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MAY 9 2006

PA PUBLIC UTILITY COMMISSION  
JEROME B. ROSS, JR.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

THREE LANE UTILITIES, Complainant

v.

PIKE COUNTY LIGHT & POWER  
COMPANY, Respondent

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Complaint Docket No. C – 20066261

**DOCUMENT  
FOLDER**

**ANSWER OF PIKE COUNTY LIGHT & POWER COMPANY**

**INTRODUCTION**

On April 27, 2006, Pike County Light & Power Company (“Pike” or the “Company”) was served with a copy of a complaint (“Complaint”) filed by its customer, Three Lane Utilities (“Complainant”). In its complaint, Complainant objects to the recent increase in Pike’s default service rates on the grounds that, “As a public utility providing community water service, we are already at our maximum rate base that we can charge and cannot pass on the huge 73% increase in electric cost to our customers.”

Complainant asks that the Pennsylvania Public Utility Commission (“Commission”) invalidate the October 2005 auction as not reflecting *true market value* and allow Pike’s customers to opt-in to another lower-cost energy provider.

As set forth in greater detail below, the rate increase that Complainant objects to already has been reviewed and approved by the Commission. Accordingly, the conduct that the Complainant objects to is simply Pike billing its customers according to the filed

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rates contained in Pike's Commission approved electric tariff. The Complaint is completely without merit and should be dismissed summarily by the Commission.

In response to the Complaint, Pike states as follows:

### DISCUSSION

1. On May 31, 2005, Pike filed a plan to establish default service rates for the period beginning January 1, 2006. Default service rates are those rates charged to customers, such as the Complainant, who do not take service from electric generation suppliers. To increase its ability to achieve the goal of providing default service coverage in an economic fashion, Pike proposed to utilize commodity swap transactions rather than physical purchases.

2. On September 23, 2005, the Commission issued an Order ("September 23 Order") approving Pike's auction proposal with certain modifications. One such modification was the Commission's directive to increase, from one to three days, the amount of time for the Commission to review the auction results and notify Pike of its recommendation.

3. Pike conducted the auction on October 25, 2005. Copies of the auction results and impacts on customers' bills were provided electronically to counsel for the Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), as well as to the Commission Staff on October 25, 2005. These bids provided Pike's default service customers with fixed prices for energy and capacity for a two-year period (i.e., 2006-2007). In setting default service rates, Pike does not mark up the auction prices.

4. No comments or complaints were received from OCA or OSBA during the three-day Commission review period. Commission Staff requested, and was provided by Pike, certain additional information during this three-day Commission review period.

5. In a letter to Pike dated October 28, 2005, a copy of which is attached hereto as Exhibit A, Commission Secretary James McNulty stated that "the auction appears to have been conducted in accordance with RFP Guidelines" and that "[F]urther investigation does not appear warranted". Accordingly, the Commission approved the auction results and directed Pike to file a supplement to its Tariff incorporating the default service rates resulting from the auction.

6. On January 1, 2006, Pike's new default service rates became effective. The Commission-approved rates are the subject of the Complaint.

7. At its open session on January 27, 2006, the PAPUC unanimously adopted a motion of Commissioner Shane directing the PAPUC's Law Bureau "to initiate a fact finding investigation into the competitive electric market in Pike County Power's service territory." On February 14, 2006, the Commission in Docket No. P-00052168 initiated a fact-finding investigation in the competitive electric market in Pike's service territory ("Fact-Finding Investigation"). The Fact-Finding Investigation is ongoing.

8. The basis of the Complaint is that Pike's default service rates filed with and approved by the Commission are somehow unreasonable. The fact that these rates increased as of January 1, 2006 does not detract from their validity. Pike denies Complainant's allegation that its default service rates are unreasonable since the Commission has reviewed and approved these very rates. Pursuant to the long established filed rate doctrine, Pike could not charge the Complainant any rate other than

the Commission-approved rate of which he complains. *Cheltenham & Abington Sewerage Co. v. Pennsylvania Public Utility Commission*, 344 Pa. 366, 25 A.2d 334 (Pa. 1942).

9. Pursuant to the filed rate doctrine, Pike is required to bill its default service customers in accordance with its existing Commission-approved default service rates until the Commission approves new default service rates. Any such new rates would apply on a prospective basis only.

10. The Complainant also states that the Commission should invalidate the October 2005 auction as not reflecting true market value and allow Pike's customers to opt-in to another lower-cost energy provider. If the Commission is to review whether to invalidate the October 2005 auction, it should perform such review in the Fact-Finding Investigation rather than in this complaint proceeding. As to the requested opt-in process, this matter is moot since the Commission already has approved an opt-out aggregation process.<sup>1</sup>

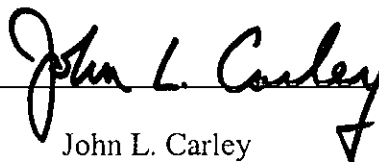
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<sup>1</sup> See, *Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company*, Docket No. P-00062205 (Order entered April 20, 2006).

## CONCLUSION

The Complainant filed its Complaint in order to oppose the increase in Pike's default service rates that became effective on January 1, 2006. The very default service rates at issue in the Complaint, however, have been reviewed and approved by the Commission. Under the filed rate doctrine, Pike can only bill the Complainant these default service rates. Accordingly, the Commission should dismiss this Complaint, without hearing. Any investigation into invalidating the results of the October 2005 auction should be performed in the context of the Commission's ongoing Fact-Finding Investigation. Finally, Complainant's request that the Commission implement an opt-in aggregation process is moot.

Respectfully submitted,



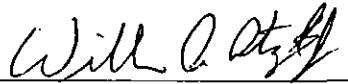
John L. Carley  
Assistant General Counsel  
Pike County Light &  
Power Company  
4 Irving Place  
Room 1815-S  
New York, NY 10003  
(212) 460-2097 (Phone)  
(212) 677-5850 (Fax)  
carleyj@coned.com

AFFIDAVIT

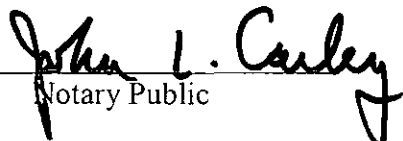
STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF NEW YORK        )

WILLIAM A. ATZL, JR., being duly sworn, according to law, upon his oath  
deposes and says:

1. I am a Director in the Rate Engineering Department of Consolidated Edison Company of New York, Inc. ("Con Edison"), an affiliate of Pike County Light & Power Company ("Pike"), and in that capacity I make this Affidavit. I am familiar with Pike's gas tariff, as well as its rates and charges for gas service.
2. I have read the attached Answer, and the same is true to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
William A. Atzl, Jr.

Sworn to and subscribed  
before me this 27th day  
of May, 2006.

  
\_\_\_\_\_  
Notary Public

JOHN L. CARLEY  
Notary Public, State of New York  
No. 4906281  
Qualified in Rockland County  
Commission Expires August 31, 2009

**EXHIBIT A**

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PA PUBLIC UTILITY COMMISSION  
BETHLEHEM, PA



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

October 28, 2005

P-00052168

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OCT 31 2005

CON EDISON LAW DEPT.

JOHN L CARLEY  
ASSISTANT GENERAL COUNSEL  
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.  
4 IRVING PLACE  
NEW YORK NY 10003

Re: Pike County Light & Power Company – Results of Auction for Financial Swap Transactions, including the impact on Retail Rates for Default Service to Residential, General, Municipal Street Lighting and Private Lighting Customers

Dear Mr. Carley:

On October 25, 2005, Pike County Light & Power Company (“Pike”) submitted electronically the results of its Request for Proposals (“RFP”) auction process, including the impact on retail rates for residential, general, municipal street lighting and private lighting customers receiving default service effective January 1, 2006, at Docket No. P-00052168. On October 27, 2005, Pike filed the results with the Commission’s Secretary.

This filing is submitted pursuant to the RFP process and Default Service Implementation Plan (“Plan”) filed May 31, 2005 and approved by the Commission in its Order, entered September 23, 2005, at Docket No. P-00052168, as modified by the Order.

Pike requests that the Commission approve the results of the auction by 11:59 p.m. October 28, 2005.

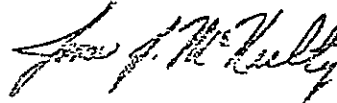
Further investigation does not appear to be warranted at this time and the auction appears to have been conducted in accordance with the RFP Guidelines.

Therefore, we approve the results of the auction and direct Pike to file a supplement to its Tariff Electric – Pa. P.U.C No. 8, no later than 60 days prior to an effective date of January 1, 2006, incorporating the proposed tariff language changes approved in the Commission’s Order, entered September 23, 2005, at Docket No. P-00052168, as modified by the Order and the default service rates resulting from the auction.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §5.44, file a petition with the Commission within 10 days of the date of this letter.

Please direct any questions to H. Edwin Rodrock, Energy Supervisor, Bureau of Fixed Utility Services at (717) 783-6185.

Sincerely,



James J. McNulty  
Secretary

cc: John L. Carley, Consolidated Edison Company of New York, Inc. (electronic)  
William Atzl, Consolidated Edison Company of New York, Inc. (electronic and first class mail)  
Michael Hassell, Esq., Morgan Lewis & Bockius LLP (electronic and first class mail)  
Tanya McCloskey, OCA (electronic and first class mail)  
Aron Beatty, OCA (electronic and first class mail)  
William Lloyd, OSBA (electronic and first class mail)  
Robert Eckenrod, OTS (electronic and first class mail)  
Kerry Klinefelter, Bureau of Fixed Utility Services  
Kathy Aunkst, Secretary's Bureau