



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. Valley Energy, Inc. /
Docket No. R-2019-3008209**

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.

VALLEY ENERGY, INC.

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DOCKET NO. R-2019-3008209

**REPLY 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 22, 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 Wavier 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 and other parties submitted 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 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 Reply Argument

Among the contested matters, the OSBA will only address the issue of Valley’s proposed modification to its Facilities Extension Policy.

As argued in the OSBA’s Main Brief, 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’

² OSBA Main Brief at 4, *See also* Fourth Revised Page No. 27 of Valley’s proposed tariff.

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 prejudice to other ratepayers, and violates cost causation principles.⁴ Additionally, the Company’s current Facilities Expansion Policy already provides applicants with a uniform footage allowance (200-feet), 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’s response to the Company’s proposed rate base is in its Main Brief.⁵

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

³ OSBA Main Brief at 4.

⁴ OSBA Main Brief at 5.

⁵ OSBA Main Brief at 5.

The OSBA did not take a position on this issue.

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

The OSBA's response to the Company's proposed revenue allocation is in its Main Brief.⁶

C. Rate Design

The OSBA's response to the Company's proposed rate design is in its Main Brief.⁷

D. Scale Back

The OSBA's response to the Company's proposed scaleback is in its Main Brief.⁸

E. Summary

X. Miscellaneous Issues

1. Valley's Facilities Expansion Policy

Valley maintains that its proposed addition of a third method for calculating the Company's portion of service line extension costs should be approved.⁹ 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

⁶ OSBA Main Brief at 6

⁷ OSBA Main Brief at 6.

⁸ OSBA Main Brief at 7

⁹ Valley Main Brief at 96

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.¹⁰

In its Main Brief, Valley argues that the OSBA's arguments should be disregarded because the OSBA offered no empirical analysis supporting the association between the 200 feet of service line or main extension and the EBAR from customers.¹¹ However, the burden to provide empirical data and analysis in this circumstance is not the OSBA's burden. As Mr. Kalcic testified:

Valley's proposal would, in fact, effectively raise the Company's existing proxy estimated base annual revenue ("EBAR") credit above the cost of 200 feet of service and/or main extension. Given the absence of *any* evidence proffered by the Company that raising the effective EBAR credit is cost-justified from a general ratepayer perspective, the Company's proposed facilities expansion modification is without foundation. The Commission should reject it.

As to Mr. Rogers' argument that Valley's proposal would not raise the maximum amount Valley can spend on any *individual* customer, I would note that the issue at hand has nothing to do with whether Valley's proposal would raise the maximum allowable individual investment amount. (The Company's maximum allowable investment amount is currently determined by the highest cost the Company incurs to install 200 feet of mains/service lines to a given applicant.) Rather, the issue is: Would Valley's proposal otherwise increase the aggregate amount the Company could invest in service extensions without requiring a CIAC from applicants? The answer to that question is unequivocally yes. However, raising the Company's aggregate permissible investment amount is inappropriate in the absence of evidence that raising the aggregate investment allowance would not result general ratepayers subsidizing service extension projects.¹²

Further, OCA Witness Mr. Mierzwa, also argues that Mr. Kalcic has not provided any evidence that the additional extension projects facilitated by Valley's proposal would not be cost-justified or economic. However, as Mr. Kalcic responded in testimony:

Since Valley is the sponsor of the proposed change in its service extension policy, it is the *Company's* responsibility to provide evidence that its

¹⁰ OSBA Main Brief at 9.

¹¹ Valley Main Brief at 97

¹² OSBA Statement No. 1-S at 1

proposal is cost justified. As I previously explained, Valley's proposal would permit an increase in the aggregate amount the Company could invest in service extensions without requiring a CIAC from applicants. However, it is not appropriate to increase the Company's permissible extension allowance absent evidence that the resulting service extensions would remain economic. Valley has provided no evidence to that effect.¹³

Lastly, the OCA argues that Valley's proposal recognizes the benefits that low-cost gas can provide to residential ratepayers, and would facilitate the extension of natural gas service to unserved and underserved areas.¹⁴ However, as set forth in the testimony of Mr. Kalcic, the Company's *current* facilities expansion policy is already significantly more generous to a residential applicant than Peoples' newly approved policy. As a result, there is no need to modify Valley's existing service extension policy in order to facilitate greater access to natural gas service.¹⁵

For the reasons explained above, and in the OSBA's Main Brief, the record shows that the Company's has not met its burden, its proposal is unsupported and should be rejected by the Commission.

¹³ OSBA Statement No. 1-S at 6

¹⁴ OCA Main Brief at 74.

¹⁵ OSBA Statement No. 1-S at 5

XI. Conclusion

Wherefore, based upon this Reply Brief, the 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,



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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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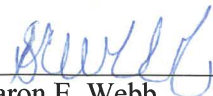
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DATE: January 22, 2020



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