



COMMONWEALTH OF PENNSYLVANIA

January 22, 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. Citizens' Electric Company of Lewisburg
/ Docket No. R-2019-3008212**

Dear Secretary Chiavetta:

Enclosed please find the Reply 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 "S. 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-2019-3008212
	:	
Citizens' Electric Company of Lewisburg, PA	:	

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

Sharon E. Webb
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Attorney ID# 73995

For: John R. Evans
Small Business Advocate

Office of Small Business Advocate
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Date: January 22, 2020

I. Introduction

A. Procedural History

On July 1, 2019, Citizen's Electric Company of Lewisburg, PA ("Citizens' " or the "Company"), filed Supplement No. 132 to Tariff Electric-PA P.U.C. No. 14. The proposed Supplement No. 132, if approved, would provide for an increase in Citizens' annual distribution revenues of \$792,246 per year, a 16.5% increase.

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. 132 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. 132. Subsequently, on September 9, 2019, Citizen's 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.

Pursuant to the procedural schedule, the OSBA served the Direct Testimony of Brian Kalcic on October 15, 2019. On November 14, 2019, the OSBA served the Rebuttal Testimony of Mr. Kalcic. 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 and other parties filed their Main Briefs on January 8, 2020.

The OSBA submits this Reply Brief in accordance with the litigation schedule established at the prehearing conference and as modified by 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 Reply Argument

Among the contested matters, the OSBA will only address the following rate structure issues as raised in the Main Briefs of Citizens’ and the OCA: 1) class revenue allocation; 2) rate design for the GLP-1 class; and 3) revenue allocation scale back.

As argued in the OSBA’s Main Brief, the revenue allocation proposals of Citizens’ and the OCA fail to move all classes closer to cost of service, in violation of *Lloyd*, and should be rejected. In its place, the ALJs and the Commission should adopt the OSBA’s recommended revenue allocation, which provides for greater movement toward cost of service for Rates RS, SH, GLP-1 and OL than under Citizens’ or the OCA’s proposal.

The Company’s proposed rate design for the GLP-1 class is reasonable, but should be adjusted in accordance with the OSBA’s recommendation in the event the GLP-1 class is assigned a final increase less than proposed by the Company.

The OSBA's revenue allocation scale back proposal properly excludes the MBL class since the class fails to exhibit movement toward cost of service at the maximum increase assigned to classes under Citizens' and the OSBA's revenue allocation proposal.

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 and rate design which reflect Citizens' 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.

IX. Customer Rate Structure

A. Allocated Cost of Service Study

The OSBA did not contest the Company's cost-of-service study methodology.

B. Revenue Allocation

Reply to Citizens'

Citizens' maintains that its proposed revenue allocation, which includes a decrease for rate class GLP-3, is reasonable and appropriate to bring all classes closer to cost of service.¹ In support of its argument, the company cites to page 15 of Citizens Statement No. 1-R. the rebuttal testimony of Howard S. Gorman. On page 15, Mr. Gorman disagrees with the OSBA's measurement toward cost of service only in absolute dollar amounts. However, as OSBA witness Brian Kalcic explained in his surrebuttal testimony, Mr. Gorman's argument, in fact, explains why the Company's rate of return metric is deficient, *not* the dollar subsidy metric used by the OSBA.² Specifically, Mr. Kalcic responded as follows:

Table 1S below shows that the average subsidy paid by Rate GLP-1 customers would increase from \$97.85 to \$100.97 per year under Citizens' proposed revenue allocation, an increase of 3.2%. According to the subsidy paid metric, Rate GLP-1 customers would be clearly worse off (i.e., move away from cost of service) under Citizen's proposal because the dollar amount each customer would be required to pay as a subsidy to other classes would increase.

Table 1S
Average Annual Subsidy Paid by GLP-1 Customers,
Under Present and Company Proposed Rates

Rate GLP-1	Present Rates	Company Proposed Rates
	(1)	(2)
Annual Subsidy	\$106,067	\$109,447
No. of Customers	1,084	1,084
Avg. Subsidy per Cust.	\$97.85	\$100.97

Source: Sch. BK-2(C), pg. 1 & Exh __ (HSG-1), Sch. B3-1, pg. 1

¹ Citizens' Main Brief at 106.

² OSBA Statement No. 1-S at 2 (*emphasis added*).

One may contrast the above conclusion with that suggested by Table 2S below, which evaluates the Company's proposed Rate GLP-1 increase from a relative rate of return perspective. Table 2S shows that: 1) the average annual amount paid by Rate GLP-1 customers for distribution service would increase from \$845.95 to \$974.13 per year under Citizens' revenue allocation proposal, an increase of 15.2%; and 2) the average annual dollar subsidy paid, while increasing, would decrease from 11.6% to 10.4%. *as a percent of a Rate GLP-1 customer's bill*. Mr. Gorman's preferred relative rate of return metric equates movement toward cost of service as a reduction in a class's subsidy as a percentage of the total revenues paid by the class. Therefore, under the relative rate of return metric, Rate GLP-1 customers are said to be better off under Citizens' revenue allocation proposal.

Table 2S

Average Annual Subsidy Paid by GLP-1 Customers,
Under Present and Company Proposed Rates

Rate GLP-1	Present Rates	Company Proposed Rates
	(1)	(2)
Annual Revenues	\$917,008	\$1,055,954
No. of Customers	1,084	1,084
Avg. Annual Bill per Cust.	\$845.95	\$974.13
Avg. Subsidy per Cust.	\$97.85	\$100.97
Subsidy as % of Bill	11.6%	10.4%

Source: Sch. BK-2(C), pg. 2 & Exh__ (HSG-1), Sch. B3-1, pg. 1³

In spite of Mr. Gorman's claim to the contrary, GLP-1 customers are *not* better off under Citizens' revenue allocation proposal because the average GLP-1 customer must provide a greater annual dollar subsidy to other customers at proposed rates than at present rates.⁴

Mr. Kalcic concluded that the Company's reliance on the relative rate of return metric is misplaced because it relies upon changes in relative rather than absolute class subsidies to determine movement towards cost of service. As Mr. Kalcic testified, the size of the Company's proposed GLP-1

³ OSBA Statement No. 1-S at 3-4

⁴ OSBA Statement No. 1-S at 4

increase (15.2%) masks the fact that the class's proposed subsidy is increasing by 3.2%. Further as Mr. Kalcic testified:

The relative rate of return metric is deficient. To paraphrase Mr. Gorman, *the relative rate of return metric* is not necessarily an accurate measure of movement toward cost of service because it does not account for the size of the overall increase assigned to a class. In certain instances, a large class increase can mask the fact that the class's dollar subsidy is increasing, even though its relative rate of return moves closer to the average.⁵

Lastly, the Company argues that besides a "small difference in the MBL class," the Company's revenue allocation proposal met Mr. Kalcic's test.⁶ However, as Mr. Kalcic testified that is not correct. Mr. Kalcic specifically responded to Mr. Gorman's argument:

The schedule referenced by Mr. Gorman measures changes in each class's *net income* subsidy under present and Company proposed rates. By definition, the net income level provided by a class excludes income taxes. As such, the net income subsidies examined by Mr. Gorman exclude income taxes at present and Company proposed rates. By way of contrast, the class *revenue* subsidies shown in Schedule BK-2(C) reflect the total *net income* and *income tax* related revenue surpluses/shortfalls of each class.

Since the Company has a greater income tax liability at proposed rates than present rates, the changes in net income subsidies referenced by Mr. Gorman are not an accurate measure of the changes in total class revenue subsidies and, therefore, are not an accurate of movement toward cost of service.⁷

Reply to OCA

The OCA maintains that Mr. Mierzwa's proposed allocation, which (i) eliminates the Company's proposed rate decrease for Rate GLP-3 and (ii) proportionally assigns the resulting rate relief to Rates RS, SH and MBL, is appropriate.⁸ However, as Mr. Kalcic explained in his

⁵ OSBA Statement No. 1-S at 6

⁶ Citizens' Main Brief at 107.

⁷ OSBA Statement No. 1-S at 6-7

⁸ OCA Main Brief at 79-80.

rebuttal testimony, the OCA's proposal fails to move rate classes closer to their indicated cost-based revenue levels.⁹

Mr. Kalcic compared the degree of movement toward cost of service under the OSBA and OCA revenue allocation proposals in Table 1R below.

Table 1R
Comparison of OSBA and OCA Proposed
Movement Toward Cost of Service
(\$000)

Class	Present Revenue Subsidy	OSBA Proposed Subsidy	OSBA % Reduction	OCA Proposed Subsidy	OCA % Reduction
	(1)	(2)	(3)	(4)	(5)
RS	(\$492.0)	(\$295.8)	39.9%	(\$357.3)	27.4%
SH	(\$3.9)	(\$2.4)	38.9%	(\$3.2)	18.1%
GLP-1	\$106.1	\$53.3	49.8%	\$109.5	-3.2%
GLP-3	\$409.7	\$289.9	29.3%	\$289.9	29.3%
MBL	(\$36.7)	(\$49.2)	-34.3%	(\$49.5)	-34.9%
OL	\$16.8	\$4.3	74.5%	\$10.6	36.6%
TOTAL	\$0.0	\$0.0	-	\$0.0	-

Source: Schedules BK-4(C) & BK-2R(C).¹⁰

Per column 3 of Table 1R, the OSBA's proposed revenue allocation moves (i) rate classes RS, SH, GLP-1, GLP-3 and OL toward cost of service, and (ii) Rate MBL away from cost of service.¹¹

⁹ OSBA Statement No. 1-R at 3-4.

¹⁰ *Id.*

¹¹ As discussed on page 9 of OSBA Statement No. 1, the OSBA decided against moving Rate MBL toward cost of service since doing so would require assigning the class an increase in excess of 97.6%.

Per column 5 of Table 1R, the OCA's proposed revenue allocation moves (i) rate classes RS, SH, GLP-3 and OL toward cost of service, and (ii) Rates GLP-1 and MBL away from cost of service.

In summary, only the outcomes for Rates GLP-3 and MBL are the same/similar under the OSBA and OCA revenue allocation proposals. In all other instances, the OSBA's proposal would move Citizens' rate classes measurably closer to cost of service than under the OCA's proposal.

In summary, the revenue allocation proposed by Mr. Kalcic complies with the decision of the Commonwealth Court in *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006). In *Lloyd*, the Court stated that cost of service is the "polestar" guiding rates cases such as this one. Therefore, in recognition of the cost-based outcomes underpinning Mr. Kalcic's proposed revenue allocation, and considering the legal requirements of *Lloyd*, the OSBA respectfully submits that the ALJs and Commission should adopt the OSBA revenue allocation.

C. Rate Design

1. Summary of Proposed Rate Design

The OSBA did not take issue with Citizen's proposed rate design. As Mr. Kalcic observed, the Company's proposed GLP-1 customer charge of \$15.00 per month is consistent with the Company's customer cost benchmark analysis.¹²

However, in the event that the Commission assigns a lower increase than proposed by the Company, Mr. Kalcic recommended that (i) the proposed GLP-1 customer charge remain unchanged at \$15.00 per month, and (ii) the current GLP-1 energy and demand charges receive a

¹² OSBA Main Brief at 9.

uniform (residual) increase so as to recover the final class revenue target.¹³ Citizens' did not address the OSBA's proposed rate design scaleback for Rate GLP-1 in its Main Brief.

Consequently, the OSBA respectfully requests that the ALJs and the Commission adopt the rate design proposal set forth in Citizens' filing taking into consideration the modification recommended by Mr. Kalcic in the event of an awarded increase that is lower than proposed by the Company.

D. Scale Back

The Company recommends a proportional scaleback of both class increases and decreases.¹⁴ The OCA recommends a proportional scaleback to all class increases.¹⁵ In contrast, in the event that the Commission awards Citizens' an increase less than the \$0.793 million shown on line 7 of Schedule BK-3(C), the OSBA recommends that the class increases shown in column 3 of Schedule BK-3(C), excluding rate MBL, be scaled back proportionally. As set forth in the OSBA's Main Brief, Rate MBL should be excluded from any scale back since the class fails to exhibit any movement toward cost of service at its (maximum) assigned increase of 26.2%.

E. Summary

X. Miscellaneous Issues

N/A

¹³ OSBA Main Brief at 9.

¹⁴ Citizens' Main Brief at 115.

¹⁵ OCA Main Brief at 92.

XI. Conclusion

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

Reject Citizens' proposed class revenue allocation;

Adopt Mr. Kalcic's recommended revenue allocation for the Company's rate classes;

Adopt the Company's proposed rate design for the GLP-1 rate class, as modified by Mr.

Kalcic in the event of an awarded increase that is lower than proposed by the Company;

and

Adopt Mr. Kalcic's revenue allocation scale back proposal.

Respectfully submitted,



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Dated: January 22, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
 :
 v. : **Docket No. R-2019-3008212**
 :
 Citizens' Electric Company of Lewisburg :

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).

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