



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

March 23, 2010

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v.  
Clean Treatment Sewage Company

Docket No. R-2009-2121928

RECEIVED  
2010 MAR 23 PM 1:50  
PA PUC  
SECRETARY'S BUREAU

Dear Secretary McNulty:

Enclosed for filing, please find an original and nine (9) copies of the **Reply Exceptions** of the Office of Trial Staff (OTS) in the above-captioned proceeding.

As evidenced by the enclosed Certificate of Service, copies are being served on all active parties of record.

Sincerely,

Adeolu A. Bakare  
Prosecutor  
Office of Trial Staff  
PA Attorney I.D. #208541

Enclosure

AAB/edc

cc: Parties of record  
Chairman Cawley  
Vice Chairman Christy  
Commissioner Gardner  
Commissioner Powelson  
Chief Counsel Pankiw  
Director Davis



## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	EXCEPTIONS .....	3
1.	OTS REPLY EXCEPTION NO. 1: OTS Replies to CTSC’s Exception of the Elimination of its Materials and Supplies Expense Claim of \$9.114.....	3
2.	OTS REPLY EXCEPTION NO. 2: OTS Replies to CTSC’s Exception to the Imputation of \$81,631 of Availability Charge Based on 192 Potential Availability Customers .....	4
A.	The Referenced Commission Decisions Rejecting the Imputation of Hypothetical of “Phantom Revenue are not Representative of the Circumstances Now Before the Commission .....	5
B.	Charging CTSC’s Usage Customers the Full Cost of Providing Service is not a Reasonable or Appropriate Conclusion Under <i>Robert J. Luckie v. Clean Treatment Sewage Company</i> .....	6
C.	CTSC’s Alternative Calculation of the Availability Fee Revenues Must be Rejected as Contrary to the Purpose of the Availability Fee. ....	9
D.	CTSC has not Made Every Reasonable Effort to Lift the Moratorium .....	11
E.	Conclusion .....	12
3.	OTS REPLY EXCEPTION NO. 3: OTS Replies to CTSC’s Exception to the Elimination of its Claim for the Vice-President’s Salary (Management Fee) .....	13
4.	OTS REPLY EXCEPTION NO. 4: OTS Replies to CTSC’s Exception for a Five Year Normalization Period for Rate Case Expense .....	17

5.	OTS REPLY EXCEPTION NO. 5: OTS Replies to CTSC’s Exception to the Reduced Allowance of \$28,473 for Administrative Contract Labor .....	19
6.	OTS REPLY EXCEPTION NO. 6: OTS replies to CTSC’s Exception to the Elimination of its Claim for Dues and Subscriptions.....	20
III.	CONCLUSION.....	21

## TABLE OF CITATIONS

### Cases

<i>Pennsylvania Public Utility Commission v. Aqua Pennsylvania, Inc.</i> , 2004 Pa. PUC LEXIS 39, *102-04 (2004).....	6
<i>Pennsylvania Public Utility Commission v. City of Lancaster – Sewer Fund</i> , 2005 Pa. PUC LEXIS 66, (Pa. PUC 2006) .....	4
<i>Pennsylvania Public Utility Commission v. Lake Latonka Water Company</i> , 71 Pa. PUC 507 (1989) [Lake Latonka].....	7
<i>Pennsylvania Public Utility Commission v. PECO</i> , 1986 Pa. PUC LEXIS 99, *59-63 (Pa. PUC 2006).....	6
<i>Pennsylvania Public Utility Commission v. Pennsylvania Gas &amp; Water – Water Division, et al.</i> , 55 Pa. PUC 339, 350 (1981) .....	6
<i>Pennsylvania Public Utility Commission v. Total Environmental Solutions, Inc. – Treasure Lake Wastewater Division</i> , Docket No. R-00072495 .....	4
<i>Pennsylvania Public Utility Commission v. Total Environmental Solutions, Inc. – Treasure Lake Water Division and Treasure Lake Wastewater Division</i> , 103 Pa. PUC 110 (2008) .....	6, 18
<i>Popowsky v. Pennsylvania Public Utility Commission</i> , 674 A.2d 1149, 1153 (1996) .....	13
<i>Robert J. Luckie v. Clean Treatment Sewage Company</i> , 76 Pa. PUC 30 (1992) [Luckie v. Clean Treatment].....	8
<i>Stephen Sutter et al., v. Clean Treatment Sewage Co.</i> , Docket No. C-20078197 .....	5

**Statutes**

66 Pa. C.S. § 526 ..... 12

66 Pa. C.S. § 1301 ..... 9

66 Pa. C.S. § 1308(d) ..... 2

66 Pa. C.S. § 1501 ..... 9

## I. INTRODUCTION

The Office of Trial Staff (“OTS”) respectfully submits these instant Reply Exceptions pursuant to the procedural schedule established by Administrative Law Judge Ember S. Jandebour (“ALJ”) in this fully litigated proceeding.

On June 29, 2009, Clean Treatment Sewage Company (“CTSC” or “Company”) filed Supplement No. 12 (“Supplement”) to Tariff Water-Pa. P.U.C. No. 2, proposing an annual increase in rates of \$221,317.<sup>1</sup> The proposed increase was to become effective October 1, 2009 and represented an increase in annual revenue of approximately 72.7%.<sup>2</sup>

CTSC provides wastewater service to approximately 378 usage customers in a development known as Marcel Lake Estates, in Dingmans Ferry, Pike County. OTS filed a Notice of Appearance on September 24, 2009. This Notice was preceded by the Office of Consumer Advocate (“OCA”), Formal Complaint and Notice of Appearance, both filed on August 16, 2009. Several individuals filed additional Formal Complaints, Comments and Objections.

Also on September 24, 2009, the Pennsylvania Public Utility Commission (“Commission”) instituted an investigation to determine the lawfulness, justness and reasonableness of the proposed rates, rules and regulations. Pursuant to 66 Pa.

---

1 The OTS Main Brief referenced Supplement No. 5 to Tariff Wastewater-Pa. PUC No. 2. The Company originally filed Supplement No. 5 before subsequently changing the title to Supplement No. 12 on August 21, 2009.

2 In rebuttal testimony, the Company proposed a revised annual increase of \$217,713. CTSC Statement DMK-1R, Attachment 1.

C.S. § 1308(d), the filing was suspended by operation of law until May 1, 2010, unless permitted by Commission Order to become effective at an earlier date.

ALJ Jandebeur presided over three days of Evidentiary Hearings, from Wednesday, January 6, 2010 through Friday, January 8, 2010. At these hearings, OTS offered into evidence the testimony and exhibits of its expert witnesses.<sup>3</sup>

Following the Evidentiary Hearings, OTS, OCA and CTSC submitted Main and Reply Briefs in accordance with the procedural schedule adopted by ALJ Jandebeur. The Recommended Decision was issued on March 2, 2010.

On March 16, 2010, OTS filed a letter indicating that it would not file Exceptions. On the same date, OCA and CTSC filed Exceptions with the Commission.

These OTS Reply Exceptions respond to issues raised in the CTSC Exceptions. The arguments presented in CTSC's Exceptions are unsupported by record evidence and contrary to Commission case law. OTS therefore respectfully requests that the Commission deny CTSC's Exceptions.

---

<sup>3</sup> The OTS testimony and exhibits included OTS Statement No. 1, OTS Statement Number No. 1-SR, OTS Exhibit No. 1 and OTS Exhibit No. 1-SR. These documents represented the Direct and Surrebuttal testimonies and the accompanying exhibits of OTS expert witness Gary Yocca. Also offered into the record were OTS Statement No. 2, OTS Statement No. 2-SR, OTS Exhibit No. 2 and OTS Exhibit No. 2-SR representing the testimony and exhibits of expert witness Debra Backer. OTS witness Ethan Cline sponsored OTS Statement No. 3, OTS Statement No. 3-SR and OTS Exhibit No. 3.

## II. EXCEPTIONS

### OTS REPLY EXCEPTION NO. 1

#### **OTS Replies to CTSC's Exception of the Elimination of its Materials and Supplies Expense Claim of \$9.114.**

CTSC Exceptions, No. 1, pp. 2.  
Recommended Decision, pp. 7-8.  
OTS Reply Brief, pp. 2-4.  
OTS Main Brief, pp. 11-14.

As appropriately determined in the Recommended Decision, CTSC expensed materials and supply ("M&S") costs and cannot additionally recover such costs through a rate base claim. In its Exceptions, CTSC offers the same arguments that were presented in its Main and Reply Briefs and rejected in the Recommended Decision. The Company asserts that it is eligible to recover 1% of its net plant-in-service as an M&S claim because the Commission permits small utilities to estimate M&S expenses due to the burdens imposed by the process of maintaining an inventory. CTSC Ex., pp. 2. As described below, approval of the Company's M&S rate base claim would result in a double count of the M&S component of its claimed operations and maintenance expenses.

As discussed in the OTS Main and Reply Briefs, the Commission denies use of the 1% method when a utility has already claimed M&S as an operations and maintenance expense. CTSC argues that the concerns over a double count are overstated but offers no evidence to support such a claim. Contrarily, the record evidence clearly demonstrates that CTSC claimed M&S costs as operations and

maintenance expenses.<sup>4</sup> Therefore, allowing the Company to recover M&S costs through rate base would result in a classic double count.<sup>5</sup> OTS MB, pp. 3. Recent case law prohibits such accounting practices.<sup>6</sup> Accordingly, OTS recommends that the Commission deny CTSC Exception No. 1 and adopt the Recommended Decision's elimination of the Company's \$9,114 rate base claim for M&S.

## **OTS REPLY EXCEPTION NO. 2**

### **OTS Replies to CTSC's Exception to the Imputation of \$81,631 of Availability Charge Based on 192 Potential Availability Customers.**

CTSC Exceptions, No. 2 , pp. 2-8.

Recommended Decision, pp. 9-11.

OTS Reply Brief, pp. 12-21.

OTS Main Brief, pp. 31-41.

CTSC excepts to the ALJ's imputation of \$81,631 of availability charge revenues based on 192 availability customers.<sup>7</sup> The Company claims that the imputation would result in unconstitutional confiscation of property, is unjust and unreasonable in violation of the Public Utility Code and contrary to record

---

4 "The Company's income statement includes materials and suppliers expenses such as chemicals, postage and office supplies." OTS MB, p. 13 n.19 *citing* Statement DMK-1R, Attachment 1.

5 "The question of whether a small water and wastewater utility can use the 1% method is not at issue in this proceeding. Here, the dispositive question is whether a utility that has expensed materials and supplies can also claim such expenses in its rate base." OTS MB, pp. 2-3.

6 OTS MB, pp. 14 *citing* OTS Statement No. 3-SR, pp. 3.; *see Pennsylvania Public Utility Commission v. City of Lancaster – Sewer Fund*, 2005 Pa. PUC LEXIS 44 (Pa. PUC 2005), at \*39-\*41 (stating that "a utility may not capitalize an item in its rate base and at the same time recover an item as an expense."); *see also Pennsylvania Public Utility Commission v. Total Environmental Solutions, Inc. – Treasure Lake Wastewater Division*, Opinion and Order, Docket No. R-00072495, pp. 19-23.

7 OTS notes that the ALJ declined to impute \$17,791 in late payment charges associated with availability fees in addition to imputing the \$81,631 in availability fee revenues. *See* OTS RB, pp. 20 (proposing a total imputation of \$99,422); *see also* OTS MB, Appendix B, Table II. Despite the different dollar amount of the total imputation, the arguments offered in the OTS Main and Reply Briefs apply with equal force to the ALJ recommended imputation.

evidence. The OTS Main and Reply Briefs provided a thorough discussion regarding the history of CTSC's availability charge, the succession of events leading to a service moratorium, and the May 15, 2009 Commission Order<sup>8</sup> precluding further collection of availability charges without the provision of availability service. Although specific excerpts from these discussions are provided below, the entire revenue imputation discussions from the OTS Main and Reply Briefs are hereby incorporated by reference. OTS MB, pp. 31-41, OTS RB, pp. 12-21.

**A. The Referenced Commission Decisions Rejecting the Imputation of Hypothetical or "Phantom" Revenue are not Representative of the Circumstances Now Before the Commission.**

The Company claims that the Commission often rejects the imputation of hypothetical or phantom revenue and should therefore reject the imputation of availability fee revenues. In support of this contention, the Company cites to four cases, none of which present facts similar to the circumstances of the instant proceeding.

As stated in the OTS Reply Brief, two of the cases cited by CTSC involve contested accounting projection and valuation methods rather than adjustments for

---

<sup>8</sup> OTS Exhibit No. 1, Schedule 2 *attaching Stephen Sutter et al., v. Clean Treatment Sewage Co., C-20078197*, Order Entered May 15, 2009 [PUC Complaint Case Order].

inadequate and unreasonable service claims.<sup>9</sup> Neither of these cases relate to availability fees. The remaining two cases do relate to availability fees but involve only situations where the subject companies demonstrated that the availability revenue tariff provisions were ineffective because the companies were “never able to generate revenue from availability fees due to noncompliant customers.”<sup>10</sup>

The four Commission Decisions cited by CTSC have no material bearing upon the facts of the instant proceeding, where CTSC’s customers are able to pay the availability fee once the Company fulfills its obligation and provides availability service. The availability revenues are not hypothetical or phantom because the Company has demonstrated its ability to collect the availability charges and intends to resume doing so when the Moratorium is lifted. Tr.3, at 78-79.

**B. Charging CTSC’s Usage Customers the Full Cost of Providing Service is not a Reasonable or Appropriate Conclusion Under *Robert J. Luckie v. Clean Treatment Sewage Company*.**

CTSC argues that it is entitled to collect the full cost of providing service from its usage customers because its facilities are allegedly being used at full capacity and that the Company is not in violation of any Pennsylvania Department of Environmental Protection (“DEP”) statute or regulation. The Company’s

---

9 See CTSC Ex., p. 5; *contra* OTS RB, p. 18 n.58 citing *Pennsylvania Public Utility Commission v. PECO* 1986 Pa. PUC LEXIS 99, \*59-63; *Pennsylvania Public Utility Commission v. Pennsylvania Gas & Water – Water Division, et al*, 55 Pa. PUC 339, 350 (1981).

10 CTSC Ex., p. 10; *contra* OTS RB, p. 18 n.59 citing *Pennsylvania Public Utility Commission v. Total Environmental Solutions Inc. – Treasure Lake Water Division and Treasure Lake Wastewater Division*, 103 Pa. PUC 110, 127-128 (2008); *Pennsylvania Public Utility Commission v. Aqua Pennsylvania, Inc.*, 2004 Pa. PUC LEXIS 39, \*102-04 (2004).

argument evidences a continued misunderstanding of the purpose and justification for availability charges.

The service issues precipitating the OTS recommendation for imputing availability fee revenues are entirely unrelated to the quality of water service issues regulated by DEP. As detailed in the OTS Main Brief, CTSC's service issues arise from a longstanding lack of managerial due diligence, not water quality. OTS argued that the Company failed to proactively respond to DEP notices in order to prevent a service moratorium and further failed to efficiently and reasonably act to lift the service moratorium.<sup>11</sup> OTS MB, pp. 34-40.

CTSC's attempt to shift the total service costs onto usage customers violates the Commission's reasoning for allowing utilities serving resort properties to charge and collect availability charges. The OTS Reply Brief provided the following excerpts and analysis of *Pa. PUC v. Lake Latonka Water Company*, where the Commission decided upon the lawfulness of availability fees:<sup>12</sup>

Here, the Commission adopted the Recommended Decision of ALJ Richard S. Herskovitz, which contained a lengthy discussion regarding the purpose of availability fees. ALJ Herskovitz concluded that, for vacation resort developments, availability fees are not only appropriate, but are also necessary.<sup>13</sup> The importance of availability fees comes from the lot owner's expectations as "[p]ersons who purchase lots within the vacation

---

11 OTS particularly questions the Company's failure to build out to its NPDES permitted 200,000 gpd flow limit and its record in incomplete submissions to the Delaware Township Board of Supervisors. OTS MB, 36-39. "A diligent utility would not have maintained its facilities in conditions requiring a DEP imposed Moratorium on additional connections five years after receiving notice of the action required to prevent such an occurrence. Neither would a diligent utility permit disputed filing fees to delay such a critical action for an additional three years." OTS MB, pp. 36.

12 OTS MB, pp. 15 citing *Pennsylvania Public Utility Commission v. Lake Latonka Water Company*, 71 Pa. PUC 507 (1989) [Lake Latonka].

13 *Id.* at 529.

resort development buy with the expectation that water and sewerage service will be available whenever they choose to build upon their respective lots.”<sup>14</sup> ALJ Herskovitz observed that the “availability of service enhanced the value of the lot” and that the availability fee “will ultimately protect the purchaser’s investment.”<sup>15</sup> Therefore, the availability fees are intended to serve the interest of the availability customers in maintaining a ready connection, not merely to subsidize usage customers. OTS MB, pp. 15

*Lake Latonka* establishes that availability fees represent a payment from an availability customer to the utility for a service, rather than a subsidy paid by an availability customer to provide a service for a usage customer. When a utility elects to charge availability fees, it concurrently agrees to provide and maintain the availability service paid for by such customer.

The utility’s duty to provide and maintain availability service for its availability customers was further clarified in *Robert J. Luckie v. Clean Treatment Sewage Company*.<sup>16</sup> In *Luckie v. Clean Treatment*, the Commission addressed the question of whether a wastewater utility can implement an availability fee before installing capacity to fully serve the lots in a development. The question was answered in the affirmative because, unlike water utilities which must be fully available at outset, wastewater utilities can extend service gradually. OTS RB, pp.

16. “Therefore, the Commission held that a sewage company may charge availability fees ‘where its facilities are less than adequate to treat sewage from all

---

14 *Id.* at 528.

15 *Id.* at 528.

16 76 Pa. PUC 30 (1992) [*Luckie v. Clean Treatment*].

lots in the development, but which are adequate for all lots intended for improvement within a reasonable period of time.”<sup>17</sup>

Under *Luckie v. Clean Treatment*, CTSC accepted a duty to provide an “adequate” number of available connections equal to a number sufficient to allow for improvement of all lots intended for improvement within a reasonable amount of time. In the instant case, the Company has clearly failed to meet this duty.<sup>18</sup> The availability customers now face decreasing property values despite making monthly availability fee payments to CTSC for as long as sixteen years. OTS RB, pp. 19. In arguing that imputing availability revenues denies the Company an opportunity to recover the full cost of providing service, CTSC ignores the critical fact that it has indeed failed to provide service to its availability customers. OTS submits that permitting CTSC to recover the full cost of service would violate the Sections 1301 and 1501 of the Public Utility Code as CTSC seeks to charge overburdensome rates to usage customers because the Company failed to provide service that its availability customers have been paying for since 1992. RD, pp. 10, OTS RB, pp. 19.

**C. CTSC’s Alternative Calculation of the Availability Fee Revenues Must be Rejected as Contrary to the Purpose of the Availability Fee.**

---

<sup>17</sup> OTS RB, pp. 16 *citing Luckie v. Clean Treatment*, at 46.

<sup>18</sup> “In stark contrast to its duty to protect the investments of availability customers by maintaining a buffer of available connections, the Company continued to charge availability fees for at least three years beyond reaching its maximum 378 connection capacity. OTS RB, pp. 17. *See also* PUC Complaint Case *supra* n.8.

In its Exceptions, CTSC continues attempting to define the availability fee as a component of usage service. This is contrary to the Commission precedents previously discussed. Imputing revenue based on the Company's 34% of rate base methodology would provide an inadequate result by encouraging the Company to continue shirking the duty owed to its availability customers and imposing unreasonably high rates on its usage customers.

The Company claims that any imputed revenues should be based on the percentage of availability customers, multiplied by the number of availability lots. Like OTS, the Company uses a total customer base of 570.<sup>19</sup> However, the Company seeks to calculate the imputation by calculating the number of availability lots (570 total - 378 usage customers = 192 availability customers), and multiplying the percentage (192 = 34% of 570) by the amount of rate base associated with the treatment plant. This calculation defies the entire purpose of the availability fee which is to compensate the Company for building out its plant to provide a buffer of available connections. Again, the Company continues its erroneous conception that availability fees exist solely to subsidize usage customers.

---

19 Although prior to the PUC Complaint Case, the Company charged availability fees to 367 availability customers, OTS used a conservative formula to impute availability revenues. Instead of imputing the full \$156,034 that the Company was receiving as of May 2009, OTS based its imputation on the 192 availability lots that would be available if the Company had built out the collection system to the 200,000 gpd licensed under its NPDES permit. OTS RB, pp. 20, n.64; *see contra* OCA Exceptions, pp. 16.

As stated above, the Commission originally permitted CTSC to collect availability revenues to “expand the capability of its sewage plant in stages.”<sup>20</sup> Accordingly, such fees cannot be calculated as a return component of the existing plant in service. From an equitable standpoint, imputing the full \$156,034 would be justified as the Company had not previously expressed any reservations towards charging availability fees to 367 lots despite not having a single lot available for connection. OTS Statement No.1-SR, pp. 8-9. However, from a ratemaking standpoint, it is proper to base the imputation of the 192 availability lots that the Company could serve within the confines of its existing NPDES permit. OTS RB, pp. 20, n.64.

The Company also claims that \$5,201 should be removed from any imputed revenues because of billing expenses attributable to the availability customers. The \$81,631 adjustment is based on the Company’s failure to provide availability service and should be imputed in whole. RD, pp. 10. Additionally, the \$81,631 imputation is already extremely conservative, totaling \$74,403 less than the \$156,034 that CTSC was collecting from availability customers as of May 9, 2009.

**D. CTSC has not Made Every Reasonable Effort to Lift the Moratorium.**

CTSC argues that it has made every diligent effort to prepare, submit and process Planning Modules required by Delaware Township and DEP to lift the

---

<sup>20</sup> OTS RB, pp. 16 citing *Luckie v. Clean Treatment*, at 45.

Moratorium. The ALJ did not conclude that the record evidence demonstrated “bad behavior” by the Company but made no specific findings regarding Company’s efforts to lift the Moratorium.

In response to CTSC’s claim of reasonable efforts, OTS hereby incorporates by reference the discussion from the OTS Main Brief establishing that CTSC submitted the first Planning Module a full five years after receiving DEP notice of its 378 maximum capacity threshold, submitted two incomplete Planning Modules, and delayed review of a Planning Module over a \$6,500 fee which was eventually paid in accordance with Delaware Township ordinances. OTS MB, pp. 33-40. OTS submits that the Company’s lack of due diligence significantly delayed the commencement of substantive review of the Planning Modules as CTSC has only submitted one Planning Module in accordance with the Delaware Township filing requirements in the eleven years since receiving DEP notice of its 378 maximum connection capacity. Such delayed action hardly constitutes reasonable service on behalf of the Company’s ratepayers.

**E. Conclusion**

For the reasons provided above, OTS recommends that the Commission reject the Company’s Exception No. 2 and adopt the ALJ’s recommendation to impute \$81,631 of revenues pursuant to Section 526 of the Public Utility Code.

### OTS REPLY EXCEPTION NO. 3

#### **OTS Replies to CTSC's Exception to the Elimination of its Claim for the Vice-President's Salary (Management Fee)**

CTSC Exceptions, No. 3, pp. 9-11.  
Recommended Decision, pp. 11.  
OTS Reply Brief, pp. 5-8.  
OTS Main Brief, pp. 17-21.

The Recommended Decision adjusted the Officer's Salary and Management Fee by eliminating the Management Fee claim of \$34,488 and directing CTSC to divide the compensation for both the President and Vice-President between the remaining \$34,418 Officer's Salary Claim.<sup>21</sup> RD, pp. 11. The ALJ relied on *Popowsky v. Pennsylvania Public Utility Commission*, in which the Commonwealth Court held that the "Commission may disallow, in whole or in part, a managerial expense claim when the record is devoid of time records and wage information concerning managerial personnel."<sup>22</sup> OTS advanced the same argument in its Main and Reply Briefs, stating that the Company must produce evidence demonstrating the duties and responsibilities carried out by its managerial personnel rather than simply calculate a salary arbitrarily based on a Commission Bureau Director's salary.<sup>23</sup>

---

21 The Officer's Salary and Management Fee claims refer to the respective proposed compensation allowances for the President and Vice-President. OTS MB, pp. 18 *citing* OCA Statement No. 1, Exhibit MJK-3.

22 RD, p. 11 *citing Popowsky v. Pennsylvania Public Utility Commission*, 674 A.2d 1149, 1153 (1996).

23 OTS proposed a different adjustment than that recommended by the ALJ, but offered the same argument in support of its position, claiming that "[t]he Company has failed to support the claimed Officer Salary and Management Fee expenses with record evidence..." OTS MB, pp. 18.

CTSC claims that the as-filed Officer's Salary and Management Fee expenses represent appropriate compensation because President and Vice-President allegedly work in a similar capacity to Commission Bureau directors. CTSC Stmt. No. DMK-1R, pp. 10-11. These arguments were addressed in the OTS Main and Reply Briefs and dismissed in the Recommended Decision. However, in its Exceptions, the Company continues to offer unsupported and conflicting arguments attempting to justify the claimed salary expenses. CTSC Ex., pp. 10-11.

The OTS Main and Reply Briefs presented extensive evidence distinguishing the responsibilities undertaken by CTSC's President and Vice-President from those incumbent upon a Commission Bureau Director. OTS established that the job descriptions provided by the Company represent a listing of potential responsibilities rather than a catalogue of duties actually performed by the President or Vice-President. OTS MB, p. 20. In addition, OTS established that CTSC erroneously included overhead expenses in its calculation of the Officer's Salary and Management Fee. OTS MB, pp. 20-21. Contrary to the Company's arguments, OTS also established the appropriateness of considering the size and financial circumstances of a utility in setting the Officer's Salary and Management Fee. OTS RB, pp. 7-8. In the interest of brevity, these lengthy discussions from the OTS Main and Reply Briefs are hereby incorporated by reference. OTS MB, pp. 17-21, OTS RB, pp. 5-8.

In its Exceptions, the Company presents broad anecdotal and unsupported statements in an attempt to establish a time record for the Vice-President. The Company's Exceptions incorporate statements made by Company Witness Dennis Kalbarczyk (an outside consultant) at the evidentiary hearings. Witness Kalbarczyk stated that the Vice-President communicates with CTSC's contracted operator on a daily basis for a time period that "may be about a half hour." Tr.2 at 44. Mr. Kalbarczyk continues to state that the Vice-President visits the plant once a month for four hours. Tr.2 at 44. Mr. Kalbarczyk additionally declares that the time spent on the proceeding alone would justify the claimed salary expense because both the *Vice-President and President attended three days of evidentiary hearing and one day of public input hearings while committing some unspecified amount of time to working with Company counsel and rate consultant in preparing the filing.* Tr.2 at 44. OTS acknowledges that the President and Vice-President attended the public input hearings and evidentiary hearings but finds great fault with the suggestion that any activities comprising four days out of the year could justify the claimed salary expense. The remaining statements amount to nothing more than unsupported opinions as Mr. Kalbarczyk is an outside consultant and failed to reference any documentary evidence supporting his characterization of the Vice-President's duties.

In its Exceptions, the Company makes additional unsupported statements regarding the allegedly “conservative” nature of its as-filed claim. The Company stated that “Neither the President nor the Vice-President is reimbursed for expenses and CTSC is not charged for local, State, or Federal taxes attributable to their compensation.” CTSC Ex., pp. 10. As a procedural matter, OTS notes that CTSC had not previously presented arguments concerning reimbursement of expenses or taxes not charged to the Company. As a substantive matter, CTSC provided no documentary evidence for these claims. Further, OTS is unaware of any provision exempting CTSC from Federal, State or local tax withholding laws. To the extent that CTSC claims that such taxes are not paid on the President and Vice-President’s salaries, OTS submits that such practices are immaterial to its ratemaking adjustment and may raise issues with the applicable Federal, State and local tax agencies.

Contrary to the assertions of the Company, adoption of the Recommended Decision would not “micro-manage the Company in an inappropriate way...” CTSC claimed a total of \$67,806 for two part-time managers of a small utility without producing any semblance of a time record for either officer. OTS recommends that the Commission reject the Company’s Exception No. 3 and adopt the ALJ’s recommendation to eliminate the Management Fee claim of \$34,488 and direct CTSC to divide the compensation for both the President and Vice-President between the remaining \$34,418 Officer’s Salary Claim.

## **OTS REPLY EXCEPTION NO. 4**

### **OTS Replies to CTSC's Exception for a Five Year Normalization Period for Rate Case Expense.**

CTSC Exceptions, No. 4, pp. 11-12.  
Recommended Decision, pp. 11-12.  
OTS Reply Brief, pp. 9-11.  
OTS Main Brief, pp. 24-26.

The Recommended Decision adopts the OTS proposal to normalize CTSC's rate case expenses over a five year period rather than the three year period requested by the Company. The Company excepts to the Recommended Decision and requests that the Commission adopt a three year normalization period for recovery of rate case expense. CTSC Ex., pp. 11. The record evidence does not support a three year normalization period and the Commission should deny CTSC's Ex. No. 4.

No party disputes that Commission precedent provides that rate case normalization should be based on a Company's filing history. RD, pp. 12. In its Exceptions, the Company states that "[w]hile the Commission traditionally bases rate case expense normalization periods on a utility's history with regard to the frequency of rate case filings, the Commission has discretion to allow shorter time periods in order to provide for a reasonable expectation of the recovery of such costs." CTSC Ex. No. 4. However, the Company has failed to present circumstances justifying a departure from the established general rule. CTSC's

filing history supports a five year normalization period, which will provide CTSC with a reasonable expectation of recovery of its rate case expenses.

In support of a three year normalization period, CTSC cites to *Pennsylvania Public Utility Commission v. Total Environmental Solutions, Inc. – Treasure Lake Water Division and Treasure Lake Wastewater Division*, claiming that the Commission here rejected a five year normalization in favor of a three year normalization.<sup>24</sup> However, as described in the OTS Reply Brief, *Total Environmental Solutions, Inc.* concerned a utility that had not filed a base rate case in twenty years. OTS RB, pp. 10. Such circumstances are not present here as CTSC filed a base rate case in 2003. OTS MB, pp. 24. If CTSC incurs increased operating costs or capital project expenses requiring a base rate case before the expiration of the five year normalization period, it will then benefit from a reduced normalization period in that proceeding.

CTSC has not provided record evidence supporting a three year normalization period. Therefore, OTS recommends that the Commission reject CTSC Exception No. 4 and adopt the ALJ's recommendation for a five year normalization of rate case expenses.

---

24 103 Pa. PUC 110 (2008).

## **OTS REPLY EXCEPTION NO. 5**

### **OTS Replies to CTSC's Exception to the Reduced Allowance of \$28,473 for Administrative Contract Labor.**

CTSC Exceptions, No. 5, pp. 12-14.  
Recommended Decision, pp. 12.  
OTS Main Brief, pp. 22-24.

The Company excepts to the ALJ's adoption of the OTS proposal to reduce the as-filed Administrative Service Contract Labor expense from \$40,678 to \$28,473. The OTS Main Brief describes the OTS adjustment in detail and is hereby incorporated by reference. OTS MB, pp. 22-24. In summary, the adjustment reflects concerns regarding the Company's failure to provide timesheets for the administrative service and conflicting evidence regarding Ms. Sorchik's use of ratepayer funded facilities and should be adopted by the Commission.

As noted in the OTS Main Brief, CTSC claims that Ms. Debbie Sorchik provides administrative support to CTSC and its parent, Consolidated Pocono Utilities, Inc. ("CPU") as the principal and only employee of A.D.S. Support Services, Inc. CTSC Ex., pp. 22. Rather than provide time sheets evidencing Ms. Sorchik's services, the Company stated only that "A.D.S. does not maintain an hourly breakdown of time spent by Ms. Sorchik on matters" and that "[t]he claim is reasonable on its face for the services provided." CTSC Ex., pp. 13. OTS submits that a salary claim cannot be considered reasonable on its face without any documentation of the time worked. Particularly under the present circumstances,

where CTSC claims that Ms. Sorchik works from a home office yet is unable to provide any contact information for her other than the office telephone number and address listed for CPU, which is the parent company of CTSC's. OTS MB, pp. 23.

OTS recommends that the Commission reject CTSC Exception No. 5 and adopt the ALJ's recommendation to reduce the as-filed Administrative Service Contract Labor expense from \$40,678 to \$28,473.

### **OTS REPLY EXCEPTION NO. 6**

#### **OTS replies to CTSC's Exception to the Elimination of its Claim for Dues and Subscriptions.**

CTSC Exceptions, No. 6, pp. 14-15.  
Recommended Decision, pp. 12.  
OTS Main Brief, pp. 30-31.

CTSC excepts to the ALJ's adoption of the OTS proposal to remove \$279 of the as-filed Dues and Subscriptions expense attributable to delivery of the local newspaper. As noted in the OTS Main Brief, the newspaper is delivered to an address shared by CTSC's owner Scott Linde's multi-million dollar private contracting business. OTS MB, pp. 31. OTS submits that the justifications offered by the Company in support of the newspaper expense are simply not credible. For example, in its Exceptions, the Company claims that the newspaper is used for the purpose of receiving Commission press releases and other announcements despite the availability of such information on the Commission's website. Additionally, Company claims that the newspaper is necessary to receive information disseminated by regulated utilities to their customers. In other words,


the Company claims that it uses the newspaper in its capacity as a *customer* of electric and water utility services rather than a *provider* of wastewater services.

Finally, OTS notes that the newspaper adjustment must be adopted to preserve the integrity of the ratemaking process. OTS acknowledges the comparatively small dollar amount of the newspaper expense but urges the Commission to consider the precedential implication of permitting utilities to recover otherwise improper expense based on the relative amount of the expense. Therefore, OTS recommends that the Commission reject CTSC's Exception No. 6 and adopt the ALJ's recommendation to eliminate the \$279 newspaper expense.

### **III. CONCLUSION**

For the reasons set forth above, the Office of Trial Staff hereby maintains that the Commission should issue an Order concluding this proceeding that incorporates all OTS Reply Exceptions submitted herein.

Respectfully submitted,



---

Adeolu Bakare  
Prosecutor  
PA Attorney I.D. #208541

Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 783-6155

Dated: March 23, 2010

