

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheet

1. <b>REPORT DATE:</b> October 17, 2006	2. <b>BUREAU AGENDA NO.</b> OCT-2006-OSA-0321*
3. <b>BUREAU:</b> Office of Special Assistants	
4. <b>SECTION(S):</b>	5. <b>PUBLIC MEETING DATE:</b> October 19, 2006
6. <b>APPROVED BY:</b> Director: C.W. Davis 7-1827 Mgr/Spvr: K. Sophy 7-8108 Legal Review:	
7. <b>PERSONS IN CHARGE:</b> B. Ramsey 7-8754	9. <b>EFFECTIVE DATE OF FILING:</b> C-20066258
8. <b>DOCKET NO.:</b> C-20065901 <i>et al.</i>	N/A

**DOCUMENT  
FOLDER**

10. (a) **CAPTION** (abbreviate if more than 4 lines)  
 (b) Short summary of history & facts, documents & briefs  
 (c) Recommendation

- (a) Valerie McCutchen *et al.* (Complainants) v. Pike County Light & Power Company (Respondent)
- (b) On September 26, 2006, Administrative Law Judge (ALJ) Ember S. Jandebaur certified a Material Question to the Commission for Interlocutory Review in the above-captioned consolidated Complaint proceedings. The Material Question asks whether the formal proceedings before the ALJ should be stayed insofar as they pertain to one aspect of the relief, a forced sale of Respondent, sought by the Complainant County of Pike. The ALJ asks whether the issue of a forced sale should be stayed given the Commission's issuance on June 22, 2006, of a Law Bureau Report recommending that the Commission issue an RFP for a study of the costs and benefits of a forced sale.
- (c) The Office of Special Assistants recommends that the Commission adopt the proposed Opinion and Order finding that the Certification of the Material Question was proper, and answering the Material Question in the negative.

**DOCKETED**  
DEC 12 2006

Order Doc. No. 635998v1

Calendar Doc. No. 636070v1

11. **MOTION BY:** Commissioner Chm. Holland  
 Commissioner Pizzingrilli - Yes  
 Commissioner Fitzpatrick - Yes
- SECONDED:** Commissioner Cawley  
 Commissioner

**CONTENT OF MOTION:** Staff recommendation adopted.



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

C-20066258

IN REPLY PLEASE  
REFER TO OUR FILE

October 24, 2006

C-20065901, et al

VALERIE MCCUTCHEN  
507 AVENUE F  
MATAMORAS PA 18336

Valerie McCutchen, et al

Office of Consumer Advocate  
Party Intervenor

Office of Small Business Advocate  
Party Intervenor

v.

Pike County Light and Power Company

Interlocutory Review of an Order Certifying a Material Question

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on October 19, 2006 has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty  
Secretary

**DOCKETED**  
FEB 2 2007

BTL

encls  
cert. mail  
LJM

See attached list for additional parties of record

DOCUMENT  
FOLDER

0001

G.D. CALIENDO ESQUIRE SENIOR CE PRES  
ONE BLUE HILL PLAZA  
21ST FLOOR  
PEARL RIVER NY 10965  
RESPONDENT

0002

VALERIE MCCUTCHEN  
507 AVENUE F  
MATAMORAS PA 18336  
COMPLAINANT

0003

JOHN L. CARLEY COUNSEL  
PIKE COUNTY LIGHT & POWER CO  
4 IRVING PLACE ROOM 1815-S  
NEW YORK NY 10003  
RESPONDENT

0004

X  
X  
X XX 99999  
WITHDRAWN

0005

GARY M. CHASE  
121 MILLER ROAD  
MILFORD PA 18337  
COMPLAINANT

0006

WILLIAM HESSLING - BUSINESS ADMINISTRATR  
DELAWARE VALLEY SCHOOL DISTRICT  
236 ROUTE 6 & 209  
MILFORD PA 18337  
COMPLAINANT

0007

WILLIAM & JANETH DEGRAW  
104 WHEATFIELD PLAZA  
MILFORD PA 18337  
COMPLAINANT

0008

CHABA M. PALLAGHY  
1036 PENNSYLVANIA AVENUE  
MATAMORAS PA 18336  
COMPLAINANT

0009

COUNTY OF PIKE  
506 BROAD STREET  
MILFORD PA 18337  
COMPLAINANT

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held October 19, 2006

Commissioners Present:

Wendell F. Holland, Chairman  
James H. Cawley, Vice Chairman  
Kim Pizzingrilli  
Terrance J. Fitzpatrick

Valerie McCutchen	:	C-20065901
Gary M. Chase	:	C-20065905
Delaware Valley School District	:	C-20065922
William & Janeth DeGraw	:	C-20065923
Chaba M. Pallaghy	:	C-20065924
County of Pike	:	C-20065942
Jeff L'Hote	:	C-20065943
Gary R. Orben	:	C-20065966
Francis L. Hall, Jr.	:	C-20066005
Joseph Demalderis	:	C-20066028
Joseph Fretta	:	C-20066194
William & Irene Loosemore	:	C-20066258
Samall Properties, Inc.	:	C-20066260
Three Lane Utilities	:	C-20066261
Three Lane Utility Corp.	:	C-20066262
Richard Snyder	:	C-20066263
Samall Properties	:	C-20066264
Michael Trenner	:	C-20066265
E.E. Hauser	:	C-20066266
Kathleen Ferranti	:	C-20066267
Carol Ann Sklar, t/a Carol Ann's Linens	:	C-20066268
Pike County Outfitters	:	C-20066269
Stebo, Inc. d/b/a Malibu Ranch	:	C-20066270
S&M Management, Inc.	:	C-20066271
Hare Hollow, Inc.	:	C-20066273
Michele Storms	:	C-20066281
Waterwheel Café & Bakery	:	C-20066282
Jack & Darryl Wood	:	C-20066283

Altec Lansing	:	C-20066336
James & Laura Pollard	:	C-20066379
Jeanette Abbott	:	C-20066392
Dan Kane	:	C-20066393
Peter R. Rushton	:	C-20066394
Panagiotis Rigas/ Milford Diner	:	C-20066395
Anthony Grigal	:	C-20066415
James E. Sechrist	:	C-20066431
Harry Forbes	:	C-20066476
John W. Dalton, Jr.	:	C-20066481
Charles J. Deller	:	C-20066483
Stacy Beecher Chelak	:	C-20066509
Thomas Hoff	:	C-20066523
Jerome Grigas	:	C-20066537
Lawrence Budzeyko	:	C-20066538
611 Broad Street LLC	:	C-20066542
Peter P. Kenny	:	C-20066546
Sylvia Recchia	:	C-20066547
Mark Robbins	:	C-20066549
Municipal Authority of the Borough of Milford	:	C-20066550
Judy Recchia	:	C-20066552
Earl Edwards	:	C-20066563
Raymond A. Paquette	:	C-20066589
Sandra Paul	:	C-20066590
Steve Height	:	C-20066592
Bertrand J. Delanney	:	C-20066623
Bertrand J. Delanney	:	C-20066624
Audrey H. Austin	:	C-20066647
Margaret Hoover	:	C-20066652
Patricia Dudzinski	:	C-20066662
Joan Stohr	:	C-20066668
Hotel Fauchere, LLC	:	C-20066722
Community Building Projects/Sean Strub	:	C-20066725
Office of the Consumer Advocate	:	
Party Intervenor	:	
Office of the Small Business Advocate	:	
Party Intervenor	:	
v.	:	
Pike County Light and Power Company	:	

Interlocutory Review of an Order Certifying  
A Material Question

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration is Interim Order II of Administrative Law Judge (ALJ) Ember S. Jandebaur in the above-captioned proceeding, which is in the nature of a Certification of a Material Question to the Commission for Interlocutory Review pursuant to 52 Pa. Code § 5.305. The ALJ's Interim Order II, which was issued on September 26, 2006, addresses a Preliminary Objection of Pike County Light and Power Company's (PCL&P or Respondent) regarding whether the issue of a forced sale of PCL&P is moot. On October 5, 2006, the Office of Consumer Advocate (OCA) and the County of Pike (Pike County or County) filed a Joint Brief in response to the Material Question. The Respondent also filed a Brief in response to the Material Question on October 5, 2006. For the reasons stated below, we determine that the Material Question properly was certified and answer the Material Question in the negative.

**BACKGROUND**

On March 1, 2006, Pike County filed a Formal Complaint against PCL&P alleging that its rate increase ranging between 73.0% – 129.0% was an unfair burden. This Complaint, which was docketed at C-20065942, was preceded and followed by numerous similar Formal Complaints docketed above. OCA filed a Notice of Intervention and Public Statement on April 5, 2006. The Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement on April 24, 2006.

On May 9, 2006, ALJ Jandebaur issued an Interim Order of Consolidation, which consolidated the above-captioned Formal Complaints, from Docket No. C-20065901 through Docket No. C-20066283, for hearing and disposition. Also on May 9, 2006, ALJ Jandebaur issued an Interim Order granting a Motion for Extension of Time filed by the OCA, cancelling a Prehearing Conference scheduled for May 24, 2006, and continuing the matter for sixty days. The basis for OCA's Motion and the ALJ's Interim Order was the ongoing nature of parallel proceedings that could have resulted in the duplication of efforts. The parallel proceedings were a Commission investigation into the market conditions in PCL&P's service territory at Docket No. P-00052168, and a petition filed by a licensed electric generation supplier, Direct Energy Services, LLC, seeking an auction for retail aggregation service at Docket No. P-00062205.

By notice dated June 7, 2006, the Commission rescheduled the Prehearing Conference for August 3, 2006. The ALJ's Prehearing Conference Order and Second Interim Order of Consolidation issued on July 14, 2006, further consolidated the Formal Complaints at Docket No. C-20066336 through Docket No. C-20066552 for hearing.

On July 14, 2006, Pike County filed an Amended Complaint, which *inter alia* requested that the Commission order the sale of PCL&P to another Pennsylvania electric distribution company or to a rural electric cooperative.

A Prehearing Conference was held before ALJ Jandebaur on August 3, 2006. Appearing at the Prehearing Conference were counsel for PCL&P, Pike County, Delaware Valley School District, Municipal Authority of the Borough of Milford, Pike County Commissioner Harry Forbes, Samall Properties, Inc., Three Lane Utilities, Inc., Richard Snyder, OCA and OSBA. Complainants Valarie McCutchen, Joseph Fretta for Fretta's Italian Food Specialties, Anthony Grigal for Ann Street Antiques and for himself, Michael Trenner, Peter R. Rushton, Kathleen Ferranti, Ken Recchia for Judy Recchia, Sylvia Recchia and himself, Charles J. Deller, Raymond A. Paquette, Darren Fouse for

Waterwheel Café, Eva Keteese (phonetic) for Panaqiotis Rigas and Milford Diner, Chaba Pallaghy, John W. Dalton, Jr., and Peter B. Kenny appeared *pro se*.<sup>1</sup> Pike County Commissioners Caridi and Wagner also participated. Mr. Rigas of the Milford Diner and Edward Hauser left letters with the OCA prior to the prehearing Conference stating that they could not attend but wished to continue to participate. At the Prehearing Conference, counsel for PCL&P indicated that PCL&P would be filing an Answer to the Amended Complaint of Pike County as well as extensive Preliminary Objections. Additionally, counsel for PCL&P moved to dismiss all of the Formal Complaints filed by persons who failed to appear at the Prehearing Conference.

At the Prehearing Conference, ALJ Jandebaur stressed to the individual Complainants that formal party status involved the obligation to fully participate in the proceeding, and strongly suggested that individuals withdraw their Formal Complaints and participate under the OCA umbrella. A deadline of August 18, 2006, was established by which time all individual Complainants were required to inform the ALJ whether they wanted to withdraw their Complaints. As a result, as of September 19, 2006, approximately twenty Formal Complaints had been withdrawn, including ten filed by persons who had participated in the Prehearing Conference.

On August 4, 2006, PCL&P filed Preliminary Objections and an Answer with New Matter to Pike County's Amended Complaint. On or about August 16, 2006, the County and OCA filed a Joint Answer to the Respondent's Preliminary Objections.

A second telephonic Prehearing Conference was held before ALJ Jandebaur on August 22, 2006. Appearing were counsel for PCL&P, Pike County, Delaware Valley School District, Municipal Authority of the Borough of Milford, Small Properties, Inc.,

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<sup>1</sup> Mr. Jorgensen for Jorgensen's Deli and himself, and Ed Nichols for Nichols' Office Products, also appeared, although it seems that they did not file Formal Complaints against PCL&P.

Three Lane Utilities, OCA, and OSBA. Complainants John W. Dalton, Jr., and Peter B. Kenny appeared pro se.

On September 28, 2006, ALJ Jandebour's Interim Orders I and II were served upon the Parties. Interim Order I addressed four of the five Preliminary Objections filed by Respondent on August 4, 2006. Very briefly, the Preliminary Objections asserted (A) that the Commission lacks jurisdiction to order a sale of PCL&P; (B) that the "filed rate doctrine" bars Pike County's Complaint against the Commission-approved rates charged by PCL&P; (C) that the Complaint failed to join Direct Energy Services LLC as a necessary party; (D) that the Commission recently had considered and rejected requests to consider a study of the costs and benefits of selling PCL&P, and therefore a forced sale of the company was a moot issue; and (E) that the billing issue raised in the County's Amended Complaint had been rectified and was moot. The ALJ's Interim Order I denied Preliminary Objections A, B, and C, and granted Preliminary Objection E.

Interim Order I, which is not before us at this time, also denied Respondent's Motion to Dismiss the Complaints filed by persons who failed to appear at either of the Prehearing Conferences without providing a valid reason for being unavailable. However, the ALJ determined that these persons had waived their right to fully participate further, designated twenty-eight Complainants as inactive parties, and removed their names from the service list. The ALJ appropriately relied on a proposed policy statement recently issued by the Commission for support for the use of "inactive party" status. *Interpretation of Procedural Rules Regarding Party Status, Rights and Obligations*, Docket No. M-00061975 (September 19, 2006). The ALJ also noted that these individuals would be able to testify at one of the public input hearings scheduled for October 4, 2006. Although Interim Order I is not before us at this time, we note that it appears that several of these Complainants did attend the Prehearing Conference on August 3, 2006, and recommend that the ALJ carefully review with the Parties whether

all twenty-eight Complainants should have been designated as inactive parties. We also recommend that the ALJ give the Complainants who previously withdrew their formal Complaints the option of continuing as inactive parties, since in the ALJ's view that option apparently was not available prior to the issuance of the proposed policy statement on September 19, 2006.

ALJ Jandebour's Interim Order II addressed Respondent's remaining Preliminary Objection D regarding whether the issue of a forced sale of PCL&P is moot and included the Certification of the Material Question that is the subject of this Opinion and Order. Interim Order II will be discussed more fully below.

On October 4, 2006, two Public Input Hearings were held, and evidentiary Hearings have been scheduled beginning January 9, 2007, in Scranton.

On or about October 5, 2006, ALJ Jandebour issued Interim Order III, which concluded that Direct Energy Services, LLC, is an indispensable party, and ordered the Office of Administrative Law Judge staff to serve it with a copy of the pleadings, notices, interim orders, and service list

## DISCUSSION

PCL&P's Preliminary Objection D stated that on January 27, 2006, the Commission opened an investigation into the competitive market conditions in PCL&P's service territory and directed the Commission's Law Bureau to conduct a sixty-day investigation. *Initiation of a Fact Finding Investigation of the Competitive Market Conditions Re: Pike County Light & Power Company*, Docket No. P-00052168 (February 14, 2006). PCL&P further stated that the Law Bureau's *Report on Competitive Market Conditions Regarding the Pike County Light & Power Company* (Report) was issued by the Commission on June 22, 2006. One of the Report's eight recommendations was that

the Commission should consider having an independent study performed regarding the costs and benefits of the sale of PCL&P to another Pennsylvania electric distribution company (EDC) or to a rural electric cooperative. PCL&P stated that the Commission's decision to release the Report without an order was a tacit rejection of the relief requested by the County and rendered the issue of a forced sale moot.

The County and OCA's Joint Answer stated that there is no basis for the assumption that the Commission's issuance of the Report constituted a tacit rejection of a forced sale. "The Report speaks for itself, but the County and OCA submit that the purpose of the Report was not to gather dust on a Commission file shelf, and it certainly was not to preclude active parties from seeking to implement the recommendations of the Report through public proceedings at the PUC." (Joint Answer at 20). The OCA and the County stated that the proceeding initiated by the County's Formal Complaint provides the Commission with a vehicle in which to address the issues identified in the Report.

The ALJ ruled on PCL&P's Preliminary Objection D as follows:

Preliminary Objection D Re: Forced Sale is Moot:

My ruling on preliminary objection D is that it is denied for the following reasons.

First, the Commission Order dated September 23, 2005, stated:

We find that Pike has satisfied its obligation under the settlement approved through the August 9, 2002 Order to evaluate membership in PJM. At this time, pursuit of membership in PJM does not appear to be in the public interest. We shall, therefore, decline to direct Pike to revisit interconnection with PJM or to explore the sale of its operations or customers to another Pennsylvania EDC. (Order at 24)

That is the sum total of the Commission's position with regard to a potential sale *at that time under that specific focus*. Additionally, that Order did not address all of the concerns raised by the County and OCA in their current Amended Complaint. Therefore, whether a sale of PCL&P or rescission of their certificate is appropriate is not a moot question, discovery is allowable, and, preliminary objection D is denied.

Interim Order II at 7. The ALJ's rulings on PCL&P's various Preliminary Objections are not before us for review; the description of her ruling on Preliminary Objection D is provided as factual background to the Material Question.

In Interim Order II, the ALJ discussed her procedural concerns raised by *consideration of the issue of a forced sale in the above-captioned Complaint proceedings* as follows:

Whether a "forced sale" or revocation of PCL&P's certificate is warranted is a factual determination yet undetermined or even explored through a formal hearing process. Appropriately, I am completely unaware of what the Commission or the Commission's Law Bureau may be pursuing with regard to the Report. My concern is that it is possible that this hearing process and any action the Commission takes with regard to the Report could result in inconsistent outcomes. This Report and possible Commission activities indicate certification of a material question to the Commission is warranted.

The more pertinent question for me as the assigned ALJ, is whether it is appropriate now to foreclose the County and OCA from pursuing this issue because of PCL&P's preliminary objection. Conversely, should PCL&P's objection be denied, knowing the OALJ and Commission results could potentially be inconsistent. For these reasons, I will certify this material question to the Commissioners: "Should the OALJ process be stayed pending final action by the Commission on Recommendation 3 of the Report?" *See* 52 Pa. Code § 5.305(a) – (f).

Interim Order II at 4. Accordingly, ALJ Jandebour certified the Material Question to the Commission regarding whether the formal hearing process should be stayed pending Commission action on Recommendation 3 of the Law Bureau's Report.

Certification of a material question to the Commission is governed by 52 Pa. Code § 5.305, which states:

(a) During the course of a proceeding, a presiding officer may certify to the Commission for review and answer a material question which has arisen or is likely to arise. The question will be accompanied by the following:

(1) An explanation of the compelling reasons why interlocutory review will prevent prejudice or expedite the conduct of the proceeding.

(2) A statement as to whether a stay of the proceedings has been placed in effect.

(3) An extract from the record that will assist the Commission.

(b) A copy of the question certified and the accompanying information will be served on the parties at the same time it is submitted to the Commission.

(c) Within 7 days of service of the certification, each party may submit a brief directed to the Commission addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of a party. The brief may not exceed 15 pages.

(d) Additional briefs will not be permitted unless directed by the Commission.

(e) Within 30 days of receipt of the certified question, the Commission will, without permitting oral argument, do one of the following:

- (1) Continue, revoke or grant a stay of proceedings.
- (2) Determine that the certification was improper and return the matter to the presiding officer for resolution.
- (3) Answer the certified question.

(f) Failure of the Commission to act upon a certified question within 30 days of its receipt will be deemed to be an affirmation of the decision of the presiding officer.

ALJ Jandebaur addressed each component of the regulatory requirements for presiding officers as follows:

(a)(1) Explanation

The parties in this proceeding involve many private citizens, several business, two statutory intervenors, and one or more utilities (PCL&P and Direct Energy). There are a number of complex issues involved in the formal complaints. One of the issues raised in the formal complaints and preliminary objections is also raised in the Recommendations made in the Report.

Recommendation 3 of the Report states:

“The Commission should consider having an independent study performed regarding the costs and benefits of the sale of the Company to another Pennsylvania EDC or a rural electric cooperative. The Commission should consider issuing an RFP to solicit parties to perform this study. As noted by the OCA, there is legal precedent for ordering such a sale. Pennsylvania Public Utility Commission v. Big Run Telephone Company and Citizen’s Utilities Company of Pennsylvania, Docket No. C-822983 (Order entered October 15, 1982) The Commission concluded, after evidentiary hearings that there was no real way to address unreasonable

rates and poor service for this company's service territory other than a sale of the company's assets." (Report at 19.)

It is clear from Recommendation 3 that it is possible that the Commission is acting or plans to act on whether sale of the assets of PCL&P is warranted. Recommendation 3 is the same as part of the requested relief asked by the County and OCA in the matter pending before me and is raised in PCL&P's preliminary objection D. The potential for prejudicial and/or inconsistent results on this specific issue is a compelling reason to certify to the Commission whether the OALJ process should be stayed pending Commission action on Recommendation 3. Moreover, it is not efficient use of resources to have simultaneous processes ostensibly reviewing the same question.

(a)(2) Stay of Proceeding

The OALJ formal hearing process has not been stayed at this time. Public input hearings are scheduled for October 4, 2006. Evidentiary hearings are scheduled for October 5, 6, 2006, and January 16, 17, 18 and 19, 2007.

(a)(3) Extract from the Record

The Commission has all the necessary documents in its possession. Specifically, the Commission needs to review Recommendation 3 of the Report, PCL&P's preliminary objection D, the County and OCA's Joint Answer to preliminary objection D.

Interim Order II at 5-6.

The Joint Brief in response to the Material Question filed by OCA and Pike County states that, to the best of their knowledge, the Commission has not acted on Recommendation 3 of the Report and, therefore, the risks of inconsistent results and duplicative efforts are not present. "On the contrary, the OCA and the County submit that the development of the record in the present complaint case could help inform

Commission action in this regard in the future. In other words, the present proceeding provides the Commission with an appropriate and timely vehicle in which to address the pressing issues identified in the Report.” (Jt. Brief at 2-3). OCA and Pike County state that they are prepared to move forward with their testimony addressing a number of issues, including the issue of the sale of PCL&P to another utility or electric cooperative. OCA and Pike County argue that it is inappropriate to suggest the Report prejudged the issues in the County’s Complaint. “There is nothing in the Report to suggest that it was intended to preclude any party from raising or seeking to implement any of the recommendations of the Report through separate formal proceedings at the PUC.” (Jt. Brief at 5).

In its Brief, Respondent responds to the Material Question without waiving its right to take an interlocutory appeal of the ALJ’s partial denial of its Preliminary Objections. Respondent argues that it would be entirely inappropriate for the ALJ to entertain proceedings involving the question of a forced sale. Respondent argues that: (1) the matter already is before the Commission, and that it would be a “usurpation of the Commission’s prerogatives to permit a complainant to force action on a matter that is under the Commission’s deliberations” (Brief at 2); (2) the Commission already has considered and rejected the requested relief; (3) a forced sale would be unwarranted even if the Commission had the power to order such a sale; and (4) “even considering such a remedy would violate PCL&P’s right to procedural due process.” (Brief at 2).

Direct Energy Services, LLC, filed a letter on October 12, 2006, stating that it does not express any position regarding the merits of the Material Question. It states that it supplies energy to customers in PCL&P’s service territory pursuant to an opt-out generation supply aggregation contract, and that it is not the default service provider, the provider of last resort (POLR) or POLR default service supplier. “Consequently, Direct Energy’s involvement in Pike County as a supplier of generation service to customers is

not dependent on what company owns the distribution facilities or provides POLR or default service.”<sup>2</sup>

We agree that the Material Question certified by the ALJ is proper. As she points out, she appropriately is unaware of what the Commission may be pursuing in response to the Report. It therefore was prudent for the ALJ to seek the Commission’s decision on whether or not to stay the proceedings before her insofar as they pertain to the specific relief (a forced sale) sought by Pike County.

Pursuant to 52 Pa. Code § 5.305(e)(3), we will answer the Material Question in the negative. To date, the Commission has not issued a Request for Proposals (RFP) for the performance of a study of the costs and benefits of a sale of PCL&P. Assuming *arguendo* that the Commission were to issue such an RFP at a future date, the submission of proposals, selection of a contractor, and performance of a study would take months, perhaps more than a year. Any Commission-initiated proceeding based on the results of such a study would take an additional lengthy period of time. Parties such as the County and OCA should not be precluded from pursuing their requested relief simply because the Commission has issued a Report prepared by its Law Bureau recommending, *inter alia*, that a study be performed. Requiring Complainants to wait indefinitely to pursue this portion of their requested relief would not be appropriate. We do not view Pike County’s Complaint as a usurpation of the Commission’s prerogatives, as argued by Respondent.

Respondent’s other objections to allowing consideration of the relief sought by Pike County are based partly on factual grounds. “Here, not only has there been no finding that the PCL&P is not providing safe and adequate service at just and reasonable

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<sup>2</sup> Although briefs in response to the Material Question were due on October 5, 2006, Direct Energy states that it was not served with the pleadings related to this matter until October 6, 2006. Therefore, its responsive letter will be accepted as timely filed.

rates, but the County has not even made a *prima facie* showing that such is the case.” (Brief at 8). Our observation on this point is that evidentiary hearings have yet to be held; to foreclose a party from pursuing relief requested in its Complaint because it has not made a factual showing in advance of a hearing would be quick justice indeed.

PCL&P also objects to allowing the County to pursue a forced sale partly on the basis of legal conclusions. “Furthermore, if the Commission were to find that PCL&P was not providing safe and adequate service at just and reasonable rates, its *only* remedy authorized under the Public Utility Code would be to order PCL&P to provide specific service at specific rates.” (Brief at 8; emphasis in the original). The *merits* of a forced sale are not before us at this time. The Material Question presented to us by ALJ Jandebour is a simple procedural question that we have answered. The proceedings before ALJ Jandebour on the issue of a forced sale (or revocation of PCL&P’s certificate of public convenience) will not interfere with any other Commission proceeding.

Finally, PCL&P objects on due process grounds to any consideration of the revocation of its certificate in this proceeding, citing *ARIPPA v. Pennsylvania Public Utility Commission*, 792 A.2d 636 (Pa. Cmwlth 2002), *appeal denied* 815 A.2d 635. OCA and Pike County’s indication, in their August 16, 2006, Joint Answer to PCL&P’s Preliminary Objections, that they may seek revocation of PCL&P’s certificate does not violate PCL&P’s procedural due process rights. On August 16, 2006, not only had evidentiary hearings not been held, they had not yet been scheduled. PCL&P has ample opportunity to respond to any evidence and argument on this issue that may be presented by Pike County and/or OCA in the proceeding before ALJ Jandebour.

## Conclusion

Based on the foregoing discussion, we conclude that the Material Question certified by ALJ Jandebaur is properly before the Commission. We answer the Material Question in the negative; **THEREFORE,**

### **IT IS ORDERED:**

1. That the following Material Question certified to the Commission by Administrative Law Judge Ember S. Jandebaur on September 26, 2006, is properly before the Commission:

**Should the OALJ formal hearing process be stayed pending Commission action on Recommendation 3 of the Law Bureau's report?**

2. That the Material Question is answered in the negative.

3. That this matter is remanded to the Office of Administrative Law Judge for further proceedings consistent with this Opinion and Order.

4. That a copy of this Opinion and Order be served upon all Parties to the above-captioned proceedings, including those Complainants who have withdrawn their Formal Complaints and those Complainants who have been classified as inactive parties by the Administrative Law Judge.

**BY THE COMMISSION,**



James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: October 19, 2006

ORDER ENTERED: OCT 24 2006