



COMMONWEALTH OF PENNSYLVANIA

January 8, 2020

E-FILED

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. /
Docket No. R-2019-3008209**

Dear Secretary Chiavetta:

Enclosed please find the Main Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sharon E. Webb'.

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Sharon E. Webb
Assistant Small Business Advocate
Attorney ID# 73995**

**For: John R. Evans
Small Business Advocate**

**Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101**

Date: January 8, 2020

I. Introduction

A. Procedural History

On July 1, 2019, Valley Energy, Inc. (“Valley” or the “Company”), filed Supplement No. 49 to Tariff Gas-PA P.U.C. No. 2. The proposed Supplement No. 49, if approved, would have resulted in an increase in the annual distribution revenues of Valley by \$1,034,186 per year, a 20.6% increase.

In addition to its July 1, 2019 Tariff filing, Valley filed a Petition for Waiver of Filing Requirements Under 52 Pa. Code Section 53.53, seeking relief for filing required documentation, since Valley’s claim exceeded the \$1 million threshold rate increase as set forth in Section 53.53.¹ On July 22, 2019, the Office of Consumer Advocate (“OCA”), the Bureau of Investigation and Enforcement (“I&E”), and the Office of Small Business Advocate filed a joint motion to reject Valley’s July 1, 2019 base rate filing for failing to comply with the requirements Section 53.53. Subsequent to the joint motion, on July 29, 2019, Valley filed replacement schedules and tariff pages to revise its rate increase request.

The OSBA filed a Notice of Appearance on July 22, 2019. Subsequently the OSBA filed a Complaint and Public Statement on August 29, 2019.

The proceeding was assigned to Administrative Law Judges (“ALJs”) Steven Haas and Benjamin Myers. By order entered August 29, 2019, the Commission suspended the implementation of Supplement No. 49 until March 30, 2020, and instituted an investigation into the lawfulness, justness and reasonableness of the rates, rules and regulations proposed in Tariff Supplement No. 49. Subsequently, on September 9, 2019, Valley filed a Tariff Supplement to voluntarily suspend the effective date of rates for an additional thirty (30) days until on or about April 29, 2020. A prehearing conference was held September 13, 2019 at which a litigation schedule was established.

¹ 52 Pa. Code §53.53

Pursuant to the procedural schedule, the OSBA served the Direct Testimony of Brian Kalcic on October 15, 2019. The OSBA served the Surrebuttal Testimony of Mr. Kalcic on December 4, 2019.

On December 16 and 17, 2019, Evidentiary Hearings were held before ALJs Haas and Myers.

The OSBA submits this Main Brief in accordance with the litigation schedule established at the prehearing conference and as modified by the ALJs via email on December 31, 2019.

B. Legal Standards

Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.”

The burden of proof to establish the justness and reasonableness of every element of the utility’s rate increase rests solely upon the public utility. 66 Pa. C.S. § 315(a). “It is well-established that the evidence adduced by a utility to meet this burden must be substantial.” *Lower Frederick Township v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

Although the burden of proof remains with the public utility throughout the rate proceeding, when a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Order entered July 17, 2008). “Section 315(a) of the Code, 66 Pa. C.S. § 315(a), applies since this is a proceeding on Commission Motion. However, after the utility establishes a prima facie case, the burden of going forward or the burden of persuasion shifts to the other parties to rebut the prima facie case.” *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007), at 12.

Furthermore, Section 523 of the Public Utility Code, 66 Pa. C.S. § 523, requires the Commission to “consider . . . the efficiency, effectiveness and adequacy of service of each utility when determining

just and reasonable rates.” In exchange for customers paying rates for service, which include the cost of utility plant in service and a rate of return, a public utility is obligated to provide safe, adequate and reasonable service. “[I]n exchange for the utility’s provision of safe, adequate and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return for the utility’s investors . . . In return for providing safe and adequate service, the utility is entitled to recover, through rates, these enumerated costs.” *Pa. PUC v. Pennsylvania Gas & Water Co.*, 61 Pa. PUC 409 (1986), at 415-16. *See also* 66 Pa. C.S. § 1501. As a result, the legislature has given the Commission discretionary authority to deny a proposed rate increase, in whole or in part, if the Commission finds “that the service rendered by the public utility is inadequate.” 66 Pa. C.S. § 526(a).

II. Summary of Argument

The OSBA opposes the Company’s proposal to add a third method/option for determining the amount of net capital investment the Company will contribute toward a service extension project (*i.e.*, Facilities Expansion Policy). Under the Company’s proposed third method, Valley would contribute “up to the Company’s average cost of 200 feet of service and/or main extension of new installations for the 12 months ended September 30 of the previous year.”² The Company’s proposal is unreasonable in that its adoption would lead to shifting a portion of the actual cost of extending service from customer applicants to general ratepayers, by reducing the applicants’ otherwise applicable contributions in aid of construction (“CIAC”).³ Such proposal, if adopted, would have the effect of creating a subsidy paid by general ratepayers for individual customer applicants, which creates an unreasonable (and undefined) shift in costs between customer classes, results in an unreasonable

² See Fourth Revised Page No. 27 of Valley’s proposed tariff.

³ OSBA Statement No. 1, at 9.

prejudice to other ratepayers, and violates cost causation principles.⁴ Additionally, the Company's current Facilities Expansion Policy already provides applicates with a uniform footage allowance (200-foot), and no further modification to such policy is warranted . Therefore, the Company's proposed modification to its Facilities Expansion Policy should be rejected as unreasonable and discriminatory.

III. Issues Resolved Among the Parties

IV. Rate Base

The OSBA did not submit direct testimony relating to any revenue requirement issues in this proceeding. The OSBA did submit direct testimony on revenue allocation which reflects Valley's full rate request in this proceeding. Any such reference is intended for comparison purposes only and should not be construed as a recommendation by the OSBA that the Commission grant the Company's request in whole or in part.

V. Revenues

The OSBA did not take a position on this issue.

VI. Expenses

The OSBA did not take a position on this issue.

VII. Fair Rate of Return

The OSBA did not take a position on this issue.

VIII. Taxes

The OSBA did not take a position on this issue.

⁴ OSBA Statement No. 1-S, at 4.

IX. Customer Rate Structure

A. Allocated Cost of Service Study

The Company did not sponsor a class cost-of-service study in this proceeding.

B. Revenue Allocation

Mr. Kalcic testified that Valley's proposed revenue allocation reflects an across-the-board increase for all rate classes, excluding contract customers.⁵ Mr. Kalcic also observed:

The Company argues, in part, that: 1) the composition of firm sales (ccf) has been relatively stable over time across rate classes; 2) a uniform rate increase is the simplest to implement and one that is most acceptable to ratepayers; and 3) a class cost-of-service study ("COSS") (which would be used to guide the development of an alternative class revenue allocation) would be expensive and time consuming to produce.⁶

Absent class cost-of-service information, Mr. Kalcic determined that there is no cost basis to assign non-uniform increases to individual classes, and concluded that Valley's proposal to assign uniform increases to rate classes was appropriate.⁷

C. Rate Design

Absent class cost-of-service information, Mr. Kalcic determined that there is no cost basis to assign non-uniform increases to individual rate elements, and concluded that Valley's proposal to assign uniform increases to individual distribution rate elements was appropriate.⁸

⁵ OSBA Statement No. 1 at 3.

⁶ OSBA Statement No. 1 at 3.

⁷ OSBA Statement No. 1 at 4.

⁸ OSBA Statement No. 1 at 5.

D. Scale Back

As Mr. Kalcic confirmed, Valley has proposed an across-the-board increase of 21.6% to all rate classes, excluding contract customers⁹ In the event the Commission awards Valley an increase less than the full request, the OSBA's recommends that the class increases shown in column 3, lines 1-11 of Schedule BK-1(V), be reduced proportionally.

E. Summary

X. Miscellaneous Issues

1. Valley's Facilities Expansion Policy

Valley has proposed a change to its existing Tariff Rule 4(I) pertaining to main and service line extensions. Mr. Kalcic summarized the Company's current provision:

Under the Company's current Tariff Rule 4(I), Valley will make a net capital investment in new or upgraded facilities for a residential applicant (i) not to exceed 6 times the customer's estimated base annual revenue ("EBAR"), or (ii) up to the cost of 200 feet of service and/or main extension.¹⁰ In the case of a non-residential applicant, Valley will undertake a net capital investment in new or upgraded facilities (i) not to exceed 4.5 times the customer's EBAR, or (ii) up to the cost of 200 feet of service and/or main extension.¹¹

If the cost of an applicant's main extension and service line exceeds the Company's allowable investment amount, as determined above, Valley requires the applicant to make an upfront payment of that difference in the form of a contribution in aid of construction ("CIAC"), before the Company will undertake the service extension project.¹²

Further Mr. Kalcic explained the rationale for including a CIAC in Valley's extension policy:

An uneconomic extension project may be defined as one that, absent a CIAC, would not generate sufficient base revenues to recover the cost of extending natural gas service to a new customer over a reasonable period of

⁹ OSBA Statement No. 1 at 4.

¹⁰ OSBA Statement No. 1 at 5, *citing* Valley Tariff, Rule 4(I)(1)(a)

¹¹ OSBA Statement No. 1 at 5, (*citation omitted*)

¹² OSBA Statement No. 1 at 5

time. Accordingly, a CIAC is intended to ensure that an extension project is economic from a general ratemaking perspective.¹³

Mr. Kalcic also explained the consequences of undertaking an uneconomic extension project, and how such action would have an adverse financial impact on the Company's other ratepayers. As Mr. Kalcic noted:

In that case, in spite of the fact that the project was uneconomic, Valley would include the full cost of the project in rate base and recover 100% of its project-related revenue requirement from general ratepayers over the service life of the extension facilities. As such, existing (general) ratepayers would subsidize the cost of providing natural gas service to new customers.¹⁴

Valley proposes to modify its existing service extension policy and add a third option for determining the amount of net capital investment that Valley would contribute towards a line extension.

Mr. Kalcic summarized the proposal as follows:

Valley is proposing to *add* a third method/option for determining the amount of net capital investment the Company will contribute toward a service extension project. Under the Company's proposed third method, Valley would contribute "up to the Company's average cost of 200 feet of service and/or main extension of new installations for the 12 months ended September 30 of the previous year."¹⁵

The Company's proposed third method would allow the Company to install facilities in excess of 200 feet (without requiring a CIAC) in circumstances where the total installation cost is less than or equal to the Company's average allowable investment amount (for a 200 ft. extension) from the previous year (e.g., \$6,557 in 2018).¹⁶

¹³ OSBA Statement No. 1 at 5

¹⁴ OSBA Statement No. 1 at 6

¹⁵ See Fourth Revised Page No. 27 of Valley's proposed tariff.

¹⁶ OSBA Statement No. 1 at 7

A. The Company's Proposal Violates Cost Causation Principles

The rationale behind the Company's proposal to modify its existing policy is based on Valley's claim that the current method of determining the allowable investment is inequitable.¹⁷ In the Company's view, the current service extension policy does not treat customers with different (unit) installation costs equitably. However, as long as the Company's unit installation costs vary across new installations, it is inevitable that some customers will receive a greater (or lesser) dollar investment allowance under a service extension policy that provides for a fixed allowance of 200 feet. Indeed, Mr. Kalcic testified that one should expect new customers to qualify for different allowable investment levels, whether due to differences in customer EBAR revenue credits or unit installation cost differences.¹⁸

Since Valley's proposal would permit the Company to install service extension facilities in excess of 200 feet (without requiring a CIAC) in certain circumstances, the Company's proposal would effectively raise its existing proxy EBAR credit above the cost of 200 feet of service and/or main extension. However, Valley has provided no evidence to suggest that raising its allowable investment level is cost justified, or that doing so would ensure that its completed service extension projects remain economic.¹⁹ In short, the Company's proposal to reduce the required level of CIACs going forward undermines the purpose of a CIAC, which is to offset that part of the cost of an extension that is not otherwise supported by an applicant's expected revenue stream.²⁰

¹⁷ OSBA Statement No. 1 at 7.

¹⁸ OSBA Statement No. 1 at 9.

¹⁹ *Id.*

²⁰ *Id.*

The OSBA opposes the Company's proposed modifications to its Main Line Extension Policy because the proposal would shift a portion of the cost of main extensions from individual customer applicants of any class to general ratepayers, compared to Valley's existing extension policy.²¹ Adoption of the proposed modification would not lower the Company's cost of extending service to applicants, it merely would excuse the customer applicant from paying a portion of that cost and transfer the responsibility for that cost to existing (general) ratepayers thereby creating a subsidy.

Cost causation is a basic tenant in utility law ratemaking.²² The Commonwealth Court of Pennsylvania unambiguously decided that the cost of service should be the "polestar" criterion for rate-setting. *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006), *allocator denied*, 916 A.2d 1104 (Pa. 2007). It is fundamentally unfair to force a customer to pay for a cost which that customer did not cause or from which that customer does not receive a benefit. Section 1304 of Pennsylvania Public Utility Code prohibits public utilities from making or granting an unreasonable preference in ratemaking to any person or subjecting any person or corporation to any unreasonable prejudice or disadvantage. 66 Pa. C.S. § 1304. To require general ratepayers to pay a portion of customer applicants' main line extension projects is discriminatory, and subjects general ratepayers to an unreasonable disadvantage in violation of 66 Pa. C.S. § 1304. Imposing costs caused by

²¹ OSBA Statement No. 1, at 6.

²² Recently, in its Proposed Policy Statement Order, at Docket No. M-2015-2518883, the Commission proposed guidelines for specific issues that the Commission will consider in reviewing the rates and proposed rate structures filed by fixed utilities. Specifically, the Commission proposed the following language for Section 69.3302: "In determining just and reasonable distribution rates...the Commission will consider, among other relevant factors: (1) How rates align revenues with cost causation principles as to both fixed and variable costs." Proposed Policy Statement Order, entered May 23, 2018, at 27, Annex A. Although the final decision on this docket is still pending, the Proposed Policy Statement Order illustrates the Commission's recognition of the vital role cost causation plays in utility ratemaking and demonstrates the Commission's preference for cost causation to be considered when evaluating the reasonableness of rates.

specific customer (both residential and non-residential) main line extensions on general ratepayers is discriminatory ratemaking and violates 66 Pa. C.S. § 1304; therefore, the Company's proposal to modify its Main Line Extension Policy should be denied.

B. The Company's Proposal Impermissibly Creates a Cross-Class Subsidy

The Company's proposal also violates the principles of eliminating cross-class subsidization. *Lloyd*, 904 A.2d at 1019-1021. The Company's proposal creates a subsidy for applicants seeking main line extensions by general ratepayers.

The Company's proposal to have general ratepayers pay a portion of the cost of main line extensions for certain customer applicants should be rejected because it creates a potential cross-class subsidization.


XI. Conclusion

Wherefore, based upon this Main Brief and the written testimony of the OSBA, the OSBA respectfully requests that the ALJs and the Commission decide these specific issues, as follows:

Apply an across-the-board proportional scaleback to the increases of all rate classes should the Commission award less than full amount of the Company's requested revenue;

Reject Valley's proposal to modify its existing Facilities Expansion Policy.

Respectfully submitted,



Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

For: John R. Evans
Small Business Advocate

Office of Small Business Advocate
Forum Place
555 Walnut Street, First Floor
Harrisburg, PA 17101

Dated: January 8, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Steven K. Haas
The Honorable Benjamin J. Myers
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
sthaas@pa.gov
benmyers@pa.gov

Christy M. Appleby, Esquire
Aron J. Beatty, Esquire
Darryl A. Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101
CAappleby@paoca.org
DLawrence@paoca.org
ABeatty@paoca.org
(Counsel for OCA)


Larry E. Cole
74 E. Laurel Street
Bradford, PA 18832
Larryc41@frontier.com

John M. Coogan, Esquire
Bureau of Investigation & Enforcement
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
jcoogan@pa.gov
(Counsel for BIE)

Jonathan P. Foster, Sr., Esq.
Jonathan P. Foster, Jr., Esq.
Foster Law Office
303 South Keystone Avenue
Sayre, PA 18840
Jonathan.Jr@fosterslawfirm.com
Jonathan.Sr@fosterslawfirm.com
(Solicitors for South Waverly Borough)
(Solicitors for Borough of Athens)

Pamela C. Polacek, Esquire
Adeolu A. Bakare, Esquire
Matthew L. Garber, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108
ppolacek@mcneeslaw.com
abakare@mcneeslaw.com
mgarber@mcneeslaw.com
(Counsel for Valley)

DATE: January 8, 2020



Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995