



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. Wellsboro Electric Company /  
Docket No. R-2019-3008208**

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.**

**WELLSBORO ELECTRIC COMPANY**

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**DOCKET NO. R-2019-3008208**

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

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**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, 1<sup>st</sup> Floor  
Harrisburg, PA 17101**

## **I. Introduction**

### **A. Procedural History**

On July 1, 2019, Wellsboro Electric Company (“Wellsboro” or the “Company”), filed Supplement No. 125 to Tariff Electric-PA P.U.C. No. 8. The proposed Supplement No. 125, if approved, would have resulted in an increase in the annual distribution revenues of Wellsboro by \$1,419,610 per year, a 27.7% increase.

In addition to its July 1, 2019 Tariff filing, Wellsboro filed a Petition for Waiver of Filing Requirements Under 52 Pa. Code Section 53.53, seeking relief for filing required documentation, since Wellsboro’s claim exceeded the \$1 million threshold rate increase as set forth in Section 53.53.<sup>1</sup> 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 Wellsboro’s July 1, 2019 base rate filing for failing to comply with the requirements Section 53.53. Subsequent to the joint motion, on July 31, 2019, Wellsboro 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. 125 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, Wellsboro filed a Tariff Supplement

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<sup>1</sup> 52 Pa. Code §53.53

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 submitted 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 Brief of the utility: 1) class revenue allocation; 2) rate design for the NRS, NRH, CS and CSH classes; and 3) revenue allocation scale back.

As argued in the OSBA's Main Brief, Wellsboro's proposed revenue allocation moves all classes closer to cost of service, except for the small non-residential heating classes, which otherwise receive the Company's maximum proposed class increase. Nevertheless, the ALJs and the Commission should adopt the OSBA's recommended revenue allocation, which eliminates the Company's proposed rate decrease to the POL class.

The Company's proposed customer charges for the NRS, NRH, CS and CSH service classes are not supported by Wellsboro's own customer cost analysis, and should be rejected by the ALJs and Commission. As argued below, the Company's existing customer charges for the NRS, NRH, CS and CSH classes should remain unchanged, with the balance of each class's assigned revenue requirement recovered in the class's respective energy and/or demand charge.

As in the OSBA's testimony and Main Brief, Rates RSAE, NRH and CSH exhibit little or no movement toward cost of service at the maximum increase assigned to classes under Wellsboro's revenue allocation proposal. Accordingly, the ALJs and Commission should adopt the OSBA's revenue allocation scale back proposal, which properly excludes the RSAE, NRH and CSH classes.

### **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 Wellsboro's "scaled back" rate request of just under \$1.0 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 Wellsboro's cost-of-service study methodology.

**B. Revenue Allocation**

Wellsboro maintains that its proposed revenue allocation, which includes a decrease for rate class POL, is reasonable and appropriate to bring all classes closer to cost of service.<sup>2</sup> The OSBA was generally supportive with the Company's revenue allocation proposal, concluding that all classes would move closer to cost of service under the Company's proposal with the exception of the Company's small non-residential heating classes (*i.e.*, Rates NRH and CSH).<sup>3</sup> As a result, the OSBA's recommended revenue allocation made slight adjustments to the Company's proposed increases to Rates POL, RS, and IS.<sup>4</sup>

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<sup>2</sup> Wellsboro Main Brief at 101

<sup>3</sup> OSBA Main Brief at 6

<sup>4</sup> OSBA Main Brief at 8 and OSBA Statement No. 1-S at 2

As support for recommended decrease to the rate POL, Wellsboro cites the Commission's decision in *UGI Utilities, Inc. – Electric Division* granting a decrease to a rate class.<sup>5</sup> Wellsboro's reliance on the UGI decision is misplaced. The Commission's decision in UGI was based on a general rejection of an alternative cost of service study and should not be taken as a general endorsement of rate decreases.<sup>6</sup>

Also in support of its proposed decrease for rate POL, Wellsboro cites *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006). While the OSBA agrees that *Lloyd* confirms that cost of service is the "polestar" guiding rates cases such as this one, the OSBA notes that the POL class would move closer to cost of service under the OSBA's revenue allocation proposal, where Rate POL would receive no increase rather than a rate decrease.<sup>7</sup> Therefore, in recognition of the cost-based nature of Mr. Kalcic's proposed modifications to Wellsboro's revenue allocation, and considering the legal requirements of *Lloyd*, the OSBA respectfully submits that the ALJs and Commission should adopt the Company's proposed revenue allocation as modified by the OSBA.

## **C. Rate Design**

### **1. Summary of Proposed Rate Design**

The OSBA's response to the Company's proposed rate design in its Main Brief.<sup>8</sup>

## **D. Scale Back**

The Company recommends a proportional scaleback of both class increases and decreases.<sup>9</sup> The OCA and I&E recommend a proportional scaleback to all class increases.<sup>10</sup> In

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<sup>5</sup> Wellsboro Main Brief at 101.

<sup>6</sup> *UGI Utilities, Inc.-Electric Division*, at 164-65. (Docket No. 2017-2650058)

<sup>7</sup> OSBA Statement No. 1-S at 3 See also BK-1R (W), attached to OSBA Statement No. 1-R.

<sup>8</sup> OSBA Main Brief at 10-12

<sup>9</sup> Wellsboro Main Brief at 111

<sup>10</sup> OCA Main Brief at 92, and I&E Main Brief at 68



contrast, in the event the Commission awards Wellsboro an increase less than the \$0.999 million shown on line 11 of Schedule BK-3(W), the OSBA recommends that the class increases shown in column 2 of Schedule BK-3(W), excluding Rates RSAE, NRH, and CSH, be reduced proportionally. Rates RSAE, NRH and CSH should be excluded from any scale back since these class exhibit little or no movement toward cost of service at the Company's proposed maximum increase.<sup>11</sup>

**E. Summary**

**X. Miscellaneous Issues**

N/A

**XI. Conclusion**

Wherefore, based upon the OSBA's Main Brief, 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:

Adopt Mr. Kalcic's recommended modifications to the Company's proposed revenue allocation;


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<sup>11</sup> OSBA Main Brief at 9 and OSBA Statement No 1-S at 9.

Reject the Company's proposed rate design, specifically its proposed customer charges for the NRS, NRH, CS, and CSH rate classes; and

Adopt Mr. Kalcic's revenue allocation scale back proposal, which excludes any scale back to the proposed increases to the RSAE, NRH and CSH classes.

Respectfully submitted,

  
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Dated: January 22, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission** :  
 :  
 v. : **Docket No. R-2019-3008208**  
 :  
**Wellsboro Electric Company** :

**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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DATE: January 22, 2020

  
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