



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

March 23, 2020

Via Electronic Filing

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission v.
Wellsboro Electric Company
Supplement No. 125 to Tariff Electric – Pa. PUC No. 8
Docket No. R-2019-3008208
I&E Reply Exceptions

Dear Secretary Chiavetta,

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Reply Exceptions** in the above-captioned proceeding.

Copies are being served on parties of record as identified in the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service. I&E has informed all parties it will only provide electronic service, and has received no objections.*

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

John M. Coogan
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JMC/jfm
Enclosure

cc: Honorable Steven K. Haas (*ALJ, PUC Harrisburg – via E-Mail only*)
Honorable Benjamin J. Myers (*ALJ, PUC Harrisburg – via E-Mail only*)
Office of Special Assistants (*via E-Mail only RA-OSA@pa.gov*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY EXCEPTIONS
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

John M. Coogan
Prosecutor
PA Attorney ID No. 313920

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
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Dated: March 23, 2020

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I. INTRODUCTION

On February 28, 2020, Administrative Law Judges Steven K. Haas and Benjamin J. Myers (“ALJs”) issued a Recommended Decision in the above-captioned proceeding. On March 13, 2020, the Bureau of Investigation and Enforcement (“I&E”), Wellsboro Electric Company (“Wellsboro” or “Company”), and the Office of Consumer Advocate (“OCA”), filed Exceptions to the ALJs’ Recommended Decision. In response to Wellsboro’s and OCA’s Exceptions, I&E files these Reply Exceptions, addressing Wellsboro’s Exceptions Nos. 2, 5, 6, 7, 8, 9, and 10, and OCA Exception No. 10. For the reasons fully explained below, I&E respectfully requests the Commission deny these Exceptions.

II. I&E REPLY EXCEPTIONS

A. **I&E Reply to Wellsboro Exception No. 2: The ALJs correctly denied Wellsboro’s proposal to increase its FPFTY O&M expense based on annualization of 9-month FTY expense data**

Wellsboro continues to claim its FPFTY expense claim should simply constitute annualized 9-month FTY actual expenses, increased by a 3% inflation adjustment. I&E avers the ALJs correctly rejected this proposition that individual expense claims not be examined. The ALJs correctly stated Wellsboro has the burden of proof to establish the justness and reasonableness of each claim.¹ Wellsboro’s Exception asserts its burden of proof is satisfied here where it projects most recent available costs for each individual

¹ Recommended Decision, p. 24 (citing 66 Pa. C.S. §§ 315(a), 1308(d)).

account.² As explained in I&E's Main Brief, Wellsboro's proposal presents several serious problems. First, Wellsboro's position renders non-company parties' review of O&M expenses in a rate case essentially meaningless. Wellsboro provided updates to essentially all of its O&M expenses in rebuttal testimony.³ Wellsboro then points to the updates as a basis to invalidate non-company parties' O&M recommendations.⁴ Following Wellsboro's practice to its logical conclusion, the Company would simply be allowed to update all of its O&M expenses at hearings and any non-company position to the contrary would be summarily rejected.

Second, introducing new claims after non-company parties have addressed the companies' direct position is a violation of due process principles.⁵ The concern is simple: parties have not and will not have the opportunity to evaluate late-brought claims. To be clear, I&E's position did take into account Wellsboro's rebuttal testimony as it relates to specific claims I&E evaluated in direct testimony.⁶ But to voluminously and constantly change the Company's O&M position leaves non-company parties in a hopeless position as to issues not addressed in non-company direct testimony. Relatedly, there are clear Commission regulations that a party cannot introduce evidence in rebuttal phase that should have been included in the party's case-in-chief or substantially varies

² Wellsboro Exceptions, pp. 9-10.

³ Wellsboro Statement No. 1-R, p. 4.

⁴ Wellsboro's witnesses Howard S. Gorman, Byron Farnsworth, Jr., and Jill Campbell objected to I&E's recommended O&M adjustments generally. I&E Statement No. 1-SR, p. 5 (citing Wellsboro Statement No. 1-R, pp. 3-5; Wellsboro Statement No. 6-R, pp. 4-5; and Wellsboro Statement No. 5-R, pp. 2-3).

⁵ *See, e.g., Pa. P.U.C. v. City of Lancaster Sewer Fund*, 2007 WL 517134 (Pa. P.U.C. 2007) (Commission agreed with ALJ "new claims brought in on rebuttal are improper, unfair and a violation of due process").

⁶ *See* I&E Main Brief, pp. 17-27.

from the party's case-in-chief.⁷ Wellsboro's attempt to wholesale revise its O&M position in rebuttal testimony, rather than specifically respond to non-company parties' O&M adjustment recommendations, is a prohibited attempt to introduce evidence that should have been introduced in direct testimony.

In addition to being procedurally improper, Wellsboro's position creates factual inaccuracies. In rejoinder testimony, Wellsboro witness Howard S. Gorman confirms presentation of FPFTY O&M costs is based on an escalation of FTY expenses, and does not remove non-recurring costs and plant activities.⁸ But, as Wellsboro witness Gorman also correctly states, "the Company must support each claim made in its rate application."⁹ In direct testimony, I&E made recommendations regarding expenses not properly supported by the Company or properly calculated based on information provided by the Company and based on I&E witness D.C. Patel's analysis as an expert witness.¹⁰ As I&E witness Patel appropriately opines, an overall adjustment to O&M expenses is not a more accurate method of determining a Company's allowable O&M expenses.¹¹ Instead, the proper way to analyze a Company's overall O&M expenses is by analyzing individual expense claims.¹² Accordingly, I&E witness Patel recommended disallowance of the total change made to Administrative and General Expense of

⁷ 52 Pa. Code §§ 5.243(c)(2)-(3).

⁸ Tr., pp. 104-106.

⁹ Wellsboro Statement No. 1-R, p. 3.

¹⁰ I&E Statement No. 1-SR, p. 7.

¹¹ I&E Statement No. 1-SR, p. 7.

¹² I&E Statement No. 1-SR, p. 7.

\$204,093 (\$1,187,484 - \$983,291) made by Wellsboro witness Gorman's between direct and rebuttal testimony,¹³ and instead recommended individual expense adjustments.

It is also important to realize Wellsboro's argument would not be limited to this proceeding only. To the contrary, O&M expenses are a common point of dispute in rate cases. If the Commission allowed this practice here, it will set a very dangerous precedent that would likely be cited by any other utility company where O&M expenses are scrutinized. This will fatally handicap non-company parties' ability to evaluate individual expense accounts. Therefore, the Commission should accept the ALJs' recommendation and reject Wellsboro's attempt to wholesale revise its O&M expenses in rebuttal testimony, and should instead evaluate the merits of the non-company parties' O&M positions.

B. I&E Reply to Wellsboro Exception No. 5: The ALJs correctly rejected Wellsboro's full Miscellaneous Distribution Expense claim (Account 588)

The ALJs correctly found Wellsboro's support for this claim based on training new employees at an elevated pace is speculative in nature. However, Wellsboro's Exception claims it should not need to guarantee retirements will occur. Rather, the Company claims it has met its burden of proof for this expense as approximately half of its staff is eligible to retire within the next 10 years, and three employees are "going to be retired...in the next five years."¹⁴ I&E avers the ALJs correctly found the Company's reliance on a timeline of five to 10 years is speculative, and does not suffice to show

¹³ Wellsboro Exhibit HSG-1, Schedule C1 (W) and Exhibit HSG-1R, Schedule C1 (R).

¹⁴ Wellsboro Exceptions, p. 13.

employee turnover will occur at a recurring, accelerated rate. Additionally, as explained in I&E's Reply Brief, Wellsboro did not provide any specific evidence to support its claim, e.g., number of new employees expected to be trained, duration of training, and the basis for projected increased training expenses to be incurred in the FTY on an ongoing basis.¹⁵ Because Wellsboro has not demonstrated the ALJs erred, its Exception should be rejected.

C. I&E Reply to Wellsboro Exception No. 6: The ALJs correctly adopted I&E's recommended adjustment to Maintenance Supervision and Engineering Expense (Account 590)

The ALJs correctly found there is no evidence demonstrating that the FPFTY expense of an employee within the Miscellaneous Distribution Expense (Account 588) claim will also exist in this claim (i.e., Account 590). As I&E explained in Reply Brief,¹⁶ if Wellsboro's claim for \$80,232 was approved, the employee's costs at issue would be reflected in the FPFTY two times, i.e., in both Account 588 and Maintenance Supervision and Engineering Expense (Account 590). The Company admits this expense has only been booked to Account 588.¹⁷ The Company has provided no evidence that the expense in dispute for this particular employee, which exists only in Account 588 in the FTY, will exist in both accounts in the FPFTY.¹⁸ Wellsboro's Exception provide no further clarification how granting this expense in both accounts will not create double counting

¹⁵ I&E Reply Brief, p. 11.

¹⁶ I&E Reply Brief, p. 10.

¹⁷ Wellsboro Main Brief, p. 46.

¹⁸ Wellsboro explained the shortfall from its original \$80,232 claim for this expense is because an employee's costs were instead charged to Account 588. Wellsboro Main Brief, pp. 45-46. Therefore Account 588 already includes the employee's costs at issue.

of the same expense. Therefore, there is no error in the ALJs' decision, and Wellsboro's Exception should be rejected.

D. I&E Reply to Wellsboro Exception No. 7: The ALJs correctly declined to accept Wellsboro's market-to-book ratio analysis to establish the ROE

The ALJs correctly declined to consider Wellsboro's market-to-book ratio analysis to determine return on equity ("ROE"), and did not err by relying primarily on a discount cash-flow ("DCF") analysis, checked by the Capital Asset Pricing Method ("CAPM"). Wellsboro does not dispute the ALJs' finding the Commission has historically relied on the DCF as the preferred method for determining an appropriate ROE, with the CAPM serving as a check.¹⁹ However, Wellsboro Exception states the ALJs erred because they did not appropriately consider where, in *Pa. P.U.C. v. UGI Utilities, Inc. – Electric Division*, the Commission stated it will consider other methods when the DCF analysis appears understated.²⁰ Wellsboro then claims the record in this proceeding demonstrates DCF results will understate the appropriate rate of return for the Company, and the Commission must consider other methods, specifically, Wellsboro's market-to-book ratio analysis.²¹

I&E asserts Wellsboro's Exception does not demonstrate DCF results are understated. As the ALJs note, Wellsboro's standalone CAPM ROE analysis of 8.27%

¹⁹ Wellsboro Exceptions, pp. 15-16.

²⁰ Wellsboro Exceptions, p. 16 (citing *Pa. P.U.C. v. UGI Utilities, Inc. – Electric Division*, Docket No. R-2017-2640058 (Order Entered October 25, 2018) ("*UGI Utilities, Inc. – Electric Division*").

²¹ Wellsboro Exceptions, pp. 16-19.

validates its DCF ROE analysis, also 8.27%.²² Likewise, I&E calculated a CAPM ROE of 7.59%, confirming the reasonableness of I&E's 8.10% DCF calculation.²³ To support its Exception, Wellsboro wholly depends on its market-to-book ratio analysis.²⁴ I&E avers this analysis is insufficient to show the DCF is understated or the ALJs erred. As explained in I&E's Main Brief, Wellsboro's market-to-book ratio analysis is flawed because it has not demonstrated investors expect utility returns to be set on a different basis than book value.²⁵ Further, the Commission has consistently validated the use of the CAPM method as a check on DCF analysis, including in *UGI Utilities, Inc. – Electric Division*, unlike the market-to-book ratio analysis.²⁶ The ALJs should not be expected to use or equally weight any method offered to check the results of the DCF analysis. Because the ALJs did not err and appropriately considered CAPM analysis as a comparison to DCF results, Wellsboro's Exception should be rejected.

E. I&E Reply to Wellsboro Exception No. 8: The Commission should reject Citizens' Exception to adjust its ROE to 10.30%

At the outset, as explained in I&E's Exceptions, the ALJs did not conclude a size risk exists for utilities, and therefore, because the Company has the burden of proof, any size adjustment should be rejected.²⁷ However, Wellsboro's Exceptions asks that the Commission apply a further size adjustment to the ALJs' initial size adjustment,

²² Recommended Decision, p. 67.

²³ See I&E Reply Brief, p. 19.

²⁴ Wellsboro Exceptions, pp. 16-19.

²⁵ I&E Main Brief, pp. 48-49.

²⁶ See Recommended Decision, pp. 53-54. In *UGI Utilities, Inc. – Electric Division*, the Commission found cost of equity should "primarily be based upon the use of the DCF methodology and that the results of the CAPM analysis should be used as a comparison to the DCF results". *UGI Utilities, Inc. – Electric Division*, p. 104.

²⁷ I&E Exceptions, pp. 11-13.

specifically, the Commission should “apply a size adjustment to the [ROE] result of the standard deviation method approved by the [Recommended Decision]”, subject to a 10.30% cap, i.e., Wellsboro’s proposed ROE.²⁸ I&E initially notes the ALJs’ size adjustment already effectively awards a 122 basis points size adjustment to Wellsboro.²⁹ Wellsboro’s claim was only for a 100 basis points upward adjustment. However, Wellsboro’s Exceptions now claim the ALJs’ recommendation to award an ROE at the upper end of a standard deviation of DCF results is not truly a size adjustment. Instead, this only reflects the Commission’s practice regarding calculating electric utility Distribution System Improvement Charge (“DSIC”) ROEs for larger companies, and therefore does not truly reflect an adjustment for size.³⁰

Wellsboro’s Exception essentially asks the Commission to completely abandon any methodological analysis, whether it be DCF, CAPM, market-to-book ratios, etc., and simply conclude that the ALJs’ recommended ROE is similar to DSIC ROEs from which a further adjustment is needed. However, Wellsboro provides no specific reason why it should be awarded at the upper end of one standard deviation of its DCF analysis other than simply stating that’s how the Commission sets its DSIC ROE. By comparison, although the average of Wellsboro’s DCF analyses only supports an 8.27% ROE, the ALJs at least specifically stated they relied on a size adjustment as the reason to award an ROE at the upper end of one standard deviation. As explained in I&E’s Reply Brief,

²⁸ Wellsboro Exceptions, p. 20.

²⁹ See Recommended Decision, p. 76. The average of Wellsboro’s DCF results is 8.27%, and the upper end of one standard deviation is 9.49%.

³⁰ Wellsboro Exceptions, pp. 20-21.

Wellsboro's reliance on the standard DSIC ROE for electric utilities is misplaced because it does not account for any of the specific facts or analyses in this case.³¹ Although I&E disagrees with the ALJs regarding a size adjustment,³² by comparison no evidence in the record exists to demonstrate why Wellsboro should simply be awarded at the upper end of one standard deviation of its DCF analysis other than the conclusory finding the Commission does the same for DSIC ROEs. Therefore, Wellsboro has not demonstrated the ALJs erred by not further adjusting its size adjustment, and its Exception should be rejected.³³

**F. I&E Reply to Wellsboro Exception No. 9 and OCA Exception No. 10:
The ALJs correctly adopted I&E's proposed revenue allocation**

Both Wellsboro and OCA except to the ALJs' adoption of I&E's proposed revenue allocation, asserting their proposed revenue allocations are preferable.³⁴ I&E avers the ALJs did not err and correctly adopted I&E's revenue allocation. Wellsboro claims the ALJs erred by denying a rate decrease to class POL and thereby insufficiently moving rate class POL towards cost-of-service.³⁵ Although OCA agreed with I&E that rate class POL should not receive a rate decrease, OCA disagreed with I&E's proposed redistribution of POL's decrease to different rate classes. The difference between OCA and I&E's proposed redistribution is that OCA proposed to proportionately distribute

³¹ I&E Reply Brief, pp. 21-23.

³² Specifically, the ALJs erred by finding evidence for a generic size effect merits a size adjustment when they did not conclude utility size effect exists. *See* I&E Exceptions, pp. 11-13.

³³ However, as mentioned above, I&E opposes any size adjustment.

³⁴ Wellsboro Exceptions, pp. 22-23; OCA Exceptions, pp. 25-29.

³⁵ Wellsboro Exceptions, p. 22.

relief to classes,³⁶ while I&E proposes that relief only be assigned to classes with a relative rate of return greater than 1.0, i.e., classes that are generating revenue greater than its cost to serve.³⁷

The OCA claims its proposal should be adopted because it more appropriately reflects principles of gradualism.³⁸ While gradualism may be taken into account, the OCA provides no basis that the ALJs did not take this into account or otherwise err by not solely relying on the OCA's analysis. The ALJs weighed all the parties' positions, including OCA's, and decided "I&E's revenue allocation...most appropriately balances the many factors which must be considered."³⁹ Importantly, among the various factors, I&E avers its proposal most appropriately moves classes towards their cost of service. As the OCA acknowledges, the Commonwealth Court has stated the "primary goal in revenue allocation is to have rates reflect the actual cost of service."⁴⁰ Although the OCA claims its proposal "will move classes towards the cost of service",⁴¹ I&E avers adopting the OCA's proposal will accomplish the opposite. Specifically, OCA's proposal will already reduce the relative rate of return of classes that are already generating less revenue than their cost to serve.⁴² By comparison, I&E's proposal will only further adjust rates for those classes that generate more revenue than their cost to serve, i.e., classes

³⁶ See Recommended Decision, p. 96.

³⁷ See Recommended Decision, pp. 101-103.

³⁸ OCA Exceptions, pp. 27-29.

³⁹ Recommended Decision, p. 105.

⁴⁰ OCA Exceptions, p. 26 (citing *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010 (Pa. Cmwlth. 2006)).

⁴¹ OCA Exceptions, p. 28.

⁴² See Recommended Decision, p. 100 (reproduction of I&E table showing relative rate of return of Wellsboro's rate classes. OCA's proposal will reduce rates for all non-POL classes, including those with relative rates of return below 1.0, i.e., those generating less revenue than their cost to serve).

with a relative rate of return above 1.0. Additionally, although Wellsboro claims greater relief should be provided to class POL, the ALJs correctly found the movement for this class from 12.46 to 3.54 under I&E's proposal still represents a significant movement towards cost of service.⁴³ As I&E's proposal most fairly allocates revenue to classes, the ALJs did not err and Wellsboro's and OCA's Exceptions should be rejected.

G. I&E Reply to Wellsboro Exception No. 10: The ALJs correctly denied the Company's proposal to recover minimum demand costs through the fixed monthly charge

Although Wellsboro recognizes the Commission only allows recovery of direct customer costs through fixed monthly charges, the Company claims the ALJs err by misstating the Commission's ability to "approve exceptions to traditional ratemaking policies and the flexibility afforded by the Final Policy Statement."⁴⁴ Accordingly, Wellsboro believes its proposal to assign volumetric costs to the customer charge is appropriate under two rationales: its proposal reflects costs that can be assigned to the customer charge, and Act 58 supports the Company's proposal.

Wellsboro cites *Pa. P.U.C. v. Aqua Pennsylvania*⁴⁵ to support its proposal.⁴⁶ However, this limited example, as the citation references, only applies to "general and administrative costs", which volumetric charges are not. Therefore, Wellsboro does not properly reconcile how this citation supports its position when volumetric charges vary with each individual account. Customers can clearly avoid volumetric charges by

⁴³ Recommended Decision, p. 105. The Company's proposed further adjustment to class POL would produce a relative rate of return of 2.37. *See Id.*, p. 102.

⁴⁴ Wellsboro Exceptions, p. 23.

⁴⁵ 2004 Pa. PUC LEXIS 39 (Order entered August 5, 2004).

⁴⁶ Wellsboro Exceptions, p. 24.

reducing their consumption. The ALJs also note how customer charges have historically been limited to the direct costs associated with billing an individual customer because those costs are typically unavoidable on an individual basis.⁴⁷ Although Wellsboro characterizes its proposal as only shifting a minimum of costs,⁴⁸ Wellsboro also views its proposal as just the first step to shifting more of the volumetric charge to the customer charge.⁴⁹ Wellsboro has therefore clearly not justified why the ALJs erred in not allowing the Company to deviate from the historic practice of limiting the customer charge to recovery of unavoidable costs.

Wellsboro further claims that its proposal should be accepted as an alternative ratemaking proposal consistent with Act 58. Wellsboro claims the ALJs misperceive alternative ratemaking mechanism as intended to unilaterally promote energy efficiency.⁵⁰ Although energy efficiency is a consideration, the ALJs clearly considered other factors in their analysis. The ALJs stated:

Commission regulations promulgated by the Policy Order state that the Commission's policy regarding alternative ratemaking is to promote efficient use of energy sources; avoid unnecessary future capital investments; reflect the sound application of cost of service principles, establish a rate structure that is just and reasonable, and consider customer impact.⁵¹

The ALJs found, in addition to discouraging energy efficiency, Wellsboro proposal does not reflect cost causation principles and does not properly consider

⁴⁷ Recommended Decision, p. 123.

⁴⁸ Wellsboro Exceptions, pp. 24-25.

⁴⁹ Wellsboro Statement No. 1, p. 44.

⁵⁰ Wellsboro Exceptions, p. 26.

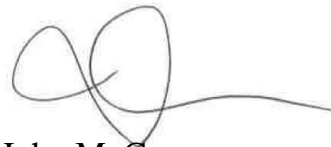
⁵¹ Recommended Decision, p. 125 (citing 52 Pa. Code § 69.3301).

customer impacts.⁵² By contrast, I&E avers Wellsboro's primary concern is revenue stability. I&E acknowledges revenue stability is a consideration. However, as the ALJs acknowledge, it is only one of many considerations.⁵³ Therefore, the ALJs clearly did not err by weighing the various considerations presented by the parties and Wellsboro's Exception should be rejected.

III. CONCLUSION

I&E respectfully requests the Commission reject the Exceptions of Wellsboro Electric Company and the Office of Consumer Advocate, discussed above, and approve the ALJs' Recommended Decision as modified consistent with I&E's Exceptions.

Respectfully submitted,



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Dated: March 23, 2020

⁵² Recommended Decision, pp. 123-125.

⁵³ Although Wellsboro claims its proposal does not violate cost of service principles, charging a customer for a cost it may not create clearly does not comply with cost of service principles.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
: :
v. : Docket No. R-2019-3008208
: :
Wellsboro Electric Company :
Supplement No. 125 to Tariff Electric – :
Pa. PUC No. 8 :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Exceptions** dated March 23, 2020, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via Electronic Mail Only

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