) days and that the Commission rule on this Motion on an expedited basis.

Respectfully Submitted,

/s/ Christy M. Appleby
Christy M. Appleby, Esquire
Darryl A. Lawrence, Esquire
J.D. Moore, Esquire
Office of Consumer Advocate
5th Floor, Forum Place
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/s/ Sharon E. Webb
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DATE: July 22, 2019
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