



COMMONWEALTH OF PENNSYLVANIA

March 13, 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 Exceptions to the Recommended Decision, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in these proceedings, 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**

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**EXCEPTION  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Sharon E. Webb  
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Attorney ID No. 73995**

**Daniel G. Asmus  
Assistant Small Business Advocate  
Attorney ID No. 83789**

**For:**

**John R. Evans  
Small Business Advocate**

**Office of Small Business Advocate  
Forum Place  
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Harrisburg, PA 17101**

**Date: March 13, 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.<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 (“OSBA”) 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

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<sup>1</sup> 52 Pa. Code §53.53

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, at which time Mr. Kalcic's Direct, Rebuttal, and Surrebuttal Testimony was admitted into the record.

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

The OSBA files the following Exception in response to the Recommended Decision.

**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 Exception**

The OSBA avers that the ALJs erred in recommending approval of 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."<sup>2</sup> 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").<sup>3</sup> 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.<sup>4</sup> Additionally, the Company's current Main Line Extension Policy is reasonable and appropriate. Therefore, the OSBA respectfully requests that the Commission reject the Company's proposed modification to its Main Line Extension Policy as unreasonable and discriminatory.

### III. Exception

**Exception No. 1: The ALJs finding that Valley's proposed modification to its currently approved main extension policy should be approved because it addresses inequities in line extension costs in the Company's current tariff misses the mark and should be rejected.**

Recommended Decision: Pages 87-90  
OSBA Main Brief: Pages 5-10  
OSBA Reply Brief: Pages 3-8

The ALJs recommend that Valley's proposal to implement a third method for calculation Valley's portion of service line extension costs be approved because the proposal will address the

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<sup>2</sup> OSBA Main Brief at 4, *See also* Fourth Revised Page No. 27 of Valley's proposed tariff.

<sup>3</sup> OSBA Statement No. 1, at 7.

<sup>4</sup> OSBA Statement No. 1-S, at 6.

inequities in line extension costs present in Valley's current main extension policy.<sup>5</sup> The ALJs fail to provide any specific legal analysis in support of their finding, and instead appear to have relied on the Company's critique that the OSBA somehow failed to show that Valley's proposal was uneconomic.<sup>6</sup>

As a preliminary matter, Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), requires that "[i]n any proceeding . . . involving any proposed or existing rate of any public utility, . . . the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility." In rate proceedings, it is well established that the burden of proof does not shift to the parties challenging a rate request. The utility's burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one. *See Pennsylvania Public Utility Commission v. Aqua Pennsylvania, Inc. (formerly Pennsylvania Suburban Water Company)*, 2004 Pa. PUC LEXIS 39; 236 P.U.R.4th 218. Because Valley simply identified what it claims to be a problem but offered no valid economic argument or cost justification in support of modifying its existing service extension policy, the Company has failed to meet its burden of proof that its proposal is reasonable and appropriate. Therefore, Valley's request to modify its current line extension policy must be denied.

The ALJs' conclusion also ignores the OSBA's analysis and concerns about allowing the implementation of an uneconomic extension project and the potential adverse financial impact such a policy would have on Valley's other ratepayers.<sup>7</sup> There is no legal justification for permitting the potential harm and inequitable results caused by the

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<sup>5</sup> Recommended Decision at 90

<sup>6</sup> Recommended Decision at 89.

<sup>7</sup> OSBA Main Brief at 7

Company's proposed modification, and approved of Valley's proposal would constitute a clear violation of established ratemaking principles.<sup>8</sup> Moreover, the ALJs ruling flies in the face of cost causation principals as the Commonwealth Court unambiguously decided in the *Lloyd* decision.<sup>9</sup>

Lastly, Valley's current main extension policy is already significantly more generous to residential applicants than Peoples' newly approved policy.<sup>10</sup> The ALJs conclusion that Valley's proposed modification to its current main extension policy is needed to facilitate the expansion of natural gas facilities and service into underserved and underserved areas ignores this fact, and disregards the important role played by the CIAC in a utility's decision to extend natural gas service to new customers.

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<sup>8</sup> OSBA Main Brief at 8

<sup>9</sup> OSBA Main Brief at 10. *See also, Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006), *allocator denied*, 916 A.2d 1104 (Pa. 2007).

<sup>10</sup> OSBA Main Brief at 6



**XI. Conclusion**

Wherefore, the OSBA respectfully requests that the Commission adopt the OSBA's Exception, as set forth above, and revise the Recommended Decision accordingly.

Respectfully submitted,



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Dated: March 13, 2020

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**Pennsylvania Public Utility Commission** :  
: **Docket No. R-2019-3008209**  
v. :  
: **Valley Energy, Inc.** :  
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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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DATE: March 13, 2020

  
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