



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

C-20066260

IN REPLY PLEASE  
REFER TO OUR FILE

ISSUED: October 5, 2007

C-20065922 et al

JOHN J GALLAGHER ESQUIRE  
SAUL EWING LLP  
2 NORTH STREET 7<sup>TH</sup> FLOOR  
HARRISBURG PA 17101

Delaware Valley School District et al  
v.  
Pike County Light & Power Company

**DOCUMENT  
FOLDER**

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision of Administrative Law Judge Ember S. Jandebaur.

An original and nine (9) copies of signed exceptions to the decision, if any, **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2<sup>ND</sup> FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265**; a copy in the hands of the Office of Special Assistants, Third Floor; and a copy in the hands of each party of record no later than **October 22, 2007** by 4:30 P.M. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions or reply exceptions.

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, no later than **October 29, 2007** by 4:30 P.M. as well as served upon the parties. A certificate of service shall be attached to the filed exceptions.

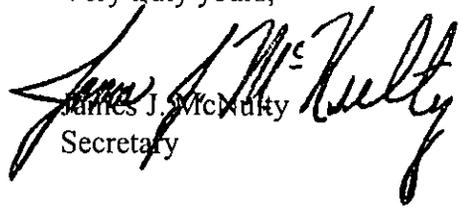
Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535, particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of exceptions/reply exceptions on a computer disk, 3 1/2" in size, in Microsoft Word 6.0 format. If Word 6.0 is not available, either Wordperfect 5.1 or ASCII format is acceptable.

MG  
Encls.  
Certified Mail  
Receipt Requested

Very truly yours,

  
James J. McNulty  
Secretary

**BA**

See attached list for additional parties of record.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Delaware Valley School District	:	C-20065922
Chaba M. Pallaghy	:	C-20065924* <sup>1</sup>
County of Pike	:	C-20065942
Jeff L'Hote	:	C-20065943*
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 Corp.	:	C-20066262
Richard Snyder	:	C-20066263
Samall Properties	:	C-20066264
E.E. Hauser	:	C-20066266*
Carol Ann's Linen Closet	:	C-20066268*
Pike County Outfitters	:	C-20066269*
Stebo, Inc.	:	C-20066270*
S&M Management	:	C-20066271*
Hare Hollow, Inc.	:	C-20066273*
Michelle Storms	:	C-20066281*
Waterwheel Café & Bakery	:	C-20066282*
Jake & Darryl Wood	:	C-20066283*
Altec Lansing	:	C-20066336
James and Laura Pollard	:	C-20066379*
Jeanette Abbott	:	C-20066392*
Dan Kane	:	C-20066393*
James E. Sechrist	:	C-20066431*
John W. Dalton, Jr.	:	C-20066481
Charles J. Deller	:	C-20066483*
Lawrence Budzeyko	:	C-20066538*
611 Broad Street LLC	:	C-20066542*
Peter P. Kenny	:	C-20066546
Earl Edwards	:	C-20066563*
Raymond A. Paquette	:	C-20066589*
Sandra Paul	:	C-20066590*
Steve Height	:	C-20066592*
Audrey H. Austin	:	C-20066647*
Margaret Hoover	:	C-20066652*
Patricia Dudzinski	:	C-20066662*
Joan Stohr	:	C-20066668*
Hotel Fauchere, LLC	:	C-20066722

<sup>1</sup> \*Indicates an inactive party.

Community Building Projects/Sean Strub  
Dana Gobin

C-20066725  
C-20066753\*

and

Office of the Consumer Advocate  
Party Intervenor

and

Office of the Small Business Advocate  
Party Intervenor

and

Direct Energy  
Indispensable Party

v.

Pike County Light and Power Company

**DOCUMENT  
FOLDER**

**RECOMMENDED DECISION**

Before  
Ember S. Jandebour  
Administrative Law Judge

**DOCKETED**  
OCT 05 2007

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I. HISTORY OF THE PROCEEDINGS

On February 23, 2006, Delaware Valley School District (C-20065922) filed a formal complaint alleging the generation charge for the main campus of the Delaware Valley School District increased 129% and that the Pike County Light and Power's (Respondent or PCL&P) rates are 2 ½ times higher than the providers (Met-Ed and PPL) at two of their other campuses.

On February 27, 2006, Chaba M. Pallaghy (C-20065924) filed a formal complaint alleging that the Respondent's rate increase was excessive and unjustifiable.

On March 1, 2006, the County of Pike (County) (C-20065942) filed a formal complaint alleging that the Respondent's rate increase of 73-129% was an unfair burden on existing budgets. The County filed an Amended Complaint on or about July 12, 2006, alleging that the Respondent's rates are neither just nor reasonable in violations of 66 Pa. C.S. §1301, that the Respondent's service is neither safe nor adequate in violation of 66 Pa. C.S. §1501, and that the Respondent has no employees headquartered in Pennsylvania.

On March 3, 2006, Jeff L'Hote (C-20065943) filed a formal complaint alleging that the Respondent's rate hike was unconscionable and will affect his ability to generate a profit in his home based business.

On March 21, 2006, Joseph DeMalderis (C-20066028) filed a formal complaint alleging that on January 1, 2006 his rate charged for electricity increased by 78%. Mr. Demalderis wants the Commission to compensate him for its (the Commission's) "failure to protect and enforce [his] rights as published on the PUC website."

On April 3, 2006, Joseph Fretta (C-20056194) filed a formal complaint alleging that the 129% increase in his electric will force him to close his establishment.

On April 11, 2006, William and Irene Loosemore (C-20066258) filed a formal complaint alleging that they want their electric bill to be reasonable.

On April 24, 2006, Samall Properties, Inc. (C-20066260 and C-20066264) filed a formal complaint alleging that the Respondent's 73% rate increase will significantly increase their costs and discourage tenants from renting in a high cost area.

On April 24, 2006, Three Lane Utilities (C-20066261 and C-20066262) filed a formal complaint alleging that as a public utility providing water service they are at their maximum rate and cannot pass on the 73% increase to their customers.

On April 24, 2006, Richard Snyder (C-20066263) filed a formal complaint alleging that he is a llama breeder and that the Respondent's 73% rate increase will affect the viability of his farm operations.

On April 21, 2006, E.E. Hauser (C-20066266) filed a formal complaint concerning the Respondent's rate increase of 73 - 100%.

On April 17, 2006, Carol Ann Sklar t/a Carol Anns Linen (C-20066268) filed a formal complaint alleging prohibitive rates having a detrimental effect on her business.

On April 17, 2006, Pike County Outfitters (C-20066269) filed a formal complaint alleging "Rate increase of 100%? Milford business (*sic*) cannot afford it."

On April 14, 2006, Stebo, Inc. d/b/a Malibu Ranch (C-20066270) filed a formal complaint alleging they have eleven accounts. No facts of the complaint were stated.

On April 13, 2006, S&M Management Inc. (C-20066271) filed a formal complaint alleging the rate increase was excessive, had doubled, and the power outages had increased.

On April 12, 2006, Hare Hollow, Inc. (C-20066273) filed a formal complaint alleging their rates were an unbearable increase and service was not reliable, that they experienced many outages.

On April 13, 2006, Jack and Darryl Wood (C-20066283) filed a formal complaint alleging the current rate increase was too steep and overburdening and they experienced too many outages.

On May 3, 2006 Altec Lansing (C-20066336) filed a formal complaint alleging that the increase of more than 70% was "beyond excessive."

On May 26, 2006, Jeanette Abbott (C-20066392) filed a formal complaint alleging that as of January 2006 her electric bill went up \$53 and that she is not home all day.

On May 26, 2006, Dan Kane (C-20066393) filed a formal complaint alleging that the Respondent is charging 3 times the amount as when he moved to the area.

On June 1, 2006, James E. Sechrist (C-20066431) filed a formal complaint alleging that his rate increase was "totally unacceptable."

On June 8, 2006, John W. Dalton, Jr. (C-20066481) filed a formal complaint alleging he was opposed to the company's rate increase, there were incorrect charges on his bill, there is reliability, safety, or quality problems with his service, that he received notice his service was being terminated and that he wanted a payment agreement.

On June 15, 2006, Charles J. Deller (C-20066483) filed a formal complaint alleging that the Respondent's rate increase was crippling the individual homeowner and local businesses.

On June 26, 2006, Lawrence Budzeyko (C-20066538) filed a formal complaint alleging the rate increase was much too high.

On June 28, 2006, 611 Broad Street LLC (C-20066542) filed a formal complaint alleging that the rate increase was jeopardizing its ability to stay in business.

On June 27, 2006, Peter P. Kenny (C-20066546) filed a formal complaint alleging his rate increase was outrageous and that he experienced outages, many for long periods of time.

On July 28, 2006, Audrey H. Austin (C-20066647) filed a formal complaint. No facts of the complaint were stated.

On July 31, 2006, Patricia Dudzinski (C-20066662) filed a formal complaint alleging her rates were extremely difficult to afford.

On July 31, 2006, Margaret Hoover (C-20066652) filed a formal complaint alleging her electric costs have doubled despite reducing her consumption and that she has no recourse except to move.

On July 28, 2006, Joan Stohr (C-20066668) filed a formal complaint. No facts of the complaint were stated.

On August 14, 2006, Hotel Fauchere, LLC (C-20066722) filed a formal complaint alleging that the increase in their rates could not be passed onto their guests and that the Respondent provided poor service.

On August 14, 2006, Community Building Projects (C-20066725) filed a formal complaint alleging that they experienced a greater than 100% increase in their rate and that they cannot pass on those costs to their tenants.

On August 31, 2006, Dana Gobin (C-20066753) filed a formal complaint alleging high rates.

A number of formal complaints were filed by additional customers but were later withdrawn. In my September 19, 2006, Interim Order, those formal complainants that withdrew their formal complaints i.e., (last names only): McCutchen C-20065901, Robbins C-20066549, Degraw C-20065923, Recchia C-20066547 and C-20066552, Grigas C-20066537, Chase C-20065905, Rushton C-20066394, Delanney C-20066623 and 6624, Hall C-20066005, Orben C-20065966, Ferranti C-20066267, Beecher C-20066509, Trenner C-20066265, Grigal C-20066415, Borough of Milford C-20066550, Forbes C-20066476, Rigas C-20066395, Hoff C-20066523 were removed from the party list and their dockets were marked closed. Thus, they do not appear on the caption above.

In the same Interim Order, the following formal complainants were designated as inactive parties: Delaware Valley School District C-20065922, Pallaghy C-20065924, L'Hote C-20055943, Storms and Storms Water Wheel Café C-20066281 and 6282, Wood C-20068283, Loosemore C-20066258, Hauser C-20066266, Skylar (d/b/a Carol Ann's Linen Closet) C-20066268, Pike County Outfitters C-20066269, Stebo d/b/a Malibu Ranch) C-20066270, S&M Management C-20066271, Hare Hollow, Inc, C-20066273 Demalderis C-20066028, Pollard C-20066379, Kane C-20066393, Abbott C-20066392, Sechrist C-20066431, Deller C-20066483, 611 Broad Street, LLC C-20066542, Budzeyko C-20066538, Edwards C-20066563, Paul C-20066590, Paquette C-20066589, Height C-20066592, Austin C-20066647, Hoover C-20066652, and Dudzinski C-20066662.

On August 3, 2006, a Prehearing Conference was held. At that conference, counsel for the PCL&P indicated they intended to file several motions. Scheduling hearings on the merits was postponed pending receipts of motions by PCL&P.

On August 4, 2006, PCL&P filed Preliminary Objections.

On or about August 16, 2006, County of Pike and OCA filed a Joint Answer of the County of Pike and the Office of the Consumer Advocate to the Preliminary Objections of Pike County Light and Power Company (Joint Answer).

A second prehearing conference was conducted August 22, 2006.

On or about August 9, 2006, counsel for Samall Properties, Richard Snyder and Three Lane Utilities, Inc. indicated by letter that they adopted the Response of the Consumer Advocate to the Answer and New Matter of Pike County Light and Power Company and the Response of the Office of the Consumer Advocate to the Preliminary Objections filed by the PCL&P (Note: both of these Responses are the joint answers of OCA *and* the County of Pike, not just OCA.)

By Interim Order dated January 31, 2007, Joan Stohr at Docket No. C-20066668, Community Building Projects/Sean Strub at Docket No. C-20066725, and Dana Gobin at Docket No. C-20066753 had not been designated as either active parties or inactive parties by the September 19, 2006 Interim Order, but none had participated as an active party. The January 31, 2007, Interim Order designated and identified them as inactive parties.

On October 4, 2006, two public input hearings (one at 10:00 a.m. and another at 6:00 p.m.) were held in Matamoras, Pennsylvania for receiving testimony from PCL&P customers. The hearings resulted in transcripts of 76 pages and 134 pages respectively.

In-person hearings were held in Scranton, Pennsylvania on November 6, 2006 and January 16, 17 and 19, 2007. Transcripts were produced for each day of hearing resulting in transcripts of 151, 156, 152, and 91 pages respectively.

Main Briefs were filed on February 12, and Reply Briefs were filed on February 26, 2007.

On April 19, 2007, the County, and PCL&P filed a document entitled "Joint Petition of Pike County Light & Power Company and the County of Pike to Reopen the Proceeding" (Joint Petition) requesting that the record in this matter be re-opened to allow time for the parties to negotiate a potential settlement. The Commission encourages amicable settlements as shown by 52 PA Code § 5.231, which states:

§ 5.231 Offers of settlement.

- (a) It is the policy of the Commission to encourage settlements.
- (b) Nothing contained in this chapter or Chapter 1 or 3 (relating to rules of administrative practice and procedure; and special provisions) preclude a party in a proceeding from submitting, at any time, offers of settlement or proposals of adjustment, or from requesting conferences for that purpose.
- (c) Parties may request that the presiding officer participate in the settlement conferences or that an additional presiding officer or mediator be designated to participate in the settlement conferences.
- (d) Offers of settlement, of adjustment, or of procedure to be followed, and proposed stipulations not agreed to by every party, including proposals intended to resolve discovery disputes, will not be admissible in evidence against a counsel or party claiming the privilege.

On May 4, 2007, Interim Order IV granted the Joint Petition to reopen the proceedings to allow time for the parties to pursue amicable settlement of the issues.

On June 13, 2007, Interim Order V granted a May 30, 2007 request by (Pike County Light & Power Company, County of Pike, and the "Large Customer Group"<sup>2</sup>) for an extension of time to continue pursuing an amicable settlement. As ordered in Interim Order V, the record was closed on July 2, 2007.

On July 3, 2007, PCL&P, County of Pike, Delaware Valley School District, Richard Snyder, Samall Properties, Inc. Hotel Fauchere, LLC, Three Lane Utilities Corp.,

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<sup>2</sup> The "Large Customer Group" consists of commercial complainants: County of Pike, Delaware Valley School District, Samall Properties, Inc., Hotel Fauchere, LLC, Three Lane Utilities Corporation, Community Building Projects, LLC, and Altec Lansing Technologies. In my November 30, 2006 Prehearing Order, this group was referred to as the Large User Group. As was noted in the Prehearing Order, the use of the phrases Large Customer Group or Large User Group is for case of reference only. The Group did not request consolidation of their complaints and therefore, each complaint stands alone. Prehearing Order at 2.

Community Building Projects, LLC and Altec Lansing Technologies, Inc. (collectively “Joint Petitioners” or “Settlement Parties”) submitted a Joint Petition for Settlement.

On July 12, 2007, OSBA filed a Comment to the Joint Petition for Settlement.

On July 18, 2007, formal complainant Peter P. Kenny submitted a letter responsive to the Joint Petition for Settlement stating that he “recognize[s] the Joint Petition must stand or fall on its own.” Mr. Kenny’s letter denied he was provided a meaningful opportunity to participate in settlement discussions. On that same day, counsel for PCL&P submitted a letter countering Mr. Kenny’s position and stating that complainants were provided an opportunity to participate in the settlement discussions.

On July 19, 2007, PCL&P, County of Pike, Large Customer Group and Direct Energy (indispensable party) submitted a Stipulation that their settlement proposal did not make any recommendation, nor suggest that any other action need to be taken by the ALJ with respect to Section B(1) of the Joint Petition for Settlement because that issue was being litigated under Docket No. P-00072245.

On July 20, 2007, the OCA filed a Comment responsive to the Joint Petition for Settlement.

On July 23, 2007, formal complainant, John Dalton, Jr., submitted a letter responsive to the Joint Petition for Settlement stating that he “dread[s] the final outcome if settlement is allowed or approved.”

This matter is ready for disposition.

## II. DISCUSSION

A brief statement of the case(s) will facilitate focusing precisely on what complaints are before me, and what relief was requested. For clarity, I am going to group the complaints by residential, commercial, public advocates, and the public input hearings.

At the close of the record, there were only two remaining active residential complainants; they were John W. Dalton Jr. and Peter P. Kenny.

### A. **Complaints**

#### 1. Residential Complaints:

Mr. Dalton alleged PCL&P's rates were discriminatory and unfair and that there was a reliability, safety, or quality problem with PCL&P's service. Mr. Dalton requested that rate be examined and the numbers supported or the rate approval withdrawn.<sup>3</sup> With regard to service issues, Mr. Dalton requested that PCL&P make clear who their provider is, PCL&P or Orange and Rockland, that PCL&P be required to provide a local telephone number for its customers and that PCL&P or Orange and Rockland be admonished for providing an unmanned telephone number for its customers.<sup>4</sup>

Mr. Kenny alleged that the rate increase was outrageous and that there were too many electric outages. Mr. Kenny requested that the old rates be reinstated and that he be placed on a grid that allowed other sources of electricity when outages occur.

#### 2. Commercial Complaints:

Joseph Fretta's complaint related to his Italian delicatessen, a commercial enterprise. Mr. Fretta alleged that his electric rate increase of 129.6% caused him worry and

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<sup>3</sup> Complaint at 1 and 9.

<sup>4</sup> Complaint at 10.

stress and that he may be forced to close his business. He requested that he be able to receive electricity from another (presumably cheaper) company.

Collectively, the Large Customer Group, represented by attorney James Melia had similar complaints. A number of the complaints mirrored each other's language, specifically, Docket Nos. C-20066260-C-20066264 varied slightly in actual complaint, but were identical in the relief requested. The relief requested was that the October 2005 auction be invalidated as not reflective of true market value and to allow PCL&P to opt out to a lower cost provider or allow PCL&P customers to opt in to another lower-cost provider.<sup>5</sup>

Hotel Fauchere, LLC alleged that they cannot increase their hotel rate and if they did, the increased rate would "discourage potential guests." Hotel Fauchere, LLC also alleged poor service and that service had to be timely supplied to properly and safely serve their guests. Hotel Fauchere, LLC asked that the PUC examine long-term alternate service to PCL&P and address the ongoing service issues.

County of Pike alleged that the Respondent's rate increase of 73-129% was an unfair burden on already in place budgets, and in their amended complaint, the County alleged that the Respondent's rates are neither just nor reasonable in violation of 66 Pa. C.S. § 1301, that the Respondent's service is neither safe nor adequate in violation of 66 Pa. C.S. § 1501, and that the Respondent has no employees headquartered in Pennsylvania. The County's original complaint requested a "rollback" and the amended complaint retained that request and added a request that the Commission order the sale of PCL&P "to another EDC or a rural electric cooperative."<sup>6</sup>

Altec Lansing Technologies alleged the rate increase "was beyond excessive" and requested that the Commission "get other providers and get the rates lowered."<sup>7</sup>

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<sup>5</sup> Complaints C-20066260-C-20066264 at 5

<sup>6</sup> Original Complaint at 5, Amended Complaint at 5.

<sup>7</sup> Complaint at 5.

Community Building Projects alleged that the rate increase significantly raised the cost of several of their facilities that they cannot pass on to their tenants. Community Building Projects additionally alleged "increasingly poor quality of service" and frequent power outages with inadequate response time. Community Building Projects requests that the Commission examine long-term alternative service and address the service issues.<sup>8</sup>

### 3. Public Advocate Complaints

The OCA was established to represent the interest of consumers before the Commission. 71 P.S. § 309-2. The OCA intervened on behalf of the County, but also noted that their intervention was to "help ensure that the interests of the Company's ratepayers are adequately represented before the Commission."<sup>9</sup> No specific complaint or relief was noted.

However, OCA in their Prehearing Memorandum identified three (3) issues: (1) sale of the utility, (2) quality of service, and (3) rates. Ultimately, as will be shown in more detail below, OCA supported, but did not sign, the Joint Petition for Settlement and dropped the request for the sale of the utility as part of their requested relief. OCA agreed, if the Joint Petition for Settlement is approved, they would work with PCL&P regarding the rate increase and service complaints.

The OSBA, included within the Department of Community and Economic Development, represents the interest of small business consumers before the Commission. 73 P.S. § 399.43. OSBA's Public Statement noted that their intervention was "to assure that the interests of the small business customers served by Pike are adequately represented and protected." No specific complaint or relief was noted.

OSBA filed a Prehearing Memorandum in which they identified two (2) issues, namely, what steps the Commission could take to mitigate the impact of PCL&P's rate increase, and what notice would be given to those customers already included in Direct's aggregation pool

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<sup>8</sup> Complaint at 5.

<sup>9</sup> Notice of Intervention and Public Statement

(and currently served by Direct) who have been identified as potentially benefiting from lower rates if the return to service provided by PCL&P on and after January 1, 2007.

4. Public Input Hearings Complaints:

The anxiety and anger experienced by the Pike County customers was well documented in the public input hearings held in this case and the public input hearings held in Docket No. P-00072245 (Opinion and Order entered August 16, 2007). As the Commission noted in Docket No. P-00072245, the two main complaints at those public input hearings were high rates and poor service.

In this Docket, two public input hearings were held in Matamoras, central to the PCL&P service area. Ten customers testified at the morning session, and an additional 26 testified at the evening session. The testimony at the morning session exposed customer frustration and anger caused by PCL&P outages resulting in businesses having to shut down, lost data, lost equipment, wages and business. One witness testified that since the rate increase they experienced three service interruptions, one that lasted for four hours. The witness was angered that PCL&P did not provide any explanations or communication regarding the cause of the interruptions. Another witness testified that in 13 months, from May 18, 2005 to June 10, 2006, he experienced 15 outages. As another residential witness put it, “[the] outages really were inconvenient.” Customers testified that the rate increase was not manageable and they felt they had had no notice that the increase was coming. They simply were hit with it.

The evening public input session provided testimonials consistent with the morning session. PCL&P customers were angered at the recurring outages and the length of time they were without service. Customers did not believe PCL&P was properly trimming trees/branches or maintaining right-of-way regarding trees and branches. Customers were annoyed that there was no PCL&P presence nearby, and that when they called for service, someone came from Orange County, New York. Customers repeatedly noted the pervasive unresponsiveness and “substantially inadequate” service of PCL&P. Lack of notice provided by PCL&P for planned outages was a common complaint. Milford Borough expressed concern that

the high rates were negatively affecting tourism and local businesses. The Borough was also concerned about its budget and that it passes on the higher electric costs to the 550 households through taxes. The Borough also testified about numerous and long outages.

In sum, the public input complaints from PCL&P's customers are:

- (1) The rate increase is unmanageable for the homeowner and the business owner. The rate increase is made more frightening by the fact that the Borough will raise taxes in order to cover its own increased electric costs, thus the rate increase affects the residents twice.
- (2) PCL&P exhibits a consistently unresponsive front to their customers.
- (3) PCL&P has unreasonably frequent outages and the outages often last for an unreasonable period.
- (4) PCL&P neglects its customers by not having a presence in the territory; responses to outages come from Orange County, New York.
- (5) PCL&P does not timely maintain trees and branches to keep its line cleared.

These five (5) complaints appeared in the formal complaints as well.

a. Burden of Proof:

Section 332(a) of the Public Utility Code provides that the party or parties seeking relief from the Commission has/have the burden of proof. 66 Pa. C.S. § 332(a). Because Messrs. Dalton and Kenny, the Large Customer Group and the public advocates are seeking relief from the Commission, each has the burden of proof in this proceeding.

The Pennsylvania Supreme Court has held that the term "burden of proof" imparts a duty to establish a fact by a preponderance of the evidence. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1995). "Preponderance of the evidence," in turn, means that one party has

presented evidence that is more convincing, even by a small amount, than the evidence presented by the other side. If the evidence is co-equal, the party with the burden of proof loses.

Morrissey v. Pa. Dept. of Highways, 424 Pa. 87, 225 A.2d 895 (1987); Samuel J. Lansberry, Inc. v. Pa. P.U.C., 578 A.2d 600, 602 (Pa. Cmwlth. 1990). (Lansberry) In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. Norfolk and Western Railway v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980). *See also, e.g.*, Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. Ct. 1984).

b. Legal Standards:

Section 701 of the Code, 66 Pa. C.S. § 701, allows any person, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth "*any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer or of any regulation or order of the Commission.*" *See also*, 52 Pa. Code § 5.21(a). (Emphasis added.)

The allegations in these complaints relate to the rates charged and the services provided by PCL&P.

PCL&P is obligated to provide service which meets the standard set forth in Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. § 1501. Section 1501 provides in pertinent part that:

Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also

shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

The rates that PCL&P charges must meet the standard set forth in Section 1301 of the Code. 66 Pa. C.S. § 1301. Section 1301 states:

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the Commission. ...

Failure to meet the standards set forth above may subject one to a civil penalty pursuant to Section 3301 of the Code, which provides in pertinent part:

If any public utility ... shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, neglect, or refuse to perform any duty enjoined upon it by PCL&P by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement determination or order made by the commission, or any order of the commission prescribing temporary rates in any rate proceeding, ...such public utility... for such violation, omission, failure, neglect, or refusal shall forfeit and pay to the Commonwealth a sum not exceeding \$1000.00, to be recovered by an action of assumpsit. ...

#### **B. Petition for Settlement**

PCL&P, County of Pike, Delaware Valley School District, Richard Snyder, Samall Properties, Inc., Hotel Fauchere, LLC, Three Lane Utilities Corp., Community Building Projects, LLC and Altec Lansing Technologies, Inc. (Settlement Parties) submitted a Joint Petition for Settlement on July 3, 2007.

The Joint Settlement is not unanimously agreed to by all parties. Residential complainants Mr. Dalton and Mr. Kenny both submitted letters in protest of the proposed Joint

Settlement. Mr. Fretta did not submit a response. The indispensable party, Direct Energy did not submit a response. Both OCA and OSBA, (the public advocates), submitted statements specifying their positions. While OCA is not a signatory to the Joint Settlement, their Comments stated “[t]he OCA supports the County’s position with regard to the proposed settlement and will work with the County to help ensure that the Company [PCL&P] fulfills its commitments under the settlement.” OSBA, also not a signatory, opposes Section B(1)(a) of the Joint Settlement (related to provider of last resort or POLR issues) and noted that the Settlement Parties did not “commit[] to anything more than a joint exploration of various infrastructure improvements and their costs, and an effort to determine if the ratepayers are willing to bear the costs involved.”

There is a substantial difference in the positions espoused in the OCA’s testimony, main brief and reply brief, the County and Large Consumer Group’s testimony and briefs, and these same Parties’ latest position, namely, support of the Joint Settlement.

It is a long-standing policy of the Commission to encourage settlements. 52 Pa. Code § 5.231. In its policy statement regarding settlements in major rate cases, the Commission provides in pertinent part at 52 Pa. Code § 69.401:

In the Commission’s judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.

Often, settlements lessen the time and expense the parties must expend litigating a case and may conserve administrative hearing resources. A timely settlement can allow the parties to avoid the substantial costs of litigation, and the preparation and service of briefs. Timely settlement may yield significant expense savings for a company’s customers. That is one reason why settlements are encouraged. However, this Joint Petition for Settlement was submitted on July 3, 2007, well after the hearings and last briefs were submitted, thus the complaints were fully litigated, and the settlement did not provide such resource savings.

As noted several times above, in order to accept a settlement, the Commission must determine that *the proposed terms and conditions are in the public interest*. PA PUC v. York Water Co., Docket No. R-00049165, (Commission Opinion and Order entered October 4, 2004); PAPUC v. C S Water and Sewer Assoc., 74 Pa. P.U.C. 767 (1991). (Emphasis added.)

The Joint Settlement will be examined in accordance with the above principles.

**C. Is the Joint Settlement in the Public Interest?**

From the perspective of the customers, public interest would be satisfied if PCL&P provided (1) lower rates, and (2) better customer service. However, the PUC “balances the needs of consumers *and utilities* to ensure safe and reliable utility service at reasonable rates...”<sup>10</sup> (Emphasis added.) Furthermore, because this Joint Settlement is *not* unanimously agreed upon, and citizens clearly have been frustrated, I will review certain points.

From a litigation perspective, each complainant needed to prove the elements of their complaint by a preponderance of substantial and legally credible evidence. Lansberry at 602. The burden of proving the rates were unjust or unreasonable was a very high hurdle because the rates charged were the result of a request for proposals (RFP) submitted in a POLR auction. On October 27, 2005, PCL&P filed the results of its auction process, which included the impact on retail rates for customers receiving POLR service. Finding no need for further investigation, and that the RFP process was properly followed, the results of the auction were approved by Commission Secretarial Letter dated October 28, 2005, and PCL&P was instructed to submit a tariff supplement, which it did.

**1. History of the Rate Increase**

The rate increase being endured by the PCL&P customers relates to rate caps that recently came off. While understanding the process will not lessen the hardship, I strive for my

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<sup>10</sup> PUC Website

recommendation, and the background for it to be understandable to each PCL&P customer. For that reason, a recitation of the pertinent Pennsylvania legislative history may benefit readers.

On December 3, 1996, Governor Tom Ridge signed into law the "Electricity Generation Customer Choice and Competition Act" (the "Act"). The Act revised the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.*, by adding *inter alia*, Chapter 28, relating to restructuring of the electric utility industry. The purpose of the law was to permit customers their choice of electricity generation suppliers. The Act set a number of timelines and caps. The language of the law relating to caps is copied here. Section 2804 (4) of the Act states:

The following caps on electric utility shall apply:

(i) For a period of 54 months from the effective date of this chapter or until an electric distribution utility is no longer recovering its transition or stranded costs through a competitive transition charge or intangible transition charge and all the customers of an electric distribution utility can choose an alternative provider of electric generation, whichever is shorter:

(A) The total charges of an electric distribution utility for service to any customer who purchases generation from that utility shall not exceed the total charges that have been approved by the commission for such service as of the effective date of this chapter; and

(B) For customers who purchase generation from a supplier other than the electric distribution utility, the charges of the utility for non-generation services that are regulated as of the effective date of this chapter, exclusive of the competitive transition charge and intangible transition charge, shall not exceed the non-generation charges that have been approved by the commission for such service as of the effective date of this chapter.

(ii) In addition to the rate cap set forth in subparagraph (i), for a period of nine years from the effective date of this chapter or until an electric distribution utility is no longer recovering its transition or stranded costs through a competitive transition charge or intangible transition charge and all customers of an electric distribution utility can choose an alternative provider of electric generation, whichever is shorter, the generation component of a utility's charges to customers who purchase generation from the

utility, including the competitive transition charge and intangible transition charge, shall not exceed the generation component charged to the customers that has been approved by the commission for such service as of the effective date of this chapter

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To help one understand the above, the General Assembly stated:

2802. Declaration of policy.

...

(3) Because of advances in electric generation technology and Federal initiatives to encourage greater competition in the wholesale electric market, it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market...

(4) Rates for electricity in this Commonwealth are on average higher than the national average...

(6) The cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth.

(7) This Commonwealth must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs...

(9) Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.

66 Pa. C.S. § 2802.

It is clear from the above language, that the legislature intended *time* to allow a number of alternative energy sources to become available to Pennsylvania customers. That did not occur nearly to the degree it was anticipated. Also, the intent was that through the Act, competitive forces rather than traditional cost-based regulation would be bring about just and

reasonable rates as required in Section 1301 of the Code. In the case of Pike County customers, however, circumstances have made it so that the customers are receiving *neither* the protection of cost-based regulation nor the benefits of competition.

## 2. Public Interest and the Rate

One purpose of the Act was to bring competition to bear on the electric marketplace to reduce electric rates. But, as demonstrated by the 2005 POLR auction, market participants showed little or no interest in the Pike County electric market either at the wholesale or retail level. The lack of competition at the wholesale level has caused Pike County customers high rates that appear to be driving tourists, businesses, and potential homebuyers out of the area.

OCA witness Matthew Kahal addressed the structural problems that have caused the rate in Pike County stating:

Q. What are the structural problems afflicting PCL&P?

A. The Company's price spike from its October 2005 procurement is attributable to the following (a) poor market timing; (b) the extremely small size of its POLR load; (c) direct interconnection with only the New York ISO market; (d) restrictions under the PSA. The latter is no longer an issue, and therefore little comment is needed. Unfortunate market timing is not a structural attribute of PCL&P *per se*, since conceivably this could be a source of rate shock and instability for any utility market-based POLR service. However, the market timing problem is magnified severely for PCL&P (compared to larger utilities) because the very small loads make it difficult to employ diversified portfolio strategies or staggered contracting to help stabilize rates.

OCA Kahal St. 1 at 14.

The price of power in the PJM Interconnection which serves most of Pennsylvania and New Jersey has been consistently lower than the cost of power in the New York ISO that serves PCL&P. Mr. Kahal examined the relationships between the prices paid in

these two markets. At the time of the auction that resulted in PCL&P's current default rates, a wide discrepancy existed between the markets. Mr. Kahal described this difference as follows:

The table below shows the published wholesale market prices for forward (on-peak) block energy for calendar years 2006 and 2007, as of the date of the October 25, 2005 auction for the PJM West trading hub and New York's Zone G (which is PCL&P's interconnection point). While this is not precisely the product sought, it provides the best single indication of wholesale market costs relevant to POLR service.

Forward Wholesale Market Prices as of October 24, 2005 (\$/MWh)			
<u>Forward Year</u>	<u>PJM West</u>	<u>New York</u>	<u>Difference</u>
2006	\$93.50	\$114.00	\$20.50
2007	\$79.25	\$103.70	\$24.50

Source: Megawatt Daily, October 25, 2005

OCA Kahal St. 1 at 15-16. The chart shows there was over \$20 per megawatt hour difference in price at the time of the auction. Mr. Kahal updated his analysis to show the current price differentials between the two markets, with the following chart:

Forward Wholesale Power Prices as of November 2, 2006 (\$/MWh)			
<u>Forward Year</u>	<u>PJM West</u>	<u>New York G</u>	<u>Difference</u>
2007	\$73.70	\$89.15	\$15.45
2008	74.60	87.30	12.70
2009	70.05	85.75	15.70

Source: Megawatt Daily, November 3, 2006

OCA Kahal St. 1 at 16. The differential between the markets lessened to approximately \$15 per megawatt hour, but the percentage difference remains consistently at 20 percent or greater.

Additionally, the indispensable party Direct Energy, a retail aggregator, acknowledged that it was able to achieve only small savings over existing rates in light of the fact that PCL&P operated in the New York market. Direct Energy St.1 at 3. As long as PCL&P remains structurally dependent upon the New York market, its customers will not have access to the lower wholesale market prices of PJM, or other generation supply options. Moreover, there is no indication the New York ISO prices will drop.

In addition to its location in the New York ISO, PCL&P's small size makes it unable to attract competition, even from wholesale suppliers. PCL&P is located in a different wholesale market than the rest of Pennsylvania (Pike is the *only* Pennsylvania utility that is not in a Regional Transmission Organization or RTO). And, Pike is part of a very large utility that operates primarily in the New York, and to a lesser extent New Jersey, regulatory arenas.

PCL&P's small peak load of 16 MW places the company at a disadvantage for the procurement of reasonably priced generation for its customers. PCL&P's default service auction generated virtually no interest from suppliers. In the last auction to serve POLR load held in 2005, only two suppliers submitted bids to provide energy for the load (one bid was by Con Edison Energy, a subsidiary of the parent of both Con Edison Energy and PCL&P, Orange & Rockland, Utilities, Inc, a subsidiary of Consolidated Edison, Inc.), and only one bid, that of Con Edison Energy was submitted for the provision of capacity (the reliability component of energy supply). With these facts, there is a question whether the bids could be considered "competitive."

As Mr. Kahal explained, the small size of PCL&P's load is a structural impediment to reasonable service because:

There are two reasons. The small POLR load simply will elicit less interest from the market, all else equal, due to the fixed costs of participating in a competitive solicitation and the various priorities of potential wholesale suppliers (i.e., suppliers may tend to focus on larger utility solicitations). I am not suggesting PCL&P will be unable to procure power for its roughly 16 MW of load, but the more active the bidding, the lower the market price

results are likely to be (all else equal). Customers will be harmed by a weak competitive procurement process.

An even larger problem is that a small load has difficulty staggering power procurement and/or employing a portfolio approach. A number of utilities use or have suggested the use of three-year laddered contracts that effectively spread market timing risk over three years, leading to a smoothing (though not necessarily a lowering) of prices. For example, PPL Electric Utilities Corp. has proposed a Competitive Bridge Program for 2010 service based on six separate procurements spread over three years. (Docket No. P-00062227) This approach would appear to be impractical for full requirements service for the Company's 16 MW POLR load. OCA Kahal St. 1 at 17.

Thus, PCL&P's small size impedes the procurement of power from the competitive market and leaves their customers at the vagaries of the NY ISO market. Smallness further limits PCL&P's ability to split up the procurement process to avoid bad market timing; therefore, it is not reasonable to break it up even further. To do so would cause even less interest from suppliers to expend their resources to participate in that process.

In its own testimony and in the context of its proposed default service plan for 2008 and beyond, PCL&P recognized the structural impediments that it faces. PCL&P witness Mr. Holtman testified that, "PCL&P recognizes that due to its relatively small size, location, and the volume risk inherent in the proposed default service structure, and despite its best efforts, insufficient interest may be shown by hedge sellers to conduct a successful auction" for securing competitively priced power for its customers in the future. PCL&P St. 3 at 8-9. PCL&P's has proposed to integrate future default supply auctions with its parent Orange & Rockland Utilities, Inc.'s financial hedge transactions to bring greater wholesale competition to PCL&P. PCL&P St. 3 at 4.

The Commission is fully aware of the unique position that PCL&P finds itself in among Pennsylvania EDCs. In response to the results of the default service auction and the 129% generation rate increase experienced on January 1, 2006, the Commission opened an investigation into the market conditions of PCL&P's service territory. Initiation of a Fact Finding Investigation of the Competitive Market Conditions Re: Pike County Light & Power

Company; Docket No. P-00052168 (Order entered February 14, 2006). (Report) In its Order, the Commission directed the Law Bureau to conduct a sixty-day investigation into the electric market in the PCL&P's service territory. The Commission provided a series of questions regarding barriers that existed to the successful implementation of the Act. The Law Bureau completed its Report in June 2006, and the Report was released by the Commission later that month.

The Law Bureau made several recommendations, including exploring the integration of PCL&P's default load with the procurement plans of its New Jersey and New York affiliates. Report at 16-17. The Law Bureau also recommended that the Commission consider having an independent study performed regarding the costs and benefits of the sale of the Company to another EDC or cooperative. Report at 19.

PCL&P is the only Pennsylvania EDC that is a member of the New York ISO. Currently, all other EDCs are members of RTOs, as designated by the Federal Energy Regulatory Commission (FERC). Of the other EDCs, all but one operate within the PJM Interconnection (PJM) (Penn Power, a mid-sized utility located in western Pennsylvania on the Ohio border, is a member of the Midwest ISO, which is a FERC recognized RTO).

Retail competition is unlikely to occur to relieve the situation faced by Pike County residents and businesses. As Mr. Kahal noted:

[A]ll available information to date (and most stakeholder opinion) suggests that mitigation of expensive POLR service from retail choice is unlikely. For example, Recommendation (5) of the Law Bureau report (page 19) observes, "To the extent that wholesale energy prices fall in the coming months, there may be an opportunity for customers to realize savings through the PowerSwitch [the Company's retail access promotion] program." That report also suggests facilitating retail access by waiving Pennsylvania EDI rules.

In fact, wholesale market power supply prices have moderated both since last October and even since April (when Direct Energy submitted its bid). It is my understanding that this has elicited no

small customer retail competition activity in the PCL&P service area. Moreover, I have been informed that a similar lack of retail competition has been the case for other small Pennsylvania electrics, post rate cap. In the case of PCL&P, the Commission provided the requested waivers of its rules in its April 20, 2006 Order, and this has not changed things.

OCA Kahal St. 1 at 31. Mr. Kahal further noted that PCL&P has:

...candidly acknowledged the barriers to this happening.

Other challenges to the implementation of retail competition in Pike's service territory remain. The size (i.e., only 4,500 electric customers), location vis-à-vis transmission access, and load characteristics of Pike's service territory (i.e., residential and small commercial) present fundamental difficulties in implementing retail competition. (Comments, March 3, 2006, Docket No. P-00052168)

OCA Kahal St. 1 at 32.

Indeed, as seen by the comments below, the Commission is aware that retail competition at this time is an unlikely solution to the Pike County citizen's electric issues. The Commission in its April 20, 2006 Order, Docket No. P-00062205, sought to be supportive of future opportunities for retail competition, but was realistic about near-term benefits stating:

No Party argued that adoption of the New York O&R retail supplier protocols and procedures, combined with a voluntary purchase of receivables program, would be sufficient to attract competitive offers to the Pike County service area. The OCA provided, perhaps, the most detailed explanation as to why this approach would be unsuccessful. Among the barriers were significant market entry costs, such as customer acquisition costs, customer information and service record costs, sales costs, and start-up costs which can be spread over a small number of customers. (Order at 10-11).

These preceding pages minimize the complexity of what caused the rates in Pike County, but should provide enough information to allow each customer to understand how the rate increase came about.

In my opinion, the hearing record demonstrated that PCL&P is exposed to a convergence of impediments that no other Pennsylvania EDC faces. The OCA, OSBA, formal complainants, the Commission, and PCL&P have all recognized the problems inherent in PCL&P's situation.

Nonetheless, there was not a preponderance of evidence submitted in the form of sworn testimony or documentary evidence that the rates currently charged by PCL&P are unjust and unreasonable, or not in accordance with the Code. That they are high does not mean they are illegal ("unjust") and in my review of the record, I cannot find that the rates violate the Code. Therefore, as to the rate complaints, even without a settlement, the complainants would lose that portion of their complaint for failure to meet their burden of proof.

### 3. Public Interest and the Service Complaints

Turning now to the complaints related to service, namely, PCL&P's unresponsiveness, frequent outages of long duration, lack of a presence in the community, and poor tree maintenance, this is what the Joint Settlement offers:

#### Service

##### a. Vegetation Management Activities.

The Company will reduce its tree trimming cycle from four years to three years and will seek to deploy more intense vegetation management, which could include ground to sky trimming and tree removal, in key areas as deemed appropriate by the Company. These key areas will likely focus on the Company's Line 7 mainline facilities. The Company will also endeavor to investigate and determine, to the extent necessary, what additional vegetation management may be required in the Cummins Hill Road section of its service territory. The County will facilitate the Company's tree-trimming activities with the Shade Tree Commission of the Borough of Milford and will provide the necessary assistance in coordinating tree-trimming activities with Westfall Township, Milford Township and the Borough of Matamoras.

b. Infrastructure Improvements.

The Company proposes to undertake a series of infrastructure projects in the PCL&P service territory. The Company intends to seek rate relief for these proposed projects, and would require such relief in order to substantially implement the overall proposed plans. These projects are listed in the attached **Appendix A** as short term and long term projects with their respective estimated costs. Also attached as **Appendix B** is a map detailing the location of these projects. The projects proposed are as follows:

The Company is presently upgrading the sources serving the Port Jervis Substation from 34.5kV to higher capacity 69kV lines. As part of this project, the Company will rebuild and upgrade its existing Port Jervis Substation. These upgrades will improve the source reliability and load serving capability to the two 34.5kV sources that presently serve the PCL&P load. These Port Jervis area improvements are scheduled to be completed by spring of 2009.

The Company will acquire property, as soon as deemed reasonable and appropriate by the Company, in or near the Borough of Milford for construction of a future area substation to improve reliability to the Borough of Milford. (See **Appendix B**).

The Company will complete, by spring of 2008, the installation of a redundant path for the head end of Line 7 past the Matamoras Substation, to improve source reliability for this feeder that serves all of the Milford area customers. (See **Appendix B**).

The Company will complete, by the end of 2008, additional improvements to Line 7 which is the main feed into the Borough of Milford, by installing two new distribution automation devices with communications. These improvements can result in smaller numbers of customers being interrupted and faster service restoration when incidents occur. (See **Appendix B**).

The Company will build a Milford Substation in or near the Borough of Milford with dedicated distribution feeders for the Milford area. The Company also will commit to constructing a storage shed and maintaining an inventory of certain equipment and supplies, as deemed appropriate by the Company, at this substation site, which may provide the means to facilitate a more timely response to service outages in the Milford area. The Company estimates that this Project will be completed by the end of 2010 assuming all regulatory approvals are received. (See **Appendix B**).

The Company will install new 34.5kV feeder that will terminate at the new Milford Substation to provide an alternate and redundant source to this substation provided that an interconnection with PPL is not constructed. The Company estimates that this Project will be completed by the end of 2012

assuming all regulatory approvals are received. (See **Appendix B**). The County will help to facilitate any local, state or federal approvals that may be necessary to construct the proposed new 34.5kV feeder.

The Company will build a connection of the distribution feeders between the new Milford Substation and the Matamoras Substation to provide additional tie capability and contingency support on the distribution feeder level. The Company estimates that this Project will be completed by the end of 2015, assuming all required regulatory approvals are received. (See **Appendix B**).

The Company will commit to fully informing the Community Advisory Council of Company plans, cost estimates and timeliness regarding the major capital projects, and will allow for Council input on the feasibility and affordability of these projects on a continuing basis.

c. Customer Relations

The Company will establish a Community Advisory Council which will be comprised of Company and community representatives. The Council's purpose will be to provide an informational forum for two-way communications between the Company and community representatives on behalf of PCL&P customers. The Council will convene initially on a quarterly basis in the Borough of Milford for the purpose of: (1) discussing issues of rates, service and customer relations (including billing issues) affecting the PCL&P service area; (2) providing updates on PCL&P efforts on completing the short and long term projects cited previously; (3) discussing ways of improving communications between PCL&P and the community and the customers; and (4) any other issues deemed of significance by PCL&P and the community representatives. The initial meeting of the Council will be scheduled for the fourth quarter of 2007 on a date acceptable to all members. The initial meeting will not be scheduled prior to the expiration of thirty (30) days following the Commission's Order adopting the Joint Petition. The Community Advisory Council will review and discuss all operations of the Company in Pike County including but not limited to the Company's proposed default service plan, annual summer preparedness plans, planned outage notification plans, construction plans for short and long term projects and updates regarding PJM and related industry developments. The Company will also provide its Annual Electric Reliability Report to the Community Advisory Council for review and discussion. The Community Advisory Council will be comprised of two members (PCL&P), one member (County of Pike), one rotating member (Borough of Milford, Milford Township, Matamoras Borough, Westfall Township), one member (Delaware Valley School District), one member (small business customer) one member (residential customer) and one member (industrial/ large commercial customer).

The Company will meet with the Pike County E.M.S. (fire and police) prior to flood season to discuss emergency response preparation and related issues.

The Company will assign an employee to attend and participate in the Pike County Chamber of Commerce and the Tri County Chamber of Commerce.

The Company will establish a site by the end of 2008 for a Customer Service Representative to serve in the community to address billing, customer service and other routine issues.

The Company will increase employee United Way contributions to \$4,000.00 on an annual basis and will continue to engage in reasonable efforts to increase its community presence.

The Company will conduct energy conservation seminars for senior citizens, church groups, small businesses and other designated interest groups on a semi-annual basis. The frequency, content and target audience of these seminars can be discussed at the Community Advisory Council meetings.

The Company will review its billing program for small businesses to determine whether an alternate billing arrangement can be established to coincide with the peak and off-peak business seasons pursuant to the Commission's regulations. The progress and results of this effort will be presented to and discussed at the Community Advisory Council meetings. The Company and the County will then cooperate to disseminate the results of this review to the small business community.

The Company is prepared to meet with any customer in order to enter into payment arrangements for outstanding arrears. This provision does not prohibit the Company from utilizing Commission-approved notice and termination procedures when all other efforts to enter into such payment arrangements with the customer fail.

The Company will undertake renewed efforts to publicize the availability of LIHEAP funding and will work with the County, senior citizens groups, church organizations and the Community Advisory Council to make such funding available to eligible customers.

The Company will cooperate with the Commission in any independent study investigating the cost/benefits of PJM Interconnection. The progress achieved and results obtained in any PJM interconnection investigation shall be shared with the Community Advisory Council.

The Company will continue its discussions with PPL and Met Ed regarding an interconnection with one or the other utility. The results of these

discussions, including proposed projects, timelines and costs shall be shared with the Community Advisory Council. The Company agrees to provide for review, upon request, cost estimates related to PPL and MetEd interconnections to an agreed-upon third party independent consultant. Cost estimates provided under this subsection shall contain only non-confidential and non-proprietary information. Joint Petitioners agree that such cost estimates cannot be used by any party in any other Commission proceeding, including rate cases, investigations, complaint matters and any other case before the Commission. The cost of any third party independent review, as described above, will be borne by the party requesting such review.

The Company will engage in outreach and education efforts with customers for energy saving opportunities for their homes and businesses. The efforts shall include but not be limited to working with the County, Community Advisory Council or other interest groups to publicize the availability of energy saving opportunities through newspapers, TV or radio.

The Company will cooperate with the County, Community Advisory Council or other interest group in examining and implementing technologies that result in more efficient use of or lessened reliance on electricity. The Settlement Parties agree that such technology will not be installed until the Company has determined that such technology is consistent with safe electric utility industry practices and will not result in any condition that adversely affects the provision of safe, adequate and reliable service.

\* \* \*

#### **D. Recommendation**

This Joint Settlement is the most difficult I have encountered in terms of determining whether the proposal is in the public interest. My difficulty in deciding stems from the history of failed communication between this community and PCL&P. On the one hand, there is no valid excuse for PCL&P's failure to communicate with its customers in a professional, timely, and adequate manner. That is a baseline of expectation of a public utility operating in Pennsylvania, below which no public utility should fall. Customers should never need to file a formal complaint with the Commission to get their utility to provide professional service.

The public outcry related to PCL&P's failure to treat its Pike County customers professionally and well, is a long record encompassing more than simply this particular set of

formal complaints. Nonetheless, the testimony and evidence provided *in these hearings* would support finding that PCL&P has not been providing service as required by 66 Pa. C.S. § 1501. That being the case, if I recommend to the Commission that this Joint Settlement not be approved and instead set forth my findings of fact and conclusions of law necessary to find PCL&P in violation of § 1501, what would such a finding do to assist the Pike County customers? I will review that in the paragraphs below.

Violations of the Code and its supporting regulations typically result in a civil penalty. A civil penalty is intended to deter future violation, and, a civil penalty is paid to the Commonwealth, it does not go to customers. A civil penalty is not recoverable in a future rate case, but is borne by the stockholders, which is appropriate. To the extent a civil penalty would send a message to PCL&P and its parent companies Orange & Rockland, Utilities, Inc. and Consolidated Edison, Inc. that Pennsylvania does not expect its customers to receive anything less than what our Code requires, a civil penalty might be productive. The next question is, what amount of civil penalty would send that message, and would it indeed grant the desired result? The answer is that there is not a guaranteed result. A civil penalty might be productive, but it might not.

Perhaps this Joint Settlement would be unanimous had PCL&P provided some rebate to its customers as a symbol of (1) its understanding of the significant burden of the rate increase, and (2) as an apology to its customers for failing to provide service that meets § 1501. The Joint Settlement addresses service issues in the future but failed to address past service issues. Counsel for PCL&P is well aware that the Code and its regulations do not provide for rebates or refunds to customers when customers do not receive the service for which they are paying, i.e., service that meets § 1501. The complainants did not allege that PCL&P was charging rates for service(s) it could not provide. If that argument had been made and proven, the result here might be different.

Weighing all of these concerns, considering that the Consumer Advocate supports the Joint Settlement, that the County and the Large Consumer Group between them represent many citizens who did not personally participate, it is my opinion that the settlement is in the

public interest. I have great respect for all of the entities and individuals involved in these complaints. I also believe that the compromises negotiated and agreed to in the Joint Settlement are in the best interests of the Pike County citizenry. Therefore, I recommend that the Joint Settlement be approved.

### III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and the subject matters presented here. 66 P.S. § 701.
2. The proposed Joint Settlement and Stipulation, including the terms and conditions contained in Appendices A and B, is in the public interest. 52 Pa. Code § 5.232(d).
3. OSBA's Comments to the Joint Petition opposing Section B(1)(a) regarding rates is moot in light of the Stipulation.
4. Formal Complainants John W. Dalton, Jr. and Peter P. Kenny's oppositions cannot be reconciled with balancing the public interest. 52 Pa. Code § 5.232(d).

### IV. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement and Stipulation submitted by Pike County Light & Power, County of Pike, Delaware Valley School District, Richard Snyder, Samall Properties, Inc., Hotel Fauchere, LLC., Three Lane Utilities Corporation, Community Building Projects, LLC and Altec Lansing Technologies, Inc. and the Stipulation submitted by

the above plus the indispensable party, Direct Energy, be approved, subject to the following terms and conditions:

- a) Pike County Light & Power will reduce its tree trimming cycle from four years to three years and will seek to deploy more intense vegetation management, which could include ground to sky trimming and tree removal, in key areas as deemed appropriate by the Pike County Light & Power. These key areas will likely focus on the Pike County Light & Power's Line 7 mainline facilities. The Pike County Light & Power will also endeavor to investigate and determine, to the extent necessary, what additional vegetation management may be required in the Cummins Hill Road section of its service territory. The County will facilitate the Pike County Light & Power's tree-trimming activities with the Shade Tree Commission of the Borough of Milford and will provide the necessary assistance in coordinating tree-trimming activities with Westfall Township, Milford Township, and the Borough of Matamoras.
- b) Pike County Light & Power proposes to undertake a series of infrastructure projects in the Pike County Light & Power service territory. Pike County Light & Power intends to seek rate relief for these proposed projects, and would require such relief in order to substantially implement the overall proposed plans. These projects are listed in Appendix A as short term and long term projects with their respective estimated costs. Appendix B is a map detailing the location of these projects.
- c) Pike County Light & Power is presently upgrading the sources serving the Port Jervis Substation from 34.5kV to higher capacity 69kV lines. As part of this project, Pike County Light & Power will rebuild and upgrade its existing Port Jervis Substation. These upgrades will improve the source reliability and load serving capability to the two 34.5kV sources that presently serve the Pike County Light & Power load. These Port Jervis area improvements are scheduled to be completed by spring of 2009.
- d) Pike County Light & Power will acquire property, as soon as deemed reasonable and appropriate by Pike County Light & Power, in or near the Borough of Milford for construction of a future area substation to improve reliability to the Borough of Milford. (See Appendix B).
- e) Pike County Light & Power will complete, by spring of 2008, the installation of a redundant path for the head end of Line 7 past the Matamoras Substation, to improve source reliability for this feeder that serves all of the Milford area customers. (See Appendix B).

- f) Pike County Light & Power will complete, by the end of 2008, additional improvements to Line 7 which is the main feed into the Borough of Milford, by installing two new distribution automation devices with communications. These improvements can result in smaller numbers of customers being interrupted and faster service restoration when incidents occur. (See Appendix B).
- g) Pike County Light & Power will build a Milford Substation in or near the Borough of Milford with dedicated distribution feeders for the Milford area. Pike County Light & Power also will commit to constructing a storage shed and maintaining an inventory of certain equipment and supplies, as deemed appropriate by Pike County Light & Power, at this substation site, which may provide the means to facilitate a more timely response to service outages in the Milford area. Pike County Light & Power estimates that this Project will be completed by the end of 2010 assuming all regulatory approvals are received. (See Appendix B).
- h) Pike County Light & Power will install new 34.5kV feeder that will terminate at the new Milford Substation to provide an alternate and redundant source to this substation provided that an interconnection with PPL is not constructed. Pike County Light & Power estimates that this Project will be completed by the end of 2012 assuming all regulatory approvals are received. (See Appendix B). The County will help to facilitate any local, state, or federal approvals that may be necessary to construct the proposed new 34.5kV feeder.
- i) Pike County Light & Power will build a connection of the distribution feeders between the new Milford Substation and the Matamoras Substation to provide additional tie capability and contingency support on the distribution feeder level. Pike County Light & Power estimates that this Project will be completed by the end of 2015, assuming all required regulatory approvals are received. (See Appendix B).
- j) Pike County Light & Power will commit to fully informing the Community Advisory Council of Pike County Light & Power plans, cost estimates and timeliness regarding the major capital projects, and will allow for Council input on the feasibility and affordability of these projects on a continuing basis.
- k) Pike County Light & Power will establish a Community Advisory Council comprising Pike County Light & Power and community representatives. The Council's purpose will be to provide an informational forum for two-way communications between Pike County Light & Power and community representatives on behalf of Pike County Light & Power customers. The Council will convene initially on a quarterly basis in the Borough of Milford for the purpose of: (1) discussing issues of rates, service and customer relations (including billing issues) affecting the Pike County Light & Power service area; (2) providing updates on Pike

County Light & Power efforts on completing the short and long term projects cited previously; (3) discussing ways of improving communications between Pike County Light & Power and the community and the customers; and (4) any other issues deemed of significance by Pike County Light & Power and the community representatives. The initial meeting of the Council will be scheduled for the fourth quarter of 2007 on a date acceptable to all members. The initial meeting will not be scheduled prior to the expiration of thirty (30) days following the Commission's Order adopting the Joint Petition. The Community Advisory Council will review and discuss all operations of Pike County Light & Power in Pike County including but not limited to Pike County Light & Power's proposed default service plan, annual summer preparedness plans, planned outage notification plans, construction plans for short and long term projects and updates regarding PJM and related industry developments. Pike County Light & Power will also provide its Annual Electric Reliability Report to the Community Advisory Council for review and discussion. The Community Advisory Council will comprise two members (Pike County Light & Power), one member (County of Pike), one rotating member (Borough of Milford, Milford Township, Matamoras Borough, Westfall Township), one member (Delaware Valley School District), one member (small business customer) one member (residential customer) and one member (industrial/ large commercial customer).

- l) Pike County Light & Power will meet with the Pike County E.M.S. (fire and police) prior to flood season to discuss emergency response preparation and related issues.
- m) Pike County Light & Power will assign an employee to attend and participate in the Pike County Chamber of Commerce and the Tri County Chamber of Commerce.
- n) Pike County Light & Power will establish a site by the end of 2008 for a Customer Service Representative to serve in the community to address billing, customer service and other routine issues.
- o) Pike County Light & Power will increase employee United Way contributions to \$4,000.00 on an annual basis and will continue to engage in reasonable efforts to increase its community presence.
- p) Pike County Light & Power will conduct energy conservation seminars for senior citizens, church groups, small businesses and other designated interest groups on a semi-annual basis. The frequency, content, and target audience of these seminars can be discussed at the Community Advisory Council meetings.
- q) Pike County Light & Power will review its billing program for small businesses to determine whether an alternate billing arrangement can be established to coincide

with the peak and off-peak business seasons pursuant to the Commission's regulations. The progress and results of this effort will be presented to and discussed at the Community Advisory Council meetings. Pike County Light & Power and the County will then cooperate to disseminate the results of this review to the small business community.

- r) Pike County Light & Power is prepared to meet with any customer in order to enter into payment arrangements for outstanding arrearages. This provision does not prohibit Pike County Light & Power from utilizing Commission-approved notice and termination procedures when all other efforts to enter into such payment arrangements with the customer fail.
- s) Pike County Light & Power will undertake renewed efforts to publicize the availability of LIHEAP funding and will work with the County, senior citizens groups, church organizations and the Community Advisory Council to make such funding available to eligible customers.
- t) Pike County Light & Power will cooperate with the Commission in any independent study investigating the cost/benefits of PJM Interconnection. The progress achieved and results obtained in any PJM interconnection investigation shall be shared with the Community Advisory Council.
- u) Pike County Light & Power will continue its discussions with PPL and Met Ed regarding an interconnection with one or the other utility. The results of these discussions, including proposed projects, timelines, and costs shall be shared with the Community Advisory Council. Pike County Light & Power agrees to provide for review, upon request, cost estimates related to PPL and MetEd interconnections to an agreed-upon third party independent consultant. Cost estimates provided under this subsection shall contain only non-confidential and non-proprietary information. Pike County Light & Power, County of Pike, Delaware Valley School District, Richard Snyder, Samall Properties, Inc. Hotel Fauchere, LLC, Three Lane Utilities Corp., Community Building Projects, LLC and Altec Lansing Technologies, Inc. agree that such cost estimates cannot be used by any party in any other Commission proceeding, including rate cases, investigations, complaint matters and any other case before the Commission. The cost of any third party independent review, as described above, will be borne by the party requesting such review.
- v) Pike County Light & Power will engage in outreach and education efforts with customers for energy saving opportunities for their homes and businesses. The efforts shall include but not be limited to working with the County, Community Advisory Council or other interest groups to publicize the availability of energy saving opportunities through newspapers, TV or radio.

w) Pike County Light & Power will cooperate with the County, Community Advisory Council or other interest group in examining and implementing technologies that result in more efficient use of or lessened reliance on electricity. Pike County Light & Power, County of Pike, Delaware Valley School District, Richard Snyder, Samall Properties, Inc. Hotel Fauchere, LLC, Three Lane Utilities Corp., Community Building Projects, LLC and Altec Lansing Technologies, Inc. agree that such technology will not be installed until the Pike County Light & Power has determined that such technology is consistent with safe electric utility industry practices and will not result in any condition that adversely affects the provision of safe, adequate, and reliable service.

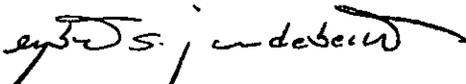
2. That the following inactive parties formal complaint be dismissed and the Dockets marked closed: Pallaghy C-20065924, L'Hote C-20055943, Storms and Storms Water Wheel Café C-20066281 and 6282, Wood C-20066283, Loosemore C-20066258, Hauser C-20066266, Skylar (d/b/a Carol Ann's Linen Closet) C-20066268, Pike County Outfitters C-20066269, Stebo d/b/a Malibu Ranch) C-20066270, S&M Management C-20066271, Hare Hollow, Inc, C-20066273 Demalderis C-20066028, Pollard C-20066379, Kane C-20066393, Abbott C-20066392, Sechrist C-20066431, Deller C-20066483, 611 Broad Street, LLC C-20066542, Budzeyko C-20066538, Edwards C-20066563, Paul C-20066590, Paquette C-20066589, Height C-20066592, Austin C-20066647, Hoover C-20066652, Dudzinski C-20066662, and Gobin at Docket No. C-20066753.

3. That the following Dockets of the signatories to the Joint Settlement be marked closed: Delaware Valley School District at C-20065922, County of Pike at C-20065942, Samall Properties, Inc. at C-20066260, Three Lane Utilities, Inc. at C-20066261, Three Lane Corporation at C-20066262, Richard Snyder at C-20066263, Samall Properties at C-20066264, Altec Lansing Technologies, Inc. at C-20066336, Hotel Fauchere, LLC at C\_20066722, and the Office of Consumer Advocate also at C-20065942.

4. That the following Docket, of one party expressing neither support of nor objection to the Joint Settlement, be marked dismissed and closed, Joseph Fretta at C-20066194.

5. That the Dockets of John W. Dalton, Jr. at C-20066481, and Peter P. Kenny at C-20066546, both opposing the Joint Settlement, be marked dismissed and closed.

Date: October 1, 2007

  
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Ember S. Jandeur  
Administrative Law Judge