

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Delaware Valley School District	:	C-20065922
County of Pike	:	C-20065942
Joseph Fretta	:	C-20066194
Samall Properties	:	C-20066260
Three Lane Utilities/Richard Snyder	:	C-20066261
Three Lane Utility Corporation	:	C-20066262
Richard Snyder	:	C-20066263
Samall Properties, Inc.	:	C-20066264
Altec Lansing	:	C-20066336
John Dalton	:	C-20066481
Peter B. Kenny	:	C-20066546
Joan Stohr	:	C-20066668
Hotel Fauchere	:	C-20066722
Delaware Valley School District	:	C-20065922
Chaba M. Pallaghy	:	C-20065924
Jeff L'Hote	:	C-20055943
Joseph Demalderis	:	C-20066028
William and Irene Loosemore	:	C-20066258
E.E. 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
Michelle Storms and Water Wheel Caf�	:	C-20066281 and 6282
Jake and Darryl Wood	:	C-20066283
James and Laura Pollard	:	C-20066379
Dan Kane	:	C-20066393
Jeanette Abbott	:	C-20066392
James E. Sechrist	:	C-20066431
Charles J. Deller	:	C-20066483
611 Broad Street, LLC	:	C-20066542
Lawrence Budzeyko	:	C-20066538
Earl Edwards	:	C-20066563
Sandra Paul	:	C-20066590
Raymond A. Paquette	:	C-20066589
Steve Height	:	C-20066592
Audrey Austin	:	C-20066647
Margaret Hoover	:	C-20066652
Patricia Dudzinski	:	C-20066662
Community Building Projects/Sean Strub	:	C-20066725
Dana Gobin	:	C-20066753

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And

Office of the Consumer Advocate
Party Intervenor

And

Office of the Small Business Advocate
Party Intervenor

v.

Pike County Light & Power

PROTECTIVE ORDER

AND NOW, upon consideration of the request for a protective order and the agreement of the affected parties,

IT IS HEREBY ORDERED THAT:

1. This Protective Order is granted with respect to all information identified at Ordering Paragraph No. 2, below, which are filed with the Commission, produced in discovery, or otherwise presented or provided during the above-captioned proceedings. All persons now, and hereafter, granted access to the materials identified in Ordering Paragraph No. 2 shall use and disclose such information only in accordance with this Protective Order.

2. The material that is subject to this Protective Order shall be the un-redacted version of the document entitled "January 31, 2006 Presentation ToThe Sussex Rural Electric Cooperative's Board of Directors" (the "January 31 Document").

3. To the extent that the party receiving the January 31 Document is subject to the Pennsylvania Right-To-Know Act, that party shall consider and treat the Confidential Information as within the exemptions from disclosure provided in the Pennsylvania Right-To-Know Act, as set forth in 65 P.S. Section 66.1(2), until such materials are found to be non-confidential or non-proprietary.

4. The January 31 Document shall be made available to the Commission and its staff for use in these proceedings and for all internal Commission analyses, studies or investigations related to the same. For purposes of filing, to the extent that the January 31 Document is placed in the Commission's report folders or testimony or other document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of the Confidential Information shall be permitted only in accordance with this Protective Order.

5. The January 31 Document shall be made available only as permitted by this Protective Order and only for purposes of reviewing, preparing or presenting evidence, cross-examination or argument in these proceedings. The January 31 Document may be disclosed to (a) counsel for parties in this proceeding, (b) witnesses of Pike County Light & Power Company who have filed written Rebuttal Testimony and have signed a Confidentiality Agreement. Persons to whom the January 31 Document is disclosed may use that document solely for preparing or presenting evidence, cross examination and argument in this proceeding and in any appeal arising from this proceeding and for no other purpose.

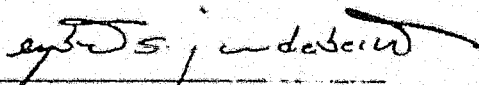
6. Any party who believes that another party has violated or intends to disclose or use the January 31 Document in a manner prohibited by this Agreement may move the Commission for an Order imposing appropriate sanctions on the party allegedly in violation of this Agreement, and/or directing the adverse party to refrain from such disclosure or use when appropriate.

7. Any public reference to the January 31 Document by counsel or persons afforded access thereto shall only be to the title or exhibit reference in sufficient detail to permit persons with access to the January 31 Document to fully understand the reference and not more.

8. The January 31 Document shall remain a part of the record, to the extent admitted into the record, for all purposes of administrative or judicial review. The part of the record in this proceeding containing the January 31 Document, including but not limited to all exhibits, writings, testimony, cross-examination, argument, and responses to discovery, and including reference thereto as mentioned in Ordering Paragraph No. 8, above, shall be sealed for all purposes, except as provided herein, including administrative and judicial review, unless the January 31 Document is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to an order of an ALJ or the Commission.

9. Within 30 days after a Commission decision is entered in the above-captioned proceedings, or in the event of appeals, within thirty days after appeals are finally decided, any party receiving the January 31 Document shall return to the producing party all copies of the document.

Date: January 31, 2007


Ember S. Jandebaur
Administrative Law Judge

OALJ Hearing Report

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Docket No.:	C-20065942		YES	NO
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Case Name:	County of Pike et al v. Pike Cty Light & Power	Hearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Testimony Taken:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Hearing Concluded:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Location:	Scranton	Further Hearing Needed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:	3	
Date:	Tuesday January 16, 2007			
		RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ALJ:	Ember S. Jandebaur	DATE:		
		Briefs to be Filed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Sargents Court Reporting	DATE:		
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Merrith A. Sheare
Reporter's Signature

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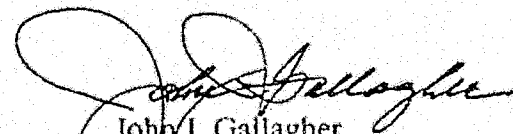
Re: County of Pike v. Pike County Light & Power Company
Docket No.: C-20065942, et al. (Consolidated)

Dear Mr. McNulty:

Enclosed please find an original and nine (9) copies of the Main Brief of Pike County Light & Power Company in the above-captioned matter.

Do not hesitate to contact the undersigned if you have any questions or concerns.

Sincerely,



John J. Gallagher
Counsel for Pike County Light &
Power Company

Enclosure

cc: Parties on Certificate of Service
The Honorable Ember S. Jandebour, ALJ
John L. Carley, Esquire

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike, et al., :
:
Complainants, :
:
v. : Docket No.: C-20065942, et al.
: (consolidated)
Pike County Light & Power Company, :
:
Respondent. :

MAIN BRIEF
OF
PIKE COUNTY LIGHT & POWER COMPANY

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I. INTRODUCTION

Statement of the Case

The question before the Commission is whether Respondent Pike County Light & Power Company ("PCL&P" or "Company") has violated the Public Utility Code or any regulation or Order of this Commission. The Complainants in this matter allege that the Company's rates are unjust and unreasonable and that the Company does not provide safe, adequate and reliable service. Following months of litigation, including extensive discovery and days of hearings, the Complainants have failed to meet their burden of proof in this matter, and consequently, the Complaints must be dismissed.

As more fully set forth below, the relevant facts and the law in this matter demonstrate that PCL&P's current default service rates are just and reasonable as they are Commission-approved rates. Also, the Company has provided safe and reliable service, and has implemented measures that have improved and continue to improve service for PCL&P customers. Finally, the forced sale of the Company, the relief requested by the Complainants in this matter, is improper and unwarranted under the facts and the law. Therefore, the Complaints should be dismissed and the relief requested should be rejected.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The 2005 Auction and PCL&P's Current Default Service Rates

For the years 1993 to 2005, the customers of the Company enjoyed relatively low electric rates that had been established by the Pennsylvania Public Utility Commission ("Commission") prior to the enactment of restructuring legislation in the Commonwealth and in subsequent Orders. In 1993, under a structure that combined generation, transmission and distribution into a single rate bundle, PCI & P customers paid less than six cents (6¢ or \$0.06) per kWh for the generation portion of their bill. The rates that customers paid prior to restructuring were set by the Commission under a traditional rate base/rate of return form of regulation. In essence, the Company demonstrated how much it cost to provide service to customers and the Commission established rates that would permit the Company to recover those costs plus a return on that investment.

The traditional rate-setting process was changed dramatically in 1997 with the enactment of the Electricity Generation Customer Choice and Competition Act ("Competition Act"). Under the Competition Act, the three components of electric service (i.e., generation, transmission, and distribution) were "unbundled" and generation became a commodity to be procured in an open competitive market. The idea was to deregulate generation and to take advantage of a competitive market to acquire generation at a lower price and reduce overall bills for customers.

The General Assembly recognized that restructuring created certain risks for the utilities and customers, and sought to ameliorate any negative impacts from restructuring by incorporating a number of protections into the legislation. The most relevant of those

¹ Act 1996, Dec. 3, P.L. 802, No. 138 codified at 66 Pa. C.S. § 2801, et seq. The Competition Act is sometimes referred to as Chapter 28 of the Public Utility Code or simply, Chapter 28.

protections, for purposes of this case, is the rate caps provision in the Competition Act. The rate caps provided that for period of time as long as nine years from the effective date of the Competition Act, the rates charged by the electric utility would not exceed the rates approved by the Commission for service as of January 1, 1997. *See, generally*, 66 Pa. C.S. § 2804. In the case of PCL&P, this meant that the Company could not charge its customers a rate that would exceed the rates approved by the Commission in 1993, the year the Commission last established rates for the Company and its customers. *Pennsylvania Public Utility Commission, et al. v. Pike County Light & Power Company*, Docket Nos. R-00922518, R-00922518C0001, R-00922518C0002 (Order adopted and entered June 10, 1993).

Under the Competition Act, upon the expiration of the rate caps, PCL&P continued to have the obligation to serve its customers. This is sometimes referred to as the "Provider of Last Resort" ("POLR") obligation. In the case of those customers who decided to continue to receive generation service from the Company instead of using an alternative generation supplier, PCL&P had the obligation to acquire energy "at prevailing market prices" to serve those customers. 66 Pa. C.S. § 2807(e)(3).

On February 10, 1998, the Company filed its Petition for Approval to Implement Retail Access for All Customers Effective May 1, 1999. This Petition sought authorization to implement retail access for its customers in accordance with the Restructuring Act and the Company's Restructuring Plan. The Commission approved a settlement of the case among the Company, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA") and the Office of Trial Staff ("OTS").²

² *Application of Pike County Light & Power Company for Approval of Restructuring Plan*, Docket No. R-00974150 (Order entered July 23, 1998) ("Pike Restructuring Settlement").

By its terms, the approved Settlement provided for, among other things, (1) the implementation of retail choice by May 1, 1999, (2) customer education on retail access, (3) stranded cost calculation and recovery, and (4) establishment of rate caps until December 31, 2005. The PCL&P Restructuring Settlement initially established an average generation rate of 3.40¢ per kWh for default service customers. In June 2000, the average generation rate was revised pursuant to the Restructuring Settlement, to 4.84¢ per kWh. These rates are for generation only and they do not include other elements of the total charge, such as the Gross Receipt Tax ("GRT"), the competitive transition charge ("CTC") or charges for transmission and distribution ("T&D"). The generation rate is the portion of the bill that increased dramatically in 2006.

On February 15, 2001, the Company filed a petition to modify its rate cap to allow for an increase in the generation rate to 6.99¢ per kWh (an increase of 44%). Ultimately, the case settled and the Company agreed to a number of terms, including, (1) an end to CTC collections, (2) a freeze of distribution rates until December 31, 2004, (3) an increase in the generation rate to 5.65¢ per kWh from July 1, 2002 to December 31, 2004, (4) an increase to generation rates for the period of January 1, 2005 to December 31, 2005 sufficient to allow the Company to recover its generation costs, but with a cap of 5.93¢ per kWh, (5) a commitment to study the costs and benefits of an interconnection with and membership in PJM, and (6) a commitment to file a new generation rate plan by June 1, 2005 to establish default service rates effective January 1, 2006. The Commission approved this latest settlement by an Order entered August 9, 2002.³

³ *Petition of Pike County Light & Power Company for Exception to Rate Cap Limitations Pursuant to 66 Pa. C.S. § 2804(4)(iii)(d)*, Docket No. P-00011872 (Order entered August 9, 2002). ("August 2002 Order").

In anticipation of the expiration of rate caps as of January 1, 2006, PCL&P began to prepare a plan to acquire generation for all its customers because there were no alternative generation suppliers willing to serve the Company's more than 4,200 customers. The Company's planning resulted in a program to establish POLR rates⁴ for customers in accordance with the Competition Act and the Commission's Orders.

Pursuant to the terms of the August 2002 Order, on May 31, 2005, PCL&P filed with the Commission for approval, a plan composed of proposed tariff changes and agreements, as well as the procedures necessary to implement PCL&P's Default Service Implementation Plan ("Plan"), to become effective January 1, 2006.⁵ The Plan submitted by the Company provided for the acquisition of power through financial swaps for PCL&P's energy and capacity requirements to serve its customers for a three-year period. Under the Plan, the price to be paid for power would be based on a number of factors, including the Day Ahead Market Zone G (Hudson Valley) hourly prices in the New York System Operator ("NYISO") control area. The Company proposed a schedule and procedures to conduct and complete an auction for the financial swaps by September 13, 2005. Following the auction, the Company would make recommendations to the Commission as to the best bid and the Commission would issue an Order approving or rejecting the results of the auction. Also, as part of the Plan, PCL&P proposed to file with the Commission, on or before December 15, 2005, default service rates to be effective January 1, 2006 through December 31, 2006.

A number of parties, including the OCA, the OSBA and the OTS intervened in the proceeding and offered comments with regard to the Company's Plan. Based on the

⁴ POLR rates are also sometimes referred to as Default Service rates.

⁵ See, *Pa. P.U.C. v. Pike County Light & Power Company*, Docket No. P-00052168 (Order entered August 25, 2005).

parties' comments and suggestions, the Commission made a number of modifications to the Company's proposed plan, and ordered that the auction go forward.

By Order entered September 23, 2005, the Commission approved, with certain modifications, the May 31, 2005 petition of PCL&P for approval of its plan for an auction to establish POLR rates pursuant to Section 2807(e)(3) of the Public Utility Code, 66 Pa. C.S. § 2807(e)(3).⁶

On October 27, 2005, PCL&P filed the results of its auction process with the Commission, which included the impact on retail rates for customers receiving POLR service. PCL&P also provided the results of the auction to OCA, OSBA, and OTS, none of which raised any objections to the results. The results of the auction were approved by Commission Secretarial Letter dated October 28, 2005.

By Order entered December 21, 2005, this Commission permitted PCL&P's new tariffs, based on the auction results, to go into effect on January 1, 2006. The new tariffs resulting from the auction implemented a more than 70% increase in PCL&P's previous retail rates on a total-bill basis and further implemented a 129% increase in generation rates for PCL&P's customers. The substantial increases that resulted from the Commission-approved auction process created great concern on the part of customers, and they began to file Formal Complaints with the Commission alleging that the Company's rates were unreasonable.

As a result of this significant increase in POLR rates, by Order entered February 14, 2006, the Commission initiated a fact finding investigation into the competitive

⁶ See, *Pennsylvania Public Utility Commission v. Pike County Light & Power Company*, Docket No. P-00052168

electric market in PCL&P's service territory.⁷ The Order listed 14 issues for comment by interested Parties, and the Commission's Law Bureau was directed to conduct a 60-day investigation into the matter and thereafter prepare and submit to the Commission a report on its findings on the questions. As part of the investigation, the Commission conducted a public input hearing at which a large number of PCL&P customers attended and voiced their concerns regarding the increase in electric rates.

On March 10, 2006, Direct Energy Services, LLC ("Direct Energy") filed a Petition for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light and Power Company, pursuant to 66 Pa.C.S. §§ 501, 1301 and 2802(9), and 52 Pa. Code §§ 3.1-3.5, 5.41 and 5.572 ("Direct Energy Petition"). The Direct Energy Petition proposed an opt-out aggregation program that promised to provide some level of savings for PCL&P customers for the generation portion of their bills.

By Secretarial letter dated March 13, 2006, the Commission notified all interested Parties that they should submit their answers to Direct Energy's Petition by close of business on March 17, 2006. A number of parties, including ConEd Energy, ConEd Solutions, Dominion Retail, Mxenergy, the OCA, the OSBA, and PCL&P submitted answers to the Direct Energy Petition.

On April 6, 2006, the Commission issued a Tentative Order, which, *inter alia*, referred the matter to the Office of Administrative Law Judge for an expedited hearing and the certification of the record directly to the Commission. A hearing was held on April 11, 2006, in Harrisburg, before ALJ Weismandel.

⁷ *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).

On June 20, 2006, the Commission approved Direct Energy's Petition and an opt-out aggregation program was established for PCL&P customers. The vast majority of PCL&P customers are now generation customers of Direct Energy.

B. Formal Complaints

Beginning in February of 2006, more than fifty customers of PCL&P filed Formal Complaints with the Commission. Every complaint filed raised the issue of the Company's rates and asked that the Commission take action to alleviate the impact of the increased default service rates. A number of the complaints alleged service problems and expressed concerns regarding outages, interruptions and the absence of a PCL&P office in the Pike County service territory. A few of the complainants asked the Commission to order the takeover of the Company by another utility or an electric cooperative.

On March 3, 2006, the County of Pike file a Formal Complaint, which was amended on July 12, 2006. *County of Pike v. Pike County Light & Power Company*, Docket No. C-20065942. The County's Complaint is typical of the complaints filed in this matter and is representative of the type of allegations made against the Company by other customer complainants. The County's complaint is also unique in that it incorporates the findings of the Law Bureau Report and, for the first time, puts forward the *Big Run* case (*see, infra.*)⁸ as Commission precedent for ordering the forced sale of the Company.

PCL&P filed Answers to all the Complaints denying the allegations. In the course of this proceeding most of the complaints filed have been withdrawn or dismissed. Only a fraction of the Formal Complaints initially filed remain active.

⁸ *Pa. PUC v. Big Run Telephone*, Docket No. C-822983 (Order entered October 15, 1982).

C. The Law Bureau Report

In response to the many complaints filed in this case, the Commission issued an Order on February 14, 2006 at Docket No. P-00052168 and directed the Commission's Law Bureau to conduct a 60-day investigation on the competitive and market conditions in PCL&P territory. The Order listed 14 issues for comment by interested parties, and following review of these comments, the Law Bureau submitted a report that was made public on June 1, 2006. The report included eight recommendations for action intended to address concerns regarding high default service rates for PCL&P customers.

While the Commission has not yet acted on the Law Bureau Report's recommendations, the Company has moved forward with proposals that would implement some of the Report's recommendations. These steps include: (1) a default service plan that contemplates load integration with PCL&P's corporate parent Orange and Rockland Utilities, Inc. ("Orange and Rockland"), (2) an interconnection study regarding PJM, (3) a proposal to implement the PowerSwitch discount for PCL&P customers, and (4) a default service plan filed nearly one year prior to the effective date of new rates to allow for a longer review period for the Commission. These and other measures are discussed in more detail below.

D. Hearings

As part of the hearing process in this proceeding, public input hearings were held on October 4, 2006 in Matamoras, Pennsylvania consisting of a morning and an evening session. A total of 37 witnesses testified before Administrative Law Judge Ember Jandebaur. The witnesses are PCL&P distribution customers and the vast majority take generation service from Direct Energy. A majority of the witnesses are small business

owners who described the impact of the current rates on those businesses. The remaining witnesses, testifying as residential customers, expressed dismay at the level of the current rates and its impact on their households. All of the witnesses testified in general that the current rates are "outrageous," "exorbitant" and, in some instances, "unaffordable."⁹

Approximately 15 of the witnesses described various service issues encountered in PCL&P territory, ranging from power interruptions to power outages. None of the witnesses had documented the number, frequency or dates of such occurrences. None of the witnesses had ever filed a formal complaint with the Commission regarding service issues.

On November 6, 2006, the first round of evidentiary hearings in this matter took place in Scranton, Pennsylvania. At this hearing, nearly all of the remaining complainants presented testimony and evidence in support of their Formal Complaints. Joseph Fretta, John Dalton and Peter Kenny presented testimony on their own behalf, Commission Harry Forbes testified on behalf of the County of Pike and Mr. William Hessling testified on behalf of the Delaware Valley School District. Most of the testimony from these witnesses focused on service issues and their impact on the complainants. Mr. Forbes testified extensively on the issue of high rates and expressed his support for the acquisition of PCL&P by the Sussex Rural Electric Cooperative ("Sussex").

Technical evidentiary hearings were held in Scranton on January 16, 17 and 19, 2007. Witnesses for the OCA, and PCL&P presented technical expert testimony concerning the rates and reliability of PCL&P in addition to a proposed interconnection with the PCL&P system by Sussex. Pike County Commissioner Forbes testified further

⁹ See, Tr. 10/4 PM at 30, ln. 3; Tr. 10/4 AM at 8; Tr. 10/4 PM at 20, ln. 15.

in rebuttal to the pre-filed testimony of PCL&P. In addition, Mr. Richard Snyder testified on behalf of various business interests (i.e., Small Properties, Community Building Projects, Fauchere Hospitality and Three Lane Utilities) in which he is a sole or partial owner. Mr. Snyder discussed the impact of the recent PCL&P rate increase on his business in addition to alleged service and reliability issues.

The OCA presented two technical witnesses (i.e., Mr. Matthew Kahal and Mr. Peter J. Lanzalotta), Robert Kolling, CEO of Sussex and Ms. Nancy Brockway. Mr. Kahal discussed his evaluation of alternative arrangements that would provide for rate relief to PCL&P's customers on a long term basis. Mr. Lanzalotta discussed his views on the available options for PCL&P to be interconnected to the PJM system and on the service reliability of the Company. Mr. Kolling discussed Sussex's interest in acquiring PCL&P, constructing an interconnection to the PCL&P system and addressing the current rates of the Company. Ms. Brockway discussed the impact of the rate increase on the Company's customers and options for the resolution of those customer concerns.

PCL&P presented three witnesses (i.e., Mr. James O'Brien, Mr. Joseph Holtman and Mr. Angelo Regan). Mr. O'Brien addressed in his testimony the formal complaints that PCL&P has received since 2001 in addition to discussing the services being provided by Direct Energy. Mr. Holtman discussed PCL&P's proposed default service plan and responded to the testimony of OCA witnesses Brockway and Kahal and OSBA witness Knecht. Mr. Regan addresses the suggested interconnection of PCL&P to PPL Electric Utilities, Inc. ("PPL"), Metropolitan Edison Company ("Met Ed") and for Sussex. In addition Mr. Regan addresses PCL&P's electric service reliability.

By stipulation of the parties, the OSBA presented the testimony of Robert D. Knecht, who addressed the current rates of PCL&P customers and the steps that can reasonably be taken to improve the competitive environment in PCL&P's territory.

Direct Energy presented, through stipulation of the parties, the testimony of Frank Lacey.

III. THE APPLICABLE LAWS AND REGULATIONS

A. The Restructuring Act – Chapter 28 of the Public Utility Code

Pursuant to the Competition Act, 66 Pa.C.S. § 2801, et seq., PCL&P's commodity rates were "unbundled" from delivery rates. The purpose of the statute was to move the Commonwealth's electric utility industry away from a traditional system of economic regulation and toward a market-based approach to establishing electric utility rates. The General Assembly found and declared, among other things, that:

Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity....

This Commonwealth must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customers...

The purpose of [Chapter 28 of the Public Utility Code] is to modify existing legislation and regulations and to establish standards and procedures in order to create direct access by retail customers to the competitive market for the generation of electricity...

The generation of electricity will no longer be regulated as a public utility function...

66 Pa. C.S. §§ 2802 (5), (7) and (12).

Pennsylvania appellate courts have found that the purpose of the Competition Act is to relinquish the local electric utilities' monopoly control over the generation of electricity and to invite competition in an effort to lower electric generation rates for the citizens of the Commonwealth. *Indianapolis Power & Light Co. v. Pa. P.U.C.*, 711 A.2d 1071 (Pa. Cmwlth. Ct. 1998), *allocatur denied*, 727 A.2d 1124 (Pa. 1999), *cert. denied*, 119 S. Ct. 1143. The Competition Act was intended to make electric generation accessible to utility customers with the belief that this would result in lower prices for

customers. To date, these lofty goals of the Competition Act have not been achieved in Pennsylvania.

The Competition Act provided some protections for electric utility customers in the form of rate caps. 66 Pa. C.S. § 2804(4). Under the Competition Act, the rates that PCL&P customers pay for their electric service were "capped" from May 1, 1999 through December 31, 2005. The purpose of the rate caps was to insulate customers from rate volatility while competitive markets developed. Upon the expiration of rate caps and, pursuant to the terms of the Competition Act, PCL&P was obligated to procure power for its customers on the open market where commodity rates are set by the prevailing market price for electric generation. Section 2807(e)(2) of the Public Utility Code provides as follows:

If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.

66 Pa. C.S. § 2807(e)(2).

As a result of the mechanism established by the Competition Act and market conditions at the time of PCL&P's procurement of power for its customers, generation rates increased substantially for the Company's customers beginning on January 1, 2006. At the time that PCL&P conducted the auction that would establish the generation rates to be paid by its default service customers, the country had recently experienced the economic shock of Hurricane Katrina and natural gas prices experienced unprecedented volatility and record price increases. Due to the market conditions existing at the time of the transition from capped commodity rates to market rates, PCL&P customers

experienced significant increases in their bills. These increases in customers' electric bills are the result of high prevailing market prices for generation, not from any increases in PCL&P's delivery rates.

The current commodity rates for PCL&P's customers were established in two separate proceedings before the Commission – the Default Service rates were approved by the Commission at Docket No. P-00052168, while the Retail Aggregation rates were approved by the Commission at Docket No. P-00062205. The Company has, at all times, acted in accordance with the provisions of Chapter 28 and has adhered to the Commission's orders in the proceedings cited above. PCL&P has not marked up the Default Service commodity rates charged to its customers.

B. Section 701 – Formal Complaints

Under the Public Utility Code, “[t]he Commission or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, 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.” 66 Pa. C.S. § 701.

The Formal Complainants in this matter have failed to show that PCL&P has done or failed to do anything in violation, or claimed violation, of any law that the Commission has jurisdiction to administer, or of any regulation or order of the Commission. As is discussed in more detail below, PCL&P has implemented rates and tariffs and performed all of its service obligations in a manner consistent with the Public

Utility Code and the Commission's regulations and orders. Consequently, the Commission must reject and deny the Complaints in this matter.

Further, under Section 701 of the Public Utility Code, a complainant challenging utility rates established by the Commission bears the burden of proving that the rates are no longer reasonable. *Duquesne Light Co. v. Pa. PUC*, 715 A.2d 540 (Pa. Cmwlth. Ct. 1998). A customer challenging Commission-approved rates must prove that the rates are unreasonable by demonstrating recent significant changes in circumstances since the Commission set the rates being challenged. *Id.* Absence of such a showing establishes *prima facie* evidence of the facts found in the prior Commission rate order. *Id.* In this case, the Complainants are challenging rates approved by the Commission, but they have failed to show significant recent changes in circumstances since the Commission Order at Docket No. P-00052168. As more fully set forth below, the Complainants have failed to meet their burden of proof.

C. Section 332(a) – Burden of Proof

Section 332 of the Public Utility Code places the burden of proof on the Complainants in this matter. This provision states as follows:

§ 332. Procedures in general

(a) BURDEN OF PROOF -- Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

66 Pa. C.S. § 332.

Inasmuch as Complainants are the proponents of an order finding that the Company's service is not adequate, efficient, safe or reasonable, the Complainants have the burden of proof.

The relevant case law amply supports the fact that the Public Utility Code assigns the burden of proof to the Complainants in this case.

In *Charles A. Patterson v. The Bell Telephone Company of Pennsylvania*, Docket No. F-8966524, 1990 Pa. PUC LEXIS 19; 72 Pa. PUC 196 (February 8, 1990), the Commission stated:

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), generally provides that the party seeking affirmative relief from the Commission has the burden of proof. In this proceeding, the Complainant filed a formal Complaint alleging Bell acted unreasonably in handling his financial inability to pay the accrued amount of his overdue bills. The Complainant is seeking our assistance in arranging a reasonable payment schedule with Bell, while resuming toll service. Accordingly, the Complainant, Charles A. Patterson, is the party with the burden of proof.

1990 Pa. PUC LEXIS 19, 7 (Pa. PUC 1990).

The Commission recently reaffirmed the fact that the proponent of a rule has the burden of proof:

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), which provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

John Gera v. PPL Electric Utilities Corporation, Docket No. C-20054657, 2006 Pa. PUC LEXIS 32 (April 6, 2006).

In addition, the Commission has found that,

Since it is the Complainant who is seeking affirmative relief from the Commission, it is he, Mr. Rounds, who bears the burden of proof in this matter. And, since the Commission does not have the jurisdiction to award the monetary damages sought by Mr. Rounds in his complaint, (see *Miller v. West Penn Power Company*, Docket No. C-00981947 (entered

October 20, 1999), the Complainant's burden is to show that Verizon violated its duty under the Public Utility Code to provide him with adequate and reasonable service. 66 Pa. C.S.A. §§ 101 et seq. § 1501.

Elmer G. Rounds, Jr. v. Verizon Pennsylvania Inc., Docket No. C-20042970, 2005 Pa. PUC LEXIS 33, 12-13 (July 26, 2005).

In *Mary M. Sobota v. Equitable Gas Company*, Judge Porterfield reached the same conclusion, i.e., that the complainant had the burden of proof:

A jurisdictional public utility, such as Equitable Gas Company, has a duty to "furnish and maintain adequate, efficient, safe, and reasonable service...." 66 Pa.C.S. § 1501. This statutory duty includes, among other things, the duty to implement and to practice proper billing and collection procedures and to provide timely and appropriate service to its customers. A person who or that brings a complaint against a jurisdictional public utility, pursuant to section 701 of the Public Utility Code, 66 Pa. C.S. § 101, *et seq.*, incurs the burden of proving by a preponderance of the evidence adduced at hearing (consistent with the allegations) that the utility has failed to discharge its statutory service duty. 66 Pa.C.S. § 332(a). In general, in order to prevail on a complaint, an interested person, such as the Complainant, must demonstrate, according to statutory law and decisional law criteria or recognized equitable principles, that the respondent utility has violated a "law which the commission has jurisdiction to administer" or violated a "regulation or order of the commission." 66 Pa. C.S. § 701.

1999 Pa. PUC LEXIS 66, 12-13. The July 14, 1999 decision of Judge Porterfield was adopted in relevant part by the Commission at *Mary M. Sobota v. Equitable Gas Company*, Docket No. C-00981661, 1999 Pa. PUC LEXIS 67 (October 18, 1999).

The above statutes and decisions demonstrate that the Complainants have the burden of proof in this case. Having the burden of proof, the Complainants must show, by a preponderance of substantial credible evidence, that the relief sought is appropriate. In *Patterson*, the Commission explained the standards that the Complainants must meet:

The Pennsylvania Supreme Court has held that the term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Marqilies*, 364 Pa. 45, 70 A.2d 858 (1950). The term

"preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. The Commission has held that a Complaint, to establish a sufficient case against a utility and satisfy the burden of proof, must show that the utility is responsible or accountable for the problem described in the Complaint. *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976).

As required by these decisions, the record in this proceeding must be reviewed to determine whether the Complainant satisfied his burden of proof. If the review indicates that the burden has been satisfied, it must then be determined whether Bell has submitted evidence of co-equal value or weight to refute the Complainant's evidence. If this has occurred, the burden of proof cannot be deemed to have been satisfied, unless additional evidence has been presented by the party having the burden of proof. *Morissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967), and *Burleson v. Pa. P.U.C.*, 66 Pa. Commonwealth Ct. 282, 443 A.2d 1373 (1982) *aff'd.*, 501 Pa. 443, 461 A.2d 1234.

1990 Pa. PUC LEXIS 19, 7-8 (Pa. PUC 1990).

Judge Porterfield amplified on the steps that complainants must satisfy:

Section 332(a) of the Code is routinely construed and applied by the Commission to require a party seeking affirmative relief from the Commission, as the Complainant is in the instant proceeding, to bear the burden of producing and coming forward with the evidence and to bear the ultimate burden of persuading the Commission by a preponderance of substantial evidence that the relief sought is proper and justified under the circumstances. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1954).

1999 Pa. PUC LEXIS 66, 12-14.

Therefore, the Complainants must demonstrate, by a preponderance of substantial evidence, adduced at a hearing, that the Company is failing to meet its statutory rate and service obligations. Nothing less will suffice.

In the instant case, the Complainants have failed to sustain their Complaints because they have not met their burden of proof. On the issue of the reasonableness of rates, the Complainants have offered evidence that their rates have increased

significantly, but they have failed to show, by a preponderance of substantial evidence, that the Company's Commission-approved default service rates are illegal, unjust or unreasonable. On the issue of service, Complainants have presented evidence of outages and interruptions, but they have failed to show that the Company has violated the Public Utility Code or the Commission regulations or rules on service. Under the statute, the Complainants claims must be rejected.

D. Section 501 – Enforcement and Remedies

Section 501 of the Public Utility Code is the basis for the Commission's power to enforce the Commonwealth's utility regulatory scheme. Section 501 provides the following, in relevant part:

...the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular of [the Public Utility Code], and the full intent thereof...

The Commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth.

66 Pa. C.S. § 501.

The regulatory powers granted to the Commission by the General Assembly are broad, but limited. The Commission has the authority to regulate all aspects of public utilities. However, the area of administrative activity is not boundless; Commission power is statutory, and the legislative grant of the power to act in any particular case must be clear. *Felix v. Pa. P.U.C.*, 146 A.2d 347 (Pa. Super. Ct. 1959). The Commission has only those powers expressly provided in the Public Utility Code. *National Fuel Gas Distribution Corp. v. Pa. P.U.C.*, 464 A.2d 546 (Pa. Cmwlth. Ct. 1983). Also, as an administrative body, the Commission is bound by due process provisions of

constitutional law and by the principles of common fairness. *Town Development, Inc. v. Pa. P.U.C.*, 411 A.2d 1317 (Pa. Cmwlth. Ct. 1980).

The limitation of the powers of the Commission established in the cases listed above, and many others, is important in this case because of the extraordinary relief that the Complainants are requesting. The County of Pike has specifically requested that the Commission order the forced sale of PCL&P (*see*, County Amended Complaint), but this is a remedy that is outside of the jurisdiction of the Commission. The power to order the involuntary divestiture of an electric public utility is not expressly granted to the Commission by the Public Utility Code. As set forth more fully below, the relief requested by the Complainants is outside of the Commission's power to grant.

IV. SUMMARY OF ARGUMENTS

The Complaints in this case should be dismissed because the Complainants have failed to meet their burden of proving that PCL&P has violated the Public Utility Code, or any Commission rule, regulation or order. The current default service rates that the Complainants allege are unjust and unreasonable are Commission-approved rates and there has been no showing that the Commission erred in approving those rates or that there has been some change in circumstance since the Commission's approval to justify setting different rates. Further, the rates comply with the Competition Act, which mandates market-based rates. The Company acquired energy for its customers at prevailing market rates as mandated by the Competition Act. The OCA has acknowledged that any retrospective adjustment of the Company's rates is strictly barred by the Commission's prohibition of retroactive ratemaking.

If the Complainants want the Commission to establish lower default service rates prospectively, the Commission has before it a Petition from PCL&P to establish those rates in another proceeding. The Company has filed a proposal to acquire power for its customers at prevailing market prices as mandated by the Competition Act. (Docket No. P-00072245). Complainants and their advocates have the option to participate in that proceeding and offer their prescription for establishing future default service rates (i.e., effective January 1, 2008). To the extent that the Commission is reviewing PCL&P default service petition in another docket, any allegations with regard to future default service rates should be addressed in that proceeding and should not be decided in the instant matter.

The service allegations should be dismissed as well because the Company has complied with its service obligations and service has improved in the PCL&P service territory. It is plain from the relatively low number of service complaints prior to 2006 that the service complaints in this matter are driven by the customers' dissatisfaction with their generation rates. Although customers have experienced outages and interruptions in the past, the degree of reliability issues has not risen remotely near the level of unreasonable service. Reliability in PCL&P's territory has been affected by the nature of the area being served and by a number of factors outside of the Company's control. To the extent that the Company can control the performance of the system, it has taken, and continues to implement, a number of steps to ensure that service and reliability improve. The Company's efforts have led to marked improvements which have been acknowledged by the at least one of the Complainants.

It follows that, if rates and service issues do not rise to the level of unreasonableness, the relief requested by the Complainants should not be granted. Even assuming, *arguendo*, that the Complainants have proven their rate and service allegations by a preponderance of the evidence, the relief requested is so extraordinary and extreme that it should not be granted by the Commission. The forced sale that the Complainants seek is not a relief that the Commission is authorized to grant under the Public Utility Code. A forced sale, as proposed by the Complainants, would constitute a violation of PCL&P's due process rights and would lead to eminent domain proceedings that would be costly and time-consuming for all involved. Lastly, there is no suitable buyer for PCL&P because the potential purchaser that the Complainants have brought forward,

Sussex, has failed to undertake the most basic due diligence and preparatory steps to become the new service provider for PCL&P's customers.

V. ARGUMENT ON RATE ISSUES

A. The Restructuring Act Mandates Market-Based Rates

Section 2807(e)(3) of the Public Utility Code provides that, following the expiration of rate caps, PCL&P has the obligation to procure energy for its default service customers at prevailing market prices. 66 Pa. C.S. §2807(e)(3). The statute was designed to provide retail customers with the opportunity to achieve savings by purchasing electric generation services in the open market either through an electric generation supplier or the local electric distribution company ("EDC"). Where customers either chose not to buy power from an electric generation supplier ("EGS") or lacked the choice of buying power from an EGS (as was the case in PCL&P territory in 2005), the EDC has the statutory obligation to go into the market to procure energy for its default service customers. PCL&P did exactly what the Competition Act mandated by formulating a plan to procure energy at prevailing market prices and filing the plan with the Commission. The Commission recognized the Company's obligation under the Competition Act and approved a modified plan to acquire the energy required to meet the default service supply needs and demands of PCL&P's customers.

Unfortunately for PCL&P's customers, in retrospect, the timing of the Company's energy procurement could not possibly have been more inopportune. A number of factors that were outside of the Company's control conspired to produce a situation that resulted in the acquisition of the required power at unusually high market prices. In the summer of 2005, as the Commission was in the process of reviewing and approving the Company's plan to procure default service power for its customers, Hurricanes Katrina and Rita visited devastation of biblical proportions on the Gulf Coast. Because the Gulf

Coast is a source area for much of the natural gas that is used to produce electricity in the Northeast, prices for the natural gas needed for generation increased dramatically with an equally dramatic increase in generation prices. At the time of the auction that was to set the price for PCL&P's default service customers, prices for generation were set at record levels. These circumstances created high prices for anyone buying power at that time, not only PCL&P.¹⁰

Other factors contributed to the extraordinarily high price of electric generation for PCL&P in the summer and fall of 2005. Some of these factors have been identified in the Commission's Law Bureau Report and in this proceeding, and they include: (1) PCL&P's participation in NYISO, (2) the relatively small size of the Company's load, and (3) the location and predominantly rural character of PCL&P's service territory.

As discussed elsewhere in this Brief (Section V. D.), the Company has proposed a default service plan that combines its efforts to procure energy with those of Orange and Rockland. In addition, the Company continues to study the possibility of becoming part of PJM through interconnections with MetEd and PPL. In this regard, Mr. Regan offered testimony regarding a possible PJM interconnection:

Q. Has PCL&P completed an interconnection study?

A. Yes. PCL&P has completed an interconnection study ("Interconnection Study") exploring the costs and benefits of interconnecting its service territory with PJM. A copy of the Interconnection Study was attached as Appendix B to the Report on Competitive Market Conditions Regarding the Pike County Light & Power Company dated June 1, 2006 prepared by the Pennsylvania Public Utility Commission's ("PAPUC") Law Bureau ("Law Bureau Report").

PCL&P St. 2 at 2. Mr. Regan also testified thus:

¹⁰ As OCA witness Matthew Kahal recognized, "Baltimore Gas & Electric Company (BGE) in Maryland has experienced a generation (POLR) rate increase in excess of 100 percent (compared to its capped rates)." OCA St. 1 at 13, lns 8-10.

Q. Is PCL&P presently aware of, or investigating any other possible interconnections with, PJM Companies?

A. PCL&P has initiated preliminary discussions with JCP&L and MetEd, and will investigate if any opportunities exist to interconnect with its existing electric delivery systems that could improve reliability, while satisfying PJM deliverability requirements.

PCL&P St. 2 at 15.

The Company's efforts are consistent with the statutory mandate to provide its customers with generation at prevailing market prices while remaining vigilant of the impact of those prices on customers' bills. In addition, PCL&P continues to study the possibility and feasibility of an interconnection with PJM to address what has been characterized as a "structural" issue that has a significant effect on the Company's rates.

B. The Rates Complained of Are Commission-Approved Rates

The Complaints in this matter challenge the justness and reasonableness of the Default Service rates of PCL&P. The Company, however, did not impose these rates on its customers unilaterally. Rather, the Commission specifically approved the very default service rates that are the subject of the Formal Complaints in this matter. Accordingly, the Complaints should be denied.

PCL&P's Default Service rates were established pursuant to a process supervised and approved by the Commission following a litigated proceeding. *See, Pa. PUC v. Pike County Light & Power Co.*, Docket N. P-00052168 (Orders entered September 23, 2005 and December 21, 2005). The Company's Default Service rate filing was submitted pursuant to the Request for Proposals ("RFP") process and Default Service Implementation Plan filed May 31, 2005, and approved by the Commission in its Order adopted August 23, 2005, and entered September 23, 2005 at Docket No. P-00052168.

As set forth above as factual background, PCL&P filed the results of its auction process in October 25, 2005, which included the impact on retail rates for customers receiving Default Service. By Order entered December 21, 2005, this Commission permitted PCL&P's new Default Service tariffs to go into effect on January 1, 2006, and the proceeding at Docket No. P-00052168 was closed.

Moreover, while they may be reluctant to acknowledge the inconvenient fact, the OCA, the OSBA and OTS, all were involved in every step of the process that set PCL&P's default service rates. More important, neither OCA, OSBA, nor OTS objected to the Commission's approval of PCL&P's default service rates.

Once the Commission approved the rates under the Default Service tariffs, PCL&P was legally bound by the Commission's determination and was unable to diverge from the Commission's rate determination. PCL&P is required to bill its Default Service customers for electric generation service at rates set in accordance with its tariff and cannot charge any other rate than that set forth in the tariff. 66 Pa. C.S. § 1303; *Bell Telephone Co. of Pennsylvania v. Pa. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. Ct. 1980). "Tariffs have the force of law and are binding on both the utility and the customer." *Pennsylvania Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. Ct. 1995).

The relief sought by the Complainants in this case cannot be granted because PCL&P, in charging the complained-of rates, was merely adhering to the Commission's default service rate determination. It would be a singularly Kafkaesque decision for the Commission to punish PCL&P for charging rates that were specifically approved by the

Commission. In fact, it would be illegal for PCL&P to charge rates other than those approved by the Commission.

Pursuant to the Public Utility Code, PCL&P is required to bill its Default Service customers in accordance with its existing Commission-approved Default Service tariff until the Commission approves a new default service tariff. 66 Pa. C.S. § 1303. Also, under the "filed rate doctrine," the only lawful rate that a utility may charge is that approved by the Commission and a utility may not deviate from the filed rate.

Ciamaichelo v. Independence Blue Cross, 814 A.2d 800 (Pa. Cmwlth. Ct. 2002); *Philadelphia Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. Ct. 2002); *Bell Telephone Co. of Pa. v. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. Ct. 1980); 66 Pa.C.S.A. § 1303. Mr. Kahal testified that he does not take issue with the prudence of PCL&P's current POLR rates (OCA St. 1 at 4) and Ms. Brockway does not assert any "imprudence" in the auction process (OCA St. 3 at 22). So, even the OCA must acknowledge that the Company has no choice but to charge the default service rates approved by the Commission.

Also, under the "filed rate doctrine," a rate approved by an agency charged with establishing such a rate is presumed to be lawful and reasonable. *See, Milkman v. Am. Travelers Life Ins. Co.*, 61 Pa. D. & C.4th 502, 2002 Pa. Dist. & Cnty. Dec. LEXIS 94 (C.P. Phila. March 28, 2002). In other words, if PCL&P had charged a rate different than the Commission-approved Default Service rate, it would be charging a rate that had not been found to be just and reasonable by the Commission.

Furthermore, the filed rate doctrine bars claims where the complaint collaterally attacks the filed rate. *Ciamaichelo*, 814 A.2d at 804; *See*, 66 Pa.C.S.A. §§ 1302, 1303,

and 1304; *Knipmeyer v. Bell Atl. Corp.*, 51 Pa. D. & C.4th 225, 2001 Pa. Dist. & Cnty. Dec. ILEXIS 289 (C.P. Phila. May 22, 2001). Under Pennsylvania law, the Complaints, to the extent they represent an attack on rates established by the Commission, must be dismissed.

C. The Complainants Are Not Generation Customers of PCL&P

In response to concerns that the Commission-approved Default Service rates would result in significantly higher rates for PCL&P retail customers, the Commission authorized an aggregation program proposed by Direct Energy, a Pennsylvania-licensed EGS. *See, Petition of Direct Energy Services, LLC*, Docket No. P00062205 (Final Order entered April 20, 2006). The resulting rates are Commission-approved rates.

Following approval of the retail aggregation rates, almost all of PCL&P's generation customers were switched from the default service rates to Direct Energy, an EGS that provided an aggregation program with lower commodity rates than those offered under PCL&P's Default Service. As of November 1, 2006, approximately 4,139 customers or ninety-one percent (91%) of eligible PCL&P customers are taking generation service from Direct Energy. PCL&P ST.1 at 6; Tr. 1/17 at 118. Customer complainants testified that they are currently Direct Energy customers for generation, including the County of Pike and Mr. Forbes, the main Complainants in this matter. Tr. 11/6 at 19 and 36. Other complainants who are customers of Direct Energy include Mr. Fretta (Tr. 11/6 at 104-105, 115), Mr. Kenny (Tr. 11/6 at 125) and Mr. Dalton (Tr. 11/6 at 144). This change of generation suppliers on the part of customers of PCL&P has resulted in the unusual situation in which the complainants are asking the Commission to rule that rates that are inapplicable to them are unjust and unreasonable.

The complainants have failed to show that PCL&P's delivery rates, the rates that apply to them, are unjust and unreasonable. This is hardly surprising since PCL&P's delivery rates have not been increased since 1993. The complainants have not alleged that the Company's delivery rates are unjust and unreasonable, and they have failed to provide any evidence to that effect. Consequently, if the rates that PCL&P charges to these customer complainants are not alleged to be unjust and unreasonable, the Commission must find that the Complainants' rate claims should be rejected.

In essence, the Commission addressed the rate complaints that were initially filed by customers when it approved the Direct Energy opt-out aggregation program, and their complaints are effective moot. As for PCL&P's default service rates going forward, the Commission will resolve that issue when it issues a decision on the Company's POLR Petition which is currently pending at Docket No. P-00072245.¹¹ Any finding that the Company's current Commission-approved default service rates are unjust and unreasonable lacks any evidentiary support, contravenes long-established legal and Commission precedent, and therefore, should not be contemplated.

D. PCL&P's Default Service Proposal Addresses Rate Issues

PCL&P has put forward a proposal to deal with high default service rates for electric supply in Pike County. In his testimony filed on December 11, 2006, Mr. Holtman outlined a plan to secure PCL&P's default service supply for the period commencing January 1, 2008. PCL&P St. 3, 3-8. The Company's plan proposes the integration of PCL&P's procurement efforts with those of its affiliate Orange and

¹¹ See, *Petition of Pike County Light & Power Company for Expedited Approval of Its Default Service Implementation Plan*, Docket No. P-00072245 (filed January 8, 2007) ("POLR Petition"). At the time of filing of this Main Brief, the Company is engaged in the process of reviewing Answers to the POLR Petition from interested parties, including the OCA, OSBA and Direct in addition to responding to interrogatories from OSBA.

Rockland and acquisition of financial hedges of energy and capacity purchases made from NYISO's spot market for the Hudson Valley Zone (Zone G). The hedges are to be acquired through a web-based, declining price auction with a term beginning January 1, 2008 and ending on December 31, 2010. Another feature of the Company's proposal is the possibility of layered hedges for a multi-year period, which PCL&P is willing to discuss with the Commission and other interested parties. *Id.*

On January 8, 2007, PCL&P formally filed its Petition for Approval of Its Default Service Implementation Plan. The POLR Petition provides more detail to the proposal initially outlined by Mr. Holtman in his testimony and requests approval of the Plan following consultations with the Commission and other interested stakeholders. PCL&P has submitted its POLR Petition to address the concerns expressed by the customers and advocates in this case with regard to the existing default rates that would apply to PCL&P customers when the Direct Energy aggregation program ends.

PCL&P is confident that its default service procurement plan should result in better rates for consumers. Mr. Holtman testified that, PCL&P's 18 MW load would be added to approximately two-thirds of Orange and Rockland's 1,000 MW load for purposes of the integrated procurement. Tr. 1/16 at 153-154. The arrangement proposed by the Company creates a more attractive load for suppliers to bid on and is likely to generate significant interest in the auction.

In addition, the declining price auction format is conducive to lower prices. As Mr. Holtman explained, "[suppliers are] competing against other suppliers for the business. So there's a downward pressure on prices." Tr. 1/16 at 139. Also, because the

auction will be conducted electronically through a web-based platform, it is preferable to an RFP format.

Electronic auctions are superior to traditional RFPs since they foster a competitive offer process in a relatively short timeframe. Offers can be selected or rejected within minutes of the close of an auction, greatly reducing a hedge supplier's risk and therefore the risk premium paid by customers.

PCL&P St. 3 at 6-7.

Other factors affecting the design of the proposed procurement process may contribute to a more efficient and robust auction, and in turn, a more favorable price for default service supply. The Company has proposed a flexible plan that includes opportunities for the Commission, the OCA and OSBA to provide input regarding the final design of the auction. *See generally*, POLR Petition. Choosing a term longer than the three-year period proposed by PCI.&P or electing to layer hedges over time may result in additional efficiencies and the potential for lower supply prices. These options are open for discussion with the Commission and the advocates, but in the end, they are proposed as a way to achieve a successful auction, and ultimately, lower electricity rates for PCL&P customers.

E. PCL&P's PowerSwitch Proposal Will Lead to Rate Savings

In an effort to provide rate savings to its customers, PCL&P has proposed to seek approval for and to implement a program similar to the PowerSwitch program currently offered to Orange and Rockland customers in New York. The PowerSwitch program provides a guaranteed discount off the Company's generation charges and allows the customer to explore the possibility of using an alternative energy supplier. Mr. O'Brien described the program in his testimony as follows:

Under the Program, customers sign up with O&R for retail choice and are either assigned to an alternate supplier, or can choose a supplier among those participating in the Program. Customers can sign up for PowerSwitch by speaking with a customer service representative or the Company's VRU, using the Company's website, or mailing in an insert that is sent along with their monthly bill.

Under the Program, the customer is guaranteed savings of 7% off the commodity portion of their gas and/or electric bill for two billing periods ("Introductory Period"). The 7% discount has been agreed to by all of the alternate suppliers participating in PowerSwitch and reflects a discount off of Orange and Rockland's Market Supply Charge and/or Gas Supply Charge for the applicable billing periods. Orange and Rockland purchases the receivables of the participating suppliers and provides billing services so that the customers receive a single bill reflecting both delivery and commodity charges.

Customers receive a service agreement from the alternate supplier after signing up for PowerSwitch. The service agreement has a month to month term and sets forth the terms and conditions for electric and/or gas supply service after the Introductory Period. If customers find the terms and conditions acceptable, they can continue with the alternate supplier after the Introductory Period, at a price to be determined under the service agreement. If the terms and conditions are not acceptable, they can either rescind the agreement and cancel their enrollment in PowerSwitch, or wait until after the Introductory Period and terminate the service agreement. The PowerSwitch Program also benefits alternate suppliers by providing them an opportunity to introduce their service to customers without extensive promotional efforts and expenses.

PCL&P St. 1 at 7.

In addition to providing customers with guaranteed savings during the introductory period, the program that PCL&P intends to propose offers the opportunity for customers to "test the water" of retail choice and to do so with minimum effort and little or no risk. The Company's proposal addresses the customers' concern with the high level of generation charges and the Commission's concern with the development of a competitive retail energy market in the PCL&P service territory. The proposed program has the added incentive of helping to fulfill one of the purposes of the Competition Act,

to provide retail customers with access to competitive markets and the possibility of lower energy prices.

Under current circumstances, it may be challenging to implement a program similar to PowerSwitch in PCL&P territory because the vast majority of customers are taking generation service from Direct Energy. As Mr. O'Brien explained:

Power Switch competes against O&R's price. We have 90 percent of our customers who are purchasing electricity from Direct, so for me to put together a program, I can't --- I'm not going to compete against Direct's price. So you know, we're talking about a handful, ten percent of the customers who will come under the Power Switch program.

Q. So for that to make any sense, you probably would have to wait until the arrangement with Direct comes to an end and then see where you're at?

A. Exactly.

Tr. 1/17 at 118.

In addition to the obstacle presented by Direct Energy's aggregation program, other barriers may exist. First, the success of the PowerSwitch proposal would be affected, in part, by the level of participation by alternative suppliers. At the moment there are two EGSs licensed in Pennsylvania to serve PCL&P customer, but there are others who have expressed interest in participating in the program once it is offered. PCL&P St. 1 at 8; Tr. 1/17 at 120-21. Also, the Commission's decision on PCL&P's Default Service Plan application will impact the prospects of the proposed program because the auction contemplated under that plan would establish the price on which the discount would be based. However, PCL&P is committed to overcome these barriers to provide customers lower bills and more choice.

F. The OCA/Sussex Rate Proposal Is Not A Serious Option

The record evidence in this matter demonstrates that the rate relief promised by Sussex and advanced by the OCA is illusory. In his testimony, Sussex President, Robert

Kolling, states that PCL&P customers will experience a 20% reduction in rates if Sussex is successful in acquiring PCL&P. OCA St. 4 at 4; Tr. 1/19 at 59-60. However, this rate reduction assertion is simply a rough estimate based on a number of factors that are outside of Sussex's control (*See*, PCL&P Cross Examination Exh. 21). According to Mr. Kolling, the 20% figure is "a rough estimate based on a comparison of the existing rates of PCL&P and Sussex." *Id.* He assumes that PCL&P rates and Sussex's rates will remain the same. Mr. Kolling's "rough estimate" also presumes that PCL&P's distribution rates may be "slightly higher as a result of acquisition and interconnection costs." These assumptions are based on factors that are subject to change and cannot be fully known by Mr. Kolling or anyone else. Mr. Kolling and the OCA have failed to produce solid support for the 20% rate reduction estimate.

In the course of oral testimony, Mr. Kolling continued to maintain that there would be a 20% reduction in rates, but his position is founded on hope rather than fact. During cross-examination he conceded that he had done no analysis to arrive at the 20% figure and there were factors outside of his control that would affect Sussex's ability to make good on the promised savings:

Q Mr. Kolling, you have in front of you what has been marked as PCL&P Cross Examination Exhibit Number 21; do you have that?

A. Yes.

Q. There PCL&P had requested any analysis that you've done. Have you performed a formal analysis as to your assertion that there will be a 20-percent reduction in current rates for Pike customers?

A. We have done, I mean, you know, **back of the envelope analysis.**

Q. How about formal analysis?

A. A formal analysis?

Q. Yes.

A. No. **I don't know what the prices are.**

Q. So you haven't done any analysis other than the back of an envelope analysis?

A. That's correct

Q. Thank you. Is it your testimony that Sussex is guaranteeing a 20-percent reduction in the current rate for Pike customers in 2008?

A. Yes. We can meet that reduction.

Q. In other words, you're guaranteeing that you will deliver a 20-percent price reduction in current rates of customers in 2008?

A. Again, based upon what comes back to a sale price that we have to incur. I can tell you if I buy it at a certain price, yes, *I can guarantee you 20. I can guarantee you something larger than 20.*

Q. So your 20-percent reduction guarantee is based upon an infinite number of variables; isn't it?

A. No, just really one, the sale price.

Q. But that sale price involves a number of variables; wouldn't it?

A. Really sitting down across the table with Con-Ed.

That's the biggest part. But yes, once you sit down and you work out a price ---.

Q. But you would agree that those negotiations would involve a number of variables and a number of points, would you not, that have an impact on the price that someone would agree to sell a company?

A. Yes. I think there are variables, but they're all manageable...

Tr. 1/19 at 59-60 (emphasis added). This exchange is very instructive because it reveals that the promise or "guarantee" of a 20% rate reduction is lacking any basis in reality. The 20% "guarantee" is a "back-of-envelope" estimate that fails to take into account the unknown sale price of PCL&P and the unknown interconnection costs associated with OCA's Sussex proposal. Mr. Kolling is "guaranteeing" a reduction even as he admits that he does not know either how much he will have to pay for the PCL&P assets or how much it will cost to interconnect his system with PCL&P's. Any "guarantee" provided under these circumstances is really no guarantee at all.

In addition, Mr. Kolling's 20% guarantee appears to assume that Sussex will sit across the table from Orange and Rockland/Con Edison and arrive at a mutually agreed price that will allow Sussex to offer lower rates. However, Orange and Rockland/Con Edison has made it clear to Mr. Kolling and Sussex that it is not interested in selling PCL&P. *See*, PCL&P Cross-Examination Exh. 19. As is specifically discussed below,

an acquisition by Sussex would involve a long process that includes a number of unpredictable events. At a minimum, the Commission must issue an order to force the sale of PCL&P, and thereafter, an eminent domain proceeding must be prosecuted to arrive at a fair market value or sales price for the Company's assets. Mr. Kolling did not take these factors into consideration when performing his back-of-the-envelope guesstimate of rate savings.

Finally, while Mr. Kolling's 20% guarantee has led the OCA and a number of customers to support the Sussex acquisition of PCL&P, the evidence suggests that the Sussex deal may end up costing customers more than they realize. Mr. Kolling has testified that Sussex's analysis of the possible acquisition of PCL&P was done at a time (January 2006) when he knew little about the possible costs associated with the purchase and the interconnection. In the course of discussing the confidential Christenberry & Collett Presentation (the January 31 Document),¹² Mr. Kolling explained all the assumptions that underlie his cost estimates:

If we go back and look at when Christenberry Collet --- when we sat down with them and determined if this was a feasible option for Sussex Rural Electric to pursue, our basic assumption for this upfront capital expenditure for this study was that we would really use all existing facilities that were out there and just use the existing metering point that we could see at the Port Jervis sub and whatever associated costs we had to just be from existing feed at that time. That was prior to all the --- you've got to look at this. That was prior to us even reviewing the rates, increases. That was prior to PJM. That was prior to anything. That was just looking at taking that little island, Pennsylvania, what was spent by Orange & Rockland, and what we felt at that time if Con-Ed is willing to sit down with us and talk to us about acquiring it and what costs we may have. And that was it. So we were using existing facilities that were in place.

¹² The January 31 Document was placed into the record as PCL&P Cross-Examination Exhibit 18.

Tr. 1/19 at 39-40. Based on this testimony, it is evident that Mr. Kolling made a number of assumptions that are either incorrect, unrealistic, or both. Sussex did not take into account the possibility of having to build its own facilities to serve Pike County residents, Sussex assumed that Orange and Rockland/Con Edison would negotiate a purchase price, and Sussex performed its investigation prior to reviewing the Company's rates and discussing the proposed transaction with PJM. And yet, Mr. Kolling continues to maintain, and the OCA continues to argue, that Sussex can deliver discounted rates to PCL&P's customers.

Mr. Kolling's 20% guarantee is simply not believable when one considers that so many of the variables that would impact the ultimate rate charged to customers are unknown and unknowable at this time. Mr. Lanzalotta testified that an interconnection with Sussex would cost \$1 to \$2 million (OCA St. 2 at 6), while Mr. Regan offered evidence to the effect that the *known costs* of a Sussex interconnection could exceed \$6 million. PCL&P St. 2 at 13. Moreover, the estimates offered by Sussex and the OCA were calculated without the benefit of an interconnection study, load studies, environmental studies or any other schematics or plans. Tr. 1/17 at 29-30; Tr. 1/16 at 59, 65-66; PCL&P Cross-Examination Exhibits. 9-12. In light of all these facts, Mr. Kolling's breezy assurances regarding a purported 20% rate reduction are simply not credible.

Mr. Kolling's 20% rate reduction "guarantee" should be viewed even more skeptically in light of his inconsistent representations about who will bear the costs of the interconnection Sussex proposes. Mr. Forbes, a County official who has zealously supported the OCA's Sussex proposal, was under the impression, based on discussions he

had with Mr. Kolling, that Sussex's members would bear some portion of the costs of interconnection. Mr. Forbes testified about his discussions with Mr. Kolling as follows:

Q. So he did mention to you that there were factors other than the purchase price, and among those were interconnection costs?

A. Correct.

Q. And did he mentioned [*sic*] to you who was going to bear the cost of interconnection?

A. Again, the discussion was that, again, the cost worked a lot differently than, of course, the private utility company. But they felt that it would be born [*sic*] by their current rate holders plus the increased rate holders of buying into this.

Q. So Mr. Kolling represented to you that the cost of interconnecting Sussex with Pike County would be born [*sic*] by customer of Sussex and customers of Pike County?

A. Absolutely.

Tr. 1/19 at 61-62. The impression that Mr. Forbes had with regard to a sharing of interconnection costs for the proposed Sussex project was mistaken. Mr. Kolling made it quite clear in the course of discovery that only Pike County customers would pay the costs of interconnection and that Sussex members would bear none of the costs. PCL&P Cross-Examination Exh. 22; Tr. 1/19 at 63. Mr. Kolling also testified as follows regarding who would bear the costs of the interconnection and the acquisition:

Q. Mr. Kolling, you have what has been marked as --- in front of you what has been marked as PCL&P Cross Examination Exhibit Number 22. Do you have that?

A. Yes, I do.

Q. Now, this response was a response to a question with regards to interconnection costs being passed along to PCL&P customers; correct?

A. Yes.

Q. You would agree, wouldn't you, that --- it's your position that Pike customers will pay rates that will include the costs of interconnection as part of their overall rates?

A. That's correct.

Q. Will their rates also reflect the total costs of the acquisition?

A. Yes, it will.

Tr. 1/17 at 62-63.

The evidence with regard to the sharing of costs for the OCA's Sussex proposal raises serious questions regarding the validity and credibility of Mr. Kolling's rate reduction "guarantee." Mr. Kolling has made it clear that Pike County residents, and only Pike County residents, will suffer the financial repercussions if Mr. Kolling's highly questionable 20% rate reduction "guarantee" fails to materialize. The Commission should be skeptical of a proposal that purports to reduce rates even though no studies have been done, and that would saddle customers with all costs, both known and unknown, for realizing the project. Given its multiple deficiencies, the Commission must reject the OCA's Sussex proposal.

G. Complainants Have Failed to Show That Rates Are Unreasonable

The Complainants have presented extensive testimony and evidence regarding the Company's rates, but they have failed to produce evidence tending to prove that the rates are unjust and unreasonable or that they are paying the rates of which they complain. It is well established that, beginning on January 1, 2006, the rates that PCL&P customers paid for generation increased by approximately 129% and that led to an overall increase in electric rates of approximately 72%. OCA St. 1 at 6 and OCA St. 3 at 10. It is also well established that more than 90% of PCL&P's customers are not taking generation service from the Company since June 2006, the date on which these customers began receiving the generation services from Direct Energy. PCL&P St. 1 at 6. Almost every customer who filed a formal complaint with the Commission after January 1, 2006 is no longer a generation customer of PCL&P. It is impossible to conclude that the customer complainants are paying for unreasonable generation rates when they do not take generation service from the Company.

While witnesses such as the OCA's Mr. Kahal and Ms. Brockway employ hyperbole to describe PCL&P's default service rates, they fail to indicate, let alone substantiate, how the Company has violated the Public Utility Code or any Commission Order setting PCL&P's rates. Ms. Brockway describes the rate increases as "devastating" (OCA St. 3 at 13), "horrendous" (p. 3) and "severe" (p. 15), but does not claim there was any "imprudence" in the auction process that resulted in the Company's high rates. OCA St. 3 at 22, ln. 26. In fact, Ms. Brockway acknowledges that the Commission approved the auction plan, and by implication, the resulting rates. *Id.* at 9-10. It is not enough to say that rates are "severe" or "horrendous" or "devastating" to prove that rates approved by the Commission are unjust, unreasonable or otherwise illegal.

Likewise, the customer complainants that testified regarding rates failed to point to a single instance where the Company violated the Public Utility Code in the manner it set rates or how it failed to abide by a Commission Order pertaining to rates. For example, Mr. Forbes testified that rates for PCL&P customers were higher than those of other utilities in other service territories and other jurisdictions. Tr. 11/6 at 34. Mr. Hessling testified that the school district's bill increased by \$23,000 per month after the increase went into effect. Tr. 11/6 at 53. Also, Mr. Fretta testified that high rates had an effect on his business. Tr. 11/6 at 104. These witnesses and other who have testified in the course of this proceeding merely described their rates. They failed to demonstrate that these rates are illegal.

As set forth above, a Complainant must carry his burden of proof by establishing by a preponderance of the evidence that the Respondent has violated the Public Utility

Code or a Commission rule or regulation. As it relates to rates, the Complainants in this matter have not pointed to any provision or rule that PCL&P has violated, much less proven that a violation has occurred. The OCA witnesses and at least one complainant have acknowledged that the rates complained-of were approved by the Commission, and no witness has provided evidence that the Company has charged rates that violate the law. Under these circumstances, the Commission should reject the Complaints for failure to prove the rate allegations raised in this matter.

H. Rate Evidence Does Not Support The Extreme Relief Sought

Given that the Complainants have failed to substantiate their rate claims and have not met the applicable burden of proof, there is no basis upon which to grant the relief requested. The Complainants have requested that the Commission order the forced sale of PCL&P, among other things. However, the evidence presented in this case with regard to rates is simply a recitation of all-too-familiar facts: the Company's rates, approved by the Commission at the end of 2005, are high. The existence of increased rates approved by the Commission, however, provides no valid basis for the Commission to order the forced sale of an electric utility in Pennsylvania.

Even if the Commission were persuaded that high rates are sufficient to justify a forced sale, it should not order such an extreme remedy absent a finding that the Company has violated a rate order of the Commission. The Company respectfully submits that the only thing the Company is guilty of is following the procedures and Orders the Commission has approved for establishing PCL&P's rates. If based on the record in this case, the Commission finds that the Company's current default service rates are unreasonable, it should order that the Company charge rates, on a prospective basis,

that are reasonable and otherwise consistent with the Public Utility Code. In the event that the Company fails to abide by the Commission's rate order, then a more severe remedy may be considered. At this stage, the forced sale of PCL&P is a remedy that is wholly unwarranted and exceedingly premature.

VI. ARGUMENT ON SERVICE ISSUES

A. Prior to 2006, PCL&P Had Few Complaints

Before addressing the service issues raised by the complainants in this case, it is important to place them in historical context. A review of the Commission's records on formal complaints filed with the Commission reveals that prior to 2006, PCL&P customers filed few formal complaints alleging service problems.

Mr. O'Brien testified as to the number of complaints filed against the Company since 2001 and concluded that "prior to the increase in the Company's default service rates in January 1, 2006, the Company experienced a very modest number of complaints each year." PCL&P St. 1 at 5. According to a chart provided by Mr. O'Brien as part of his testimony only 11 service complaints were filed by PCL&P customers from 2001 to 2005. There were 11 complaints in five years and none of these complaints was filed by any of the complainants in this proceeding. *Id.*

The total number of complaints in the relevant period were provided as part of Mr. O'Brien's testimony:

Pike County Light and Power Company
Informal/Formal PUC Complaints
January 2001 - July 2006

Type	2001	2002	2003	2004	2005	2006
Billing	5	0	2	4	6	59
Credit	4	11	4	10	5	9
Service	3	1	3	2	2	1
Total	12	12	9	16	13	69

PCL&P St. 1 at 5.

In the course of hearings on this matter, a number of witnesses admitted that they had not filed service complaints prior to the increase in PCL&P's default service rates

(i.e., January 1, 2006). Under questioning, Mr. Forbes testified on behalf of the County as follows:

Q. Before the complaint in these proceedings, did you personally ever file a complaint about service with the Public Utility Commission?

A. No, I have not.

Q. And how about in your role as a county commissioner? Have you ever filed a complaint as to the service?

A. No, I have not.

Q. Did you ever complain to the PUC in your role as a county commissioner about voltage fluctuations?

A. Only when I filed this one, but not ---.

Q. But not before this?

A. No.

Q. And yet, you agreed with me that the service has improved materially in the last year; has it not?

A. Yes.

Tr. 11/6 at 43-44.

Mr. Hessling, who testified on behalf of the Delaware Valley School District offered similar testimony with regard to outages and admitted that the District did not file any complaints at the Commission against PCL&P before 2006. Tr. 11/6 at 88. Mr. Fretta testified that he experienced outages, but also admitted that he did not complain to either the Company or the Commission. Tr. 11/6 at 116. Mr. Kenny testified that he did not file a complaint or exchange any correspondence with the Commission or the Company regarding the repeated outages he allegedly experienced. Tr. 11/6 at 132-33, 136. The complainants referenced here are public officials, a businessman and even a litigator, and they would have the Commission believe that while their electric service was inadequate, it was not bad enough to file a complaint with the Commission.

It is not credible to suggest, as Ms. Brockway has stated, that PCL&P customers simply tolerated poor service prior to the rate increases. Mr. O'Brien made this point very clearly when he testified as follows:

My experience, the vast majority of which... has been in the Customer Service area, indicates that if service is poor and unreliable, customers complain about it. Customers' inclination to complain about service outages, regardless of the prices of such service, only has increased as households become increasingly reliant on technologies (e.g., computers) which require continuous electric service.

PCL&P St. 1 at 5.

Whatever the reason for the customers' failure to complain about the service issues they described, it is clear that very few service complaints were filed against the Company in the years between 2001 and 2005. If the number of complaints filed with the Commission is any indication of service satisfaction, it is apparent that the Company's customers were reasonably satisfied with their service until their default service rates increased on January 1, 2006. As Mr. Forbes so aptly put it, "[t]he rate increase was the kicker." Tr. 11/6 at 46 ln. 23. This statement seems to capture the feelings of many of the complainants, and it goes to show that absent the rate increase, outages and interruptions would not be an issue. In other words, the service record of the Company simply cannot justify the extraordinary and extreme remedy sought by the OCA and the Complainants.

B. Historic Outage Issues Are Related to the Territory Served

A significant portion of PCL&P's territory can fairly be described as mountainous and wooded. The Company's transmission and distribution lines travel across tree-covered terrain, and not surprisingly, many of the unplanned outages experienced by PCL&P customers are caused by tree contact. The situation is exacerbated by storms that cause trees to come in contact with, and even down, power lines. The characteristics of this service territory, and specifically, the tree contact that is common to this area are a

major contributing factor to customer hours of interruption in recent years. PCL&P St. 2 at 17.

In his testimony, Mr. Angelo Regan explained the relationship between the characteristics of the service territory and the outages experienced by customers:

The type of outages that PCL&P customers experience and the resultant hours of interruption, are directly related to geography, customer density, vegetation density, system design, and other system and operating specific parameters. The nature of the PCL&P service territory, where many customers are fed from radial lines in heavily treed areas at the very end of the Company's service territory, explains why, as discussed above, customers are particularly susceptible to tree related interruptions and longer duration outages. Given the more rural characteristics of PCL&P's service territory, it is simply unrealistic for many of the Company's customers to expect that they will experience the same levels of high service reliability as customers who reside in predominately urban or suburban environments, where the electric delivery infrastructure is considerably more developed with higher levels of redundancy available.

PCL&P St. 2 at 25.

In response to the tree-related incidents that have led to outages and interruptions in the past, the Company has improved its tree-trimming and vegetation management practices. According to Mr. Regan:

Significant vegetation management was performed and the reliability performance with respect to tree incidents has improved in 2006. In recognition of these effects, in the summer of 2006, PCL&P committed to improving its vegetation management cycle on its PCL&P distribution system to a three-year program.

PCL&P St. 2 at 17. *See, also*, Tr. 1/16 at 124, OCA Cross Examination Exh. 3.

The shortening of the tree-trimming cycle has resulted in reliability improvements, and the Company is committed to continuing its efforts to reduce vegetation-related outages and interruptions. These efforts are already yielding results, and the Company expects that they will continue. Even the Complainants in this matter

recognize that service has improved in the past year (Tr. 1/16 at 43), and County Commissioner Forbes has commended the Company for its tree-trimming efforts. Tr.1/19 at 30, lns. 5-8.

C. Complainants Failed to Substantiate Their Service Claims

The Complainants in this case have alleged that their service is inadequate, but in many instances they have failed to substantiate their claims. For example, Mr. Forbes testified to repeated outages and interruptions, but he acknowledged that he failed to keep records of the problems. Tr. 11/6 at 47. Similarly, Mr. Fretta testified about outages that he experienced but failed to give an exact date for these occurrences. Tr. 11/6 at 117-18.

Complainant Mr. Kenny, an experienced commercial litigator who practiced for years in New York City, testified at length about outages, interruptions and fluctuations he experienced but was unable to provide any details of these service incidents because he kept no records. Tr. 11/6 at 123, ln. 22. In the course of cross-examination, Mr. Kenny testified as follows:

Q. You testified that you had many outages in the course of many years; is that correct?

A. I testified I had many outages, yes.

Q. And you have no records of any of those outages?

A. No, sir.

Tr. 11/06 at 129, ln. 25 to 130, ln. 4.

Mr. Kenny was unable to provide dates on which the outages occurred, and did not know the hour, the day, the month, the season, and in some instances the year in which the alleged interruption took place. Again, under cross-examination, Mr. Kenny failed to provide any details with regard to the outages he claims he experienced:

Q. You testified about extended outages. One, you said lasted for an entire day?

A. Yes, sir.

Q. Do you remember the date of that outage?

A. No, sir.

Q. Do you remember approximately the period of time it was, perhaps a season? Was it winter, summer, fall, spring?

A. If I appreciate where you're going with the question, I cannot think that there was any weather connection.

Q. That's not where I'm going. My question --- I just want a period of time. Maybe you can give me a year of when that happened.

A. I think it was in 2005, but it could also have been 2004 because there was more than the one extended outage.

Q. You testified as to one outage that would last you for an entire day. Were there more outages that lasted for an entire day?

A. The other one I recall was perhaps not as bad as the particular one that I referred to as an entire day, but it was more than a few hours.

Q. And when is the date of that?

A. Again, I don't know.

Q. This outage that lasted for an entire day, you say it was in the year 2004 or 2005. Again, can you give me some more specific information, whether it was in winter, in the summer?

A. I'm afraid I can't answer.

Tr. 11/6 at 133-34.

The failure of Mr. Kenny and other complainants to provide any details or records of outages leaves the service allegations in the record without proper support. There is no way for the Company to verify that the specific outages alleged indeed happened and no way for the Company to respond to the allegations. This prejudices PCL&P significantly in this proceeding because there is no way of rebutting or disproving the allegations if there are no details that would allow the Company to corroborate or disclaim these allegations. Also, without sufficient detail to support these allegations there is no way for the Commission to determine the cause of the service issues and no way to assign responsibility for the problem. It is possible that the Company is being blamed for outages that are not attributable to a failure by the Company, such as a storm, an intentional act, or a roadside accident. Alternatively, certain of these outages may be due

to problems on the customer's side of the meter. Accordingly, the Commission cannot rely on these unsupported allegations of service problems as the basis for a finding that the Company has provided inadequate service, particularly in light of the extraordinary remedy requested.

Where the Company has been able to review the records of outages for a particular customer, it has been able to verify that some of the outages have been outside of the Company's control or has been able to conclude that the customer lives in a particularly troublesome area of the service territory. In the case of Mr. Kenny, Mr. Regan researched Mr. Kenny's claims of outages and found the following:

Mr. Kenny's residence is located in Milford, Pennsylvania, near the end of a long heavily treed road that is served by a step-down transformer and a long radial line off of the radial portion of Line 7. The Company's analysis substantiated that there were 16 outages that affected this customer in the January 2005 to November 2006 timeframe. The make-up of interruptions are broken down as follows: one storm related, three non-Company accidents, one scheduled, one animal contact, one overloaded fuse, four equipment failures, one of which was the DVS riser pole failure, and five tree contacts, one of which was a tree from well outside of the ROW that fell into Line 7 and disrupted service to all of the customers served from Line 7. PCL&P would note that seven of these sixteen outages were due to extenuating circumstances or incidents over which PCL&P has little control. PCL&P anticipates that its vegetation management program improvements will address the tree conditions. The overload condition occurred from a blown fuse on Cummins Hill Road, and, as a result, the Company upgraded the fuse size. PCL&P acknowledges that this customer has experienced a higher than average number of interruptions. It must be noted, however, that this customer is located near the end of a long heavily treed single-phase spur that is fed from a stepdown transformer, off of a radial feeder at the end of the Company's service territory. While PCL&P has taken action to improve his service reliability, given his location, and the exacerbated radial nature of the system that serves him, Mr. Kenny likely will continue to be more susceptible to outages than the average PCL&P customer.

PCL&P St. 2 at 26-27.

Mr. Regan's explanation of the outages, their cause and the steps taken by PCL&P to address these issues are not a substitute for the evidence that complainants need to introduce into the record in order to substantiate their claims. The Company's records reveal the number of outages and interruptions and the likely causes of each, but they also reveal that some of the incidents were outside of the Company's control. Based on the non-specific testimony of the Complainants, it is impossible to determine whether the outages they remember were actually PCL&P's fault. The Commission should not use unsubstantiated claims of outages to find that the Company has failed to meet its service obligations.

D. Complainants Did Not Meet Their Burden of Proof on Service

Section 332 of the Public Utility Code places the burden of proof on the Complainant to show by a preponderance of the evidence that the Company has violated the Public Utility Code, the Commission's regulations, or a rule or order of the PUC. 66 Pa. C.S. § 332; 701. In this matter, the Complainants have failed to meet their burden of proof and their claims should be rejected.

As noted above, several witnesses testified about outages, interruptions, fluctuations and other service problems, but in almost all cases, the Complainants failed to provide sufficient information to ascertain whether PCL&P was responsible for the incident. Basic information regarding the service problems is missing from the Complainants' testimony – information that could help the Company identify a cause and aid the Commission in determining whether PCL&P was in any way responsible for the service interruptions. In most cases, as demonstrated above, the Complainants could not provide dates, times or even years when the outages happened, much less a cause for the

outage. The Commission has held that a Complaint, to establish a sufficient case against a utility and satisfy the burden of proof, must show that the utility is responsible or accountable for the problem described in the Complaint. *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976). Under the circumstances in this case, it cannot be said that the Company has failed to meet its service obligations because the Complainants have failed to come forward with sufficient information to show that PCL&P is "responsible or accountable for the problem described in the Complaint." *Id.*

E. PCL&P's Service and Reliability Have Improved

Contrary to the allegations made by the Complainants and the claims made by some of the witnesses, service and reliability have improved in the most recent 12-month period. As of November 2006, PCL&P service has been better than the reliability targets established by the Commission in all categories. As Mr. Reagan testified:

The rolling 12-month Frequency (SAIFI) of 1.18 is better than the target of 1.31. The rolling 12-month Restoration (CAIDI) of 108 minutes is significantly better than the target of 215 minutes. The rolling 12-month Duration (SAIDI) of 127 minutes is significantly better than the target of 282 minutes. Contrary to Mr. Lanzalotta's comments, this data supports the fact that PCL&P's reliability in 2006 is not degrading, but is improving and exceeding the PAPUC's criteria.

PCL&P St. 2 at 19-20.

Mr. Reagan's objective assessment of PCL&P's service improvements are supported by the testimony of Mr. Forbes, the main complainant in this case. Mr. Forbes testified twice that the Company's service has improved in the last year. Under questioning by Company counsel, Mr. Forbes testified as follows:

Q. Okay. Let's get back to outages for a minute. I believe you testified that the company performed work somewhere about a year ago. Is it your opinion that the situation with respect to outages has improved materially since that work was done?

A. It has improved. What it has allowed, it has allowed a second source of electric to come over across the river from Port Jervis from your areas over there. Has it improved the spiking? No. Has it improved outages to where one particular area may be out longer than another? Yes, it has, and it's substantially in that case.

Tr. 11/6 at 39

Q. And yet, you agreed with me that the service has improved materially in the last year; has it not?

A. Yes.

Tr. 11/6 at 44, lns. 13-15.

In addition to the admissions of Mr. Forbes with regard to service improvements, Mr. Regan's testimony makes it clear that the Company has endeavored to improve service in its territory in response to the complaints of its customers. PCL&P is demonstrating that it will make the necessary improvements in service, and that the extraordinary remedy of a forced sale requested by the Complainants in this case is unwarranted and unjustified. Based on the evidence of record, the Commission cannot conclude that the Company's service problems are neither "unconscionable" nor persistent enough to justify an extreme remedy. In fact, the record evidence shows that the service is improving in the PCL&P service territory.

F. PCL&P Plans Service and Reliability Enhancements

In addition to the efforts that have yielded improvements in current service and reliability, PCL&P is committed to implementing further measures to ensure enhanced system performance. The Company has plans to take advantage of upgrades to Orange and Rockland's Port Jervis facilities to provide more reliable service to its customer.

In his rebuttal testimony, Mr. Regan provided a brief explanation of system upgrades that the Company expects will be completed by 2008 and which will bring improved reliability to the PCL&P service area. Mr. Regan testified as follows:

...by the end of 2008, Orange and Rockland will have three 69kV lines terminating at its Port Jervis Substation, which will also be upgraded in 2008 to provide significantly improved reliability to the 13.2kV and 34.5kV systems that it serves. This extremely strong source will be providing substantially improved system reliability to the PCL&P system and its customers from just a quarter mile away from Pike County. The eventual tying of the Orange and Rockland and PP&L 69kV systems is what PCL&P envisions as the ultimate and correct long-term solution to improving reliability for all of the customers in this area of Pennsylvania.

PCL&P St. 2 at 2, ln. 23 to 3, ln. 8. The project described by Mr. Regan is an internal Orange and Rockland project that is moving forward. These upgrades to the sources into the Port Jervis substation, and the subsequent upgrades to the substation itself are intended and expected to improve reliability for the entire area. Tr. 1/16 at 100.

Another project that PCL&P is exploring at this time is the possible interconnection of PCL&P with PPL. This matter is still in the early planning stages. The Company has completed an interconnection study that explores the costs and benefits of interconnecting its service territory with PJM.¹³ This interconnection study will serve as a basis for continuing to pursue the possibility of a 69kV transmission line extension from PPL territory. According to Mr. Regan, this transmission line extension is the ideal and proper long-term solution to improve reliability and allow for future load growth.

PCL&P St. 2 at 2. Mr. Regan elaborated on the benefits of this interconnection thus:

The way that the 69 kV PP&L extension would provide even further improvements would be the radial portion of line seven that presently feeds out of our Port Jervis substation when it gets past Matamoras and

¹³ A copy of the Interconnection Study referenced by Mr. Regan in testimony was attached as Appendix B to the Report on Competitive Market Conditions Regarding the Pike County Light & Power Company dated June 1, 2006 prepared by the Commission's Law Bureau ("Law Bureau Report").

basically the I-84 geographic areas, predominantly radial until it gets to the end of Milford. So from the point of having another interconnection with another utility at the back end of Pike, that would be a network solution, a network interconnection, as opposed to leaving that line radial. That's where the improvements would come in.

Tr. 1/16 at 104-05.

The Company is planning and pursuing projects to enhance service reliability for Pike County customers.

G. The OCA/Sussex Proposal Would Lead to Less Reliability

The OCA, through its witness Robert Kolling, presented a suggestion of a plan for Sussex to provide electric service to PCL&P customers through a proposed interconnection of Sussex's system to the PCL&P system. OCA St. 4. While Mr. Kolling did not provide any specifics concerning this proposed interconnection, the OCA did present Peter J. Lanzalotta as a witness to elaborate in greater detail as to the viability of a proposed interconnection by Sussex. OCA St. 2. The OCA has presented its interconnection plan without benefit of any analysis, schematics, or data describing its technical feasibility and its consequential reliability impact on PCL&P's customers. Mr. Lanzalotta acknowledged that he did not prepare any plans, schematics or maps of the proposed interconnection, nor did he perform any environmental studies or analysis, or zoning analysis of the proposed interconnection. Tr. 1/16 at 64. Sussex does not intend to use its own facilities to create the proposed interconnection, but rather, will utilize a 34.5kV Jersey Central Power & Light Company line. Mr. Lanzalotta has not inspected the Jersey Central line and was not aware that this line would be utilized.¹⁴ Tr. 1/16 at 52 and 68. Indeed, Mr. Lanzalotta's opinions, as he admitted, are based upon the statements

¹⁴ More important, Sussex has not secured JCP&L's approval to use its facilities as part of Sussex's interconnection proposal.

and opinions of OCA witness Kolling who, in turn, has neither performed nor submitted any analysis concerning the technical feasibility of the interconnection. Tr. 1/16 at 68, 74. In fact, Mr Kolling has described the process of developing the interconnection as having traced something on a map. Tr. 1/17 at 29.

PCL&P witness Angelo Regan testified concerning the proposed interconnection by Sussex with PCL&P. Mr Regan prefaced his testimony by stating that Mr. Lanzalotta had not provided any system maps outlining the Sussex system, did not identify the Sussex sources or the path of the proposed interconnection and the facilities that would need to be upgraded to interconnect the PCL&P and Sussex systems. PCL&P St. 2 at 9. The proposed interconnection consisting of a single radial feed from the Sussex source feeders to PCL&P's system is approximately 17 to 23 miles from PCL&P's load centers. PCL&P St. 2 at 13. To utilize such a service line will triple the line exposure, or reliability of the system that PCL&P presently utilizes to serve its customers. PCL&P St. 2 at 13, ln. 14; Tr. 1/16 126-27. It is important to note that 35% of PCL&P customers, particularly in the Matamoras and West Falls areas are served from dual services with automatic transfer capacity. Tr. 1/16 at 127. This built-in redundancy in a significant portion of PCL&P's system is in sharp contrast to the markedly inferior Sussex interconnection proposal (i.e., a single, long radial feed with no redundancy). During cross-examination, Mr. Lanzalotta concurred that a single radial line originating in Branchville and terminating in Matamoras without an interconnection with the Orange and Rockland facilities in Port Jervis, New York would result in severely impaired reliability for the PCL&P customers. Tr. 1/16 at 85. In other words, the Sussex proposal

for an interconnection with the PCL&P system constitutes a giant leap backwards in reliability and reasonable service for PCL&P customers.

In sum, Sussex's interconnection plan was hastily conceived, is devoid of any technical foundation, and foists upon the PCL&P customers a proposed system that will result in markedly inferior service reliability.

VII. ARGUMENT ON THE RELIEF SOUGHT

A. The Commission Lacks the Authority to Order a Forced Sale

The County's Amended Complaint asks the Commission to order the sale of PCL&P to another utility or electric cooperative as a remedy to address the allegations in its Complaint and that of other Complainants. However, the County and the other Complainants have failed to identify any language in the Public Utility Code which gives the Commission the jurisdiction, power, or authority to order the forced sale of PCL&P.

Under the Public Utility Code, the Commission lacks the jurisdiction and/or the authority to order the forced sale of PCL&P. The Commission's power is statutory, and the legislative grant of power to act in any particular case must be clear. The Commission derives its authority from legislative action, and its powers are confined to those specifically declared. The Public Utility Code, 66 Pa. C.S. § 101, *et seq.*, covers only such matters as are expressly, or by necessary implication, included within its terms. *Allegheny County Port Auth v. Pa. PUC*, 237 A.2d 602 (Pa. 1967).

Additionally, the power and authority to be exercised by the Commission must be conferred by legislative language that is **clear and unmistakable**. *Process Gas Consumer Group v. Pa. PUC*, 511 A.2d 1315 (Pa. 1986) (emphasis added). There is no legislative language whatsoever – much less clear and unmistakable language – in the Public Utility Code that grants the Commission the jurisdiction, power or authority to order the forced sale of an electric utility.

The case cited by the County in its Amended Complaint does not support the contention or the implication that the Commission has the power to order the forced sale of PCL&P. In support of its request to have the Commission order the forced sale of

PCL&P, the County cites the case of *Pa. PUC v. Big Run Telephone*, Docket No. C-822983 (Order entered October 15, 1982) ("Big Run"). However, the *Big Run* case is not relevant to the instant matter, either factually or legally. The OCA and the County have labored mightily to manufacture similarities between the *Big Run* situation and the case at hand. However, there are the obvious distinguishing characteristics to the *Big Run* case, which set it far apart from the facts and circumstance of this case. The *Big Run* case involved a telephone company with an "unconscionable number of service problems" (*Big Run* RD at 2, 10) operating in the days before the break-up of AT&T, the enactment of the Competition Act, and Section 529 of the Public Utility Code. The case involved a long-running dispute that first came to the attention of the Commission in 1979 and took nearly five years to resolve. In the end, the Commission ordered the publication of bids, Big Run reached an agreement with Bell of PA to transfer its assets and abandon service, and the Commission approved their Joint Application. In other words, even with a demonstration that Big Run Telephone Company had "unconscionable service problems," the forced sale issue was never actually tested because the transfer was voluntary. Here, while complainants have advanced various non-specific claims of outages and interruptions, there is certainly no evidence of an "unconscionable" level of service problems.

More important, certain critical aspects of the *Big Run* decision undermine its authority as legal precedent. Most significant, the ALJ and the Commission in that case both failed to cite any authority for their decision to force the sale of the Big Run Telephone Company. So glaring was this omission that then-Commissioner Linda Taliaferro felt compelled to issue a separate opinion in which she wrote:

I believe the Commission is without power to order the utility to open its books and records to interested purchasers, nor are we in the position to order Big Run to divest itself of its operating territory... If the able Representatives of Big Run were to utilize the legislative process and, in conjunction with their peers in the House and Senate, pass legislation granting the Public Utility Commission the power and authority to force an unwilling privately-owned company to divest itself of title and ownership, then clearly we could act as the Administrative Law Judge proposes... I do not believe we have the authority to require the Company (force, if you will) to submit to the process recommended by the Judge.

Taliaferro Opinion at 1 and 3. The Commission's decision in *Big Run* was never challenged on appeal. The Commission's failure to cite to any legislative authority for its actions makes its orders susceptible to challenge and reversal.

B. A Forced Sale Would Violate Due Process Principles

There is only one area where the Commission has a clear statutory power to order the sale of a utility company. Under Section 529 of the Public Utility Code, 66 Pa.C.S. § 529, the Commission has statutory power to order the sale of small water and sewer utilities.¹⁵ Here, again, OCA and the County pretend that the Commission is not mindful of the procedural safeguards set forth in Section 529, which provide that the only initial action the Commission may take in the case of a small water or sewer company that is not providing appropriate service at reasonable rates is to specify the rates and service to be provided thereafter. Only after the water or sewer company violated those remedial orders can the Commission even begin to contemplate additional action of a sale. Therefore, even if one were to assume that the Commission has the inherent power to order the sale of the Company, Section 529 demonstrates that elementary due process

¹⁵ Under Pennsylvania rules of statutory construction, the inclusion of specific matters in a statute implies the exclusion of all other matters. *Ken R. on behalf of Charles v. Arthur Z.*, 682 A.2d 1267, 1270 (Pa. 1996). This is known as the doctrine of *inclusio unius est exclusio alterius*. Based on the doctrine of *inclusio unius est exclusio alterius*, when the General Assembly granted the Commission the power to order the acquisition of small water and sewer utilities, it did not intend to grant the Commission the jurisdiction, power, or authority to order the forced sale of any and all other types of utilities.

considerations provide that it can do so only after (1) a proceeding where it was demonstrated that rates and service were statutorily inadequate, (2) the Commission ordered the company to take remedial action, and (3) the company failed or refused to take the appropriate remedial action.

Based on the elementary due process protections that are afforded small water and sewer companies under Section 529, the forced sale of PCL&P cannot lawfully be contemplated. The complainants here have not proved that PCL&P has failed to meet its obligations under the Public Utility Code. Therefore, even the consideration of a forced sale of the Company is grossly premature and fundamentally inappropriate.

The Company has shown here that, by enacting a statute that permits the Commission to order the acquisition of troubled water systems (66 Pa. C.S. § 529), the General Assembly precluded the Commission from ordering the same for electric utilities. The County and the OCA have maintained that there is a significant *difference* between the Commission's power to order an acquisition and the Commission's power to order a sale. Joint Answer of OCA and the County to PCL&P Objections at 12.

This contention makes no sense. If, as the OCA and the County argue, the Commission always had the power to order a forced sale, it would follow that the enactment of Section 529 in 1992 was an exercise in redundancy because it, too, ultimately involves the forced *sale* of the small water or sewer utility as a necessary corollary to the acquisition of it by a larger entity. The County and the OCA have failed to explain why the General Assembly would feel constrained to codify a power the Commission always had. It is not explained because it cannot be. The Commission has no such power.

More telling, however, is the substance of Section 529 - which the Complainants and the OCA studiously ignore. Before the Commission can take any action under Section 529 it must find the following, only after notice and an opportunity to be heard:

- (1) that the small water or sewer utility is in violation of statutory or regulatory standards...;
- (2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;
- (3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;
- (4) that alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible;
- (5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and
- (6) that the rates charged by the acquiring capable public utility to its pre-acquisition customers will not increase unreasonably because of the acquisition.

66 Pa. C.S. § 529(a).

Therefore, even if the Commission were to find that PCL&P is providing inadequate service at unreasonable rates, *and* that it is subject to a power similar to that the Commission enjoys under Section 529, the procedural safeguards set forth in Section 529 make clear that the only action the Commission could then take would be to specify the rates and service thereafter to be provided. Only *after* the Company violated those curative orders could the Commission even begin to contemplate additional action.

Therefore, even if one were to credit the Complainants' contention that the Commission has the inherent power to order the sale of the Company, Section 529 demonstrates that it can do so only after it orders the Company to take remedial action and only after the Company fails or refuses to do so.

But that is not all that Section 529 requires. Section 529(b) states that:

Before the commission may order the acquisition of a small water or sewer utility in accordance with subsection (a), the commission shall discuss with the small water or sewer utility, and shall give such utility a reasonable opportunity to investigate, alternatives to acquisition, including, but not limited to:

- (1) The reorganization of the small water or sewer utility under new management.
- (2) The entering of a contract with another public utility or a management or service company to operate the small water or sewer utility.
- (3) The appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public.
- (4) The merger of the small water or sewer utility with one or more other public utilities.
- (5) The acquisition of the small water or sewer utility by a municipality, a municipal authority or a cooperative.

Id. § 529(b) (emphasis added).

Therefore, even if the Commission had the inherent powers that the Complainants and the OCA claim it does, a sale of the Company would not be the only remedy that the Commission would be required to consider.¹⁶ Again, the Commission could consider a

¹⁶ Moreover, even if this were a Section 529 proceeding - and clearly it is not - the Commission would have to find that a putative buyer is appropriate. The evidence in this proceeding demonstrates that Sussex is not a suitable buyer for PCL&P and that the co-op has only engaged in very preliminary reviews and discussions.

more severe remedy only *after* the Company was afforded an opportunity to cure proven deficiencies and failed to do so.

The Complainants further ignore the fact that, even if it had the power to order a sale, the Commission cannot simply order a utility to put itself up for sale, or do so at a price that the OCA and the County think is fair. Section 529 provides that, even where the Commission orders a small utility to be acquired, the price is subject to important legal safeguards:

(e) ACQUISITION PRICE -- The price for the acquisition of the small water or sewer utility shall be determined by agreement between the small water or sewer utility and the acquiring capable public utility, subject to a determination by the commission that the price is reasonable. If the small water or sewer utility and the acquiring capable public utility are unable to agree on the acquisition price or the commission disapproves the acquisition price on which the utilities have agreed, the commission shall issue an order directing the acquiring capable public utility to acquire the small water or sewer utility by following the procedure prescribed for exercising the power of eminent domain pursuant to the act of June 22, 1964 (Sp. Sess., P.L. 84, No. 6), known as the Eminent Domain Code.

Id. § 529(e).

Furthermore, the OCA and the County fail to acknowledge that, just like the procedures under Section 529, a forced sale, to be lawful, would have to be at a price determined under the Eminent Domain Code, 26 P.S. § 1-101, *et seq.*, as the law requires. That price would be determined based on Section 1-602 of that law, where "just compensation" demands that the measure of damages be "the difference between the fair market value of the condemnnee's entire property interest immediately before the condemnation and as unaffected by the condemnation and the fair market value of the property interest remaining immediately after the condemnation and as affected by the condemnation." 26 P.S. § 1-602 (also known as the "before-and-after" rule). Since fair

market value is likely to be considerably higher than book value, despite Mr. Kolling's guarantee, a forced sale would not reduce rates.

For all these reasons, any decision from the Commission cannot provide for a forced sale, divestiture or other disposition of the Company. Assuming, *arguendo*, that every element of rates and service raised by the Complainants had been proved, the *only* remedy that the Commission could lawfully adopt would be to issue an order prescribing the rates and service to be provided hereafter. Also, assuming *arguendo* that Section 529 applies in this instance, pursuant to Section 529, due process requires that the Company must be afforded an opportunity to comply with remedial orders that might emanate from these proceedings before a sale could even lawfully be contemplated.

Accordingly, due process demands that any and all elements of these Complaints that seek to investigate whether the Company should be sold must be dismissed because a sale is a remedy that may be pursued, if at all, only after the Company fails to adhere to any prior remedial orders.

C. The Evidence Does Not Support a Forced Sale

As was discussed in more detail above, the Commission's jurisdiction to order a forced divestiture of the Company is statutorily non-existent. However, even if the Commission were reluctant to acknowledge its lack of jurisdiction to order a sale of PCL&P, the evidence presented by the Complainants in this case is woefully inadequate to support an order to compel divestiture. The evidence that purports to support the allegations of unjust rates and unreasonable service is either non-existent or very weak, and as such, cannot serve as the basis for the extraordinary and extreme remedy sought by the Complainants here.

First, the evidence presented does not support a finding that PCL&P default service rates are unreasonable. The witnesses that testified on the issue of rates presented testimony to the effect that their rates are much higher than they were between 1993 and 2005, but they did not present evidence that they are unreasonable. There was no evidence presented to suggest that the Company received more from ratepayers than it paid for the power it acquired for its customers, for example. There was no evidence that the Commission erred in approving the auction process in 2005 or that the Company failed to follow the Commission's Order approving the auction. Similarly, there was no evidence that the rates were based on something other than "prevailing market prices" as mandated by the Competition Act. In sum, there was no evidence to support the Complainants' allegations and calls for a forced sale of PCL&P.

Second, there is insufficient evidence to prove the Complainants' allegations that the Company's service is so poor as to be unreasonable, and that the only appropriate remedy is to compel PCL&P to sell itself. A number of customers presented evidence regarding outages, interruptions and other service problems, but much of the evidence lacked the kind of detail that would enable the Commission to clearly ascertain whether the service incident was the result of a failure by the Company to meet Commission service requirements. Many of the customer complainants failed to provide dates, times, duration and other basic information that would support the contention that the Company was at fault for the events described. In a number of instances, the Company has researched its records and found that incidents fitting the vague descriptions that the Complainants provided were caused by factors outside the Company's control (storms, fallen trees, non-company accidents, and the like). Further, the Company has worked

hard to improve service in an area that is susceptible to outages because of the rural nature of the territory, and has achieved significant enhancement in service in the last year. This evidence, taken together, shows that PCL&P's service may be imperfect, but it is improving. Certainly, the evidence of service problems presented in this case is not sufficient to justify a forced sale of PCL&P.

The Company has demonstrated its commitment to serve its customers and to provide better rates and service. The Company is confident that its proposed Default Service Plan will result in a successful auction and better prices for PCL&P customers because of the aggregation of the Company's load with Orange and Rockland and improved market conditions. In addition, the Company has successfully implemented measures to improve service and reliability in its territory and will continue to explore and put in place additional equipment, procedures and other safeguards to ensure continued improvements in service and reliability. Already, the Company's efforts have paid off in better service over the last year as acknowledged by the main complainants in this case. Based on the above, the Commission may find that the Company can do better in the areas of rates and service and order specific steps that the Company should take to implement these improvements. However, there is insufficient evidence of the type of "unconscionable service problems" or illegal rates that could support an order to force the sale of PCL&P.

D. Sussex Is Not A Suitable Substitute

Even if the Commission finds that it has the clear and unmistakable statutory authority to order a forced sale of an electric utility, and it finds that the complainants have met their burden of showing by a preponderance of the evidence that PCL&P's rates

are illegal and the Company's service suffers from an unconscionable number of problems, Sussex is simply not a suitable candidate to acquire PCL&P's electric operations. Among the many deficiencies with the OCA's Sussex proposal, the following stand out as worthy of Commission consideration:

- ◆ Sussex's rates and service are not regulated or monitored by the Commission or the New Jersey Board of Public Utilities;
- ◆ Sussex is a tax-exempt entity, and an acquisition by Sussex of PCL&P would deprive the County of Pike of tax revenues;
- ◆ The residents of Pike County would bear the costs of an acquisition and interconnection, Sussex members would not;
- ◆ Orange and Rockland/Con Edison has rejected Sussex's offer to discuss a sale, and an acquisition by Sussex would involve a costly and time-consuming eminent domain proceeding;
- ◆ Sussex's 20% rate reduction "guarantee" is not credible because the costs of the proposed acquisition and interconnection are not known, and these costs are factors that affect the level of rates going forward;
- ◆ Neither Sussex nor the OCA have undertaken a comprehensive formal study to assess the feasibility of the proposed Sussex acquisition of and interconnection with PCL&P;
- ◆ Neither Sussex nor the OCA have prepared plans, schematics, drawings or any studies dealing with zoning, environmental issues, approvals, PJM deliverability requirements, loads, redundancy or back-up;

- ◆ The OCA's Sussex interconnection proposal would make service to Pike County customers severely less reliable;
- ◆ Sussex does not own or control the facilities necessary to achieve the proposed interconnection; Sussex's plan relies on JCP&L's Branchville substation for connection and Orange and Rockland's Port Jervis substation for back-up power;
- ◆ Sussex has not obtained the permission of either JCP&L or Orange and Rockland to use these facilities, and has not quantified the cost of any upgrades required if such permission is forthcoming; and
- ◆ Sussex's ability to finance the acquisition and interconnection is doubtful because it is based on a letter of interest from the National Rural Utilities Cooperative Finance Corporation that has so many caveats as to make the "conditional commitment" meaningless.

These obvious material and numerous shortcomings in the OCA's Sussex acquisition and interconnection proposal make it plain that Sussex is not a suitable substitute for PCL&P. Sussex's 20% rate reduction "guarantee" is based on back-of-the-envelope guesstimates that conveniently ignore significant cost factors. Sussex's interconnection plan amounts to little more than blurred traces on a map. The Sussex interconnection proposal would be entertaining, in the way that children's fairy tales are entertaining, if its real-life repercussions on Pike County customers would not be so dire. As demonstrated by the Company, the Sussex interconnection proposal likely will result in increased delivery rates and markedly inferior service reliability. While OCA and the customer complainants have chosen to willfully ignore these unpleasant realities, the Commission, in carrying out its statutory duties, must view the Sussex interconnection

proposal in a clear analytical light. Viewed from that perspective, the Commission has no alternative but to reject the Sussex interconnection proposal.

VIII. CONCLUSION

Based on the foregoing, the Commission should dismiss the Formal Complaints in this case. The complainants have failed to meet their burden of proof with respect to their rates and service allegations, and the Commission lacks the authority to grant the relief requested by the complainants.

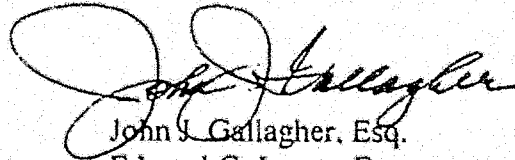
PCL&P's current default service rates were approved by the Commission, and as such, are just and reasonable. Future default service rates will be established by the Commission in a separate proceeding and the same should not be decided here.

With regard to service, the Complainants have not presented sufficient evidence to justify a finding of unreasonable service. In addition, the Company has implemented and continues to plan for measures that have led and will lead to improvements in service and reliability.

The forced sale of PCL&P which has been proposed by the complainants is not within the power of the Commission to order. Even if such a remedy were permissible under the Public Utility Code, the complainants have failed to present sufficient evidence to justify such extreme relief. Furthermore, the proposed purchaser is not a suitable buyer for the Company.

In light of the facts and the law as set forth above, the Complaints in this matter should be dismissed with prejudice, and the Commission should order any other relief it may deem just and proper.

Respectfully submitted,



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APPENDIX

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE,

Complainants,

v.

PIKE COUNTY LIGHT & POWER
COMPANY,

Respondent.

Docket No. C – 20065942, et al.
(consolidated)

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APPENDIX TO
THE MAIN BRIEF OF
PIKE COUNTY LIGHT & POWER COMPANY
(PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW)

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I. PROPOSED FINDINGS OF FACT

A. Rates

1. On May 31, 2005, PCL&P filed with the Commission for approval, a plan composed of proposed tariff changes and agreements, as well as the procedures necessary to implement PCL&P's Default Service Implementation Plan, to become effective January 1, 2006. *Pa. P.U.C. v. Pike County Light & Power Company*, Docket No. P-00052168.
2. By Order entered September 23, 2005, the Commission approved, with certain modifications, the May 31, 2005 petition of PCL&P for approval of its plan for an auction to establish POLR rates pursuant to Section 2807(e)(3) of the Public Utility Code, 66 Pa. C.S. § 2807(e)(3). *Id.*
3. The Commission specifically approved the very default service rates that are the subject of the Formal Complaints in this matter. *Id.*
4. The results of the auction were approved by Commission Secretarial Letter dated October 28, 2005. *Id.*
5. By Order entered December 21, 2005, this Commission permitted PCL&P's new tariffs, based on the auction results, to go into effect on January 1, 2006. *Id.*
6. PCL&P acquired energy for its customers at prevailing market rates as mandated by the Competition Act. *Id.*
7. Beginning on January 1, 2006, the rates that PCL&P customers paid for generation increased by approximately 129% and that led to an overall increase in electric rates of approximately 72%. OCA St. 1 at 6 and OCA St. 3 at 10.

8. Mr. Matthew Kahal testified that he does not take issue with the prudence of PCL&P's current POLR rates. (OCA St. 1 at 4).
9. Ms. Nancy Brockway does not assert any "imprudenc" in the PCL&P auction process (OCA St. 3 at 22).
10. By Order entered February 14, 2006, the Commission initiated a fact finding investigation into the competitive electric market in 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).
11. On March 10, 2006, Direct Energy Services, LLC filed a Petition for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light and Power Company, pursuant to 66 Pa.C.S. §§ 501, 1301 and 2802(9), and 52 Pa. Code §§ 3.1-3.5, 5.41 and 5.572. *Petition of Direct Energy Services, LLC*, Docket No. P-00062205.
12. On June 20, 2006, the Commission approved Direct Energy's Petition and an opt-out aggregation program was established for PCL&P customers. *Petition of Direct Energy Services, LLC*, Docket No. P-00062205 (Order entered June 20, 2006).
13. Complainants testified that the County of Pike is currently a Direct Energy customer for generation. Tr. 11/6 at 19 and 36.
14. Mr. Fretta is a Direct Energy generation customer. Tr. 11/6 at 104-105, 115.
15. Mr. Kenny is a Direct Energy generation customer. Tr. 11/6 at 125.

16. Mr. Dalton is a Direct Energy generation customer. Tr. 11/6 at 144.
17. As of November 1, 2006, approximately 4,139 customers or 91% of eligible PCL&P customers are taking generation service from Direct Energy. PCL&P ST.1 at 6; Tr. 1/17 at 118.
18. The Company has filed a proposal to acquire power for its customers at prevailing market prices as mandated by the Competition Act. *Petition of Pike County Light & Power Company for Expedited Approval of Its Default Service Implementation Plan*, Docket No. P-00072245.
19. PCL&P has proposed to seek approval for and to implement a program similar to the PowerSwitch program currently offered to Orange and Rockland customers in New York. PCL&P St. 1 at 7.

B. Service and Reliability

20. "Prior to the increase in the Company's default service rates in January 1, 2006, the Company experienced a very modest number of complaints each year."
PCL&P St. 1 at 5.
21. The Delaware Valley School District did not file any complaints at the Commission against PCL&P before 2006. Tr. 11/6 at 88.
22. Mr. Fretta testified that he experienced outages, but he did not complain to either the Company or the Commission. Tr. 11/6 at 116.
23. Mr. Fretta testified about outages that he experienced but failed to give an exact date for these occurrences. Tr. 11/6 at 117-18.
24. Mr. Kenny testified that he did not file a complaint or exchange any correspondence with the Commission or the Company regarding the repeated outages he allegedly experienced. Tr. 11/6 at 132-33, 136.
25. Mr. Kenny testified at length about outages, interruptions and fluctuations he experienced but was unable to provide any details of these service incidents because he kept no records. Tr. 11/6 at 123, ln. 22. Tr. 11/06 at 129, ln. 25 to 130, ln. 4.
26. Mr. Forbes testified to repeated outages and interruptions, but he acknowledged that he failed to keep records of the problems. Tr. 11/6 at 47.
27. The type of outages that PCL&P customers experience and the resultant hours of interruption, are directly related to geography, customer density, vegetation

density, system design, and other system and operating specific parameters.

PCL&P St. 2 at 25.

28. PCL&P's service has improved in the past year. Tr. 1/16 at 43.
29. PCL&P's reliability in 2006 is not degrading, but is improving and exceeding the PAPUC's criteria. PCL&P St. 2 at 19-20.
30. In the summer of 2006, PCL&P committed to improving its vegetation management cycle on its PCL&P distribution system to a three-year program. PCL&P St. 2 at 17. *See, also*, Tr. 1/16 at 124; OCA Cross Examination Exh. 3.
31. The Company plans to take advantage of upgrades to Orange and Rockland's Port Jervis facilities to provide more reliable service to its customer. PCL&P St. 2 at 2, In. 23 to 3, In. 8.
32. PCL&P has completed an interconnection study exploring the costs and benefits of interconnecting its service territory with PJM. PCL&P St. 2 at 2.
33. PCL&P has initiated preliminary discussions with JCP&L and MetEd, and will investigate if any opportunities exist to interconnect with its existing electric delivery systems that could improve reliability, while satisfying PJM deliverability requirements. (PCL&P St. 2 at 15).

C. Sussex

34. Orange and Rockland/Con Edison has made it clear to Mr. Kolling and Sussex that it is not interested in selling PCL&P. See, PCL&P Cross-Examination Exh. 19.
35. The cost and rate estimates offered by Sussex and the OCA were calculated without the benefit of an interconnection study, load studies, environmental studies or any other schematics or plans. Tr. 1/17 at 29-30; Tr. 1/16 at 59, 65-66; PCL&P Cross-Examination Exhibits. 9-12.
36. Mr. Kolling testified that Pike County customers would pay the costs of interconnection and that Sussex members would bear none of the costs. PCL&P Cross-Examination Exh. 22; Tr. 1/19 at 63.
37. Mr. Lanzalotta he did not prepare any plans, schematics or maps of the proposed Sussex interconnection, nor did he perform any environmental studies or analysis, or zoning analysis of the proposed interconnection. Tr. 1/16 at 64.
38. Mr. Lanzalotta did not inspect the length of the Jersey Central Power & Light Company line which will be utilized for the proposed Sussex interconnection project. Tr. 1/16 at 68.
39. Mr. Lanzalotta's opinions are based upon the statements and opinions of OCA witness Mr. Kolling who, in turn, has neither performed nor submitted any analysis concerning the technical feasibility of the interconnection. Tr. 1/16 at 68, 74.

40. The proposed interconnection consisting of a single radial feed from the Sussex source feeders to PCL&P's system is approximately 17 to 23 miles from PCL&P's load centers. PCL&P St. 2 at 13.
41. Utilizing the service line proposed by OCA and Sussex to interconnect with PCL&P's territory will triple the line exposure, or reliability of the system that PCL&P presently uses to serve its customers. PCL&P St. 2 at 13; Tr. 1/16 126-27.
42. A single radial line originating in Branchville and terminating in Matamoras without an interconnection with the Orange and Rockland facilities in Port Jervis, New York would result in severely impaired reliability for the PCL&P customers. Tr. 1/16 at 85.

II. PROPOSED CONCLUSIONS OF LAW

1. Under the Electricity Generation Customer Choice and Competition Act, the three components of electric service (i.e., generation, transmission, and distribution) were "unbundled" and generation became a commodity to be procured in an open competitive market. Act 1996, Dec. 3, P.L. 802, No. 138 codified at 66 Pa. C.S. § 2801, *et seq.* ("Competition Act").
2. The purpose of the Competition Act was to move the Commonwealth's electric utility industry away from a traditional system of economic regulation and toward a market-based approach to establishing electric utility rates. 66 Pa. C.S. §§ 2802 (5), (7) and (12).
3. The purpose of the Competition Act is to relinquish the local electric utilities' monopoly control over the generation of electricity and to invite competition in an effort to lower electric generation rates for the citizens of the Commonwealth. *Indianapolis Power & Light Co. v. Pa. P U.C.*, 711 A.2d 1071 (Pa. Cmwlth. Ct. 1998), *allocatur denied*, 727 A.2d 1124 (Pa. 1999), *cert. denied*, 119 S. Ct. 1143.
4. The Competition Act was intended to make electric generation accessible to utility customers with the belief that this would result in lower prices for customers. 66 Pa. C.S. § 2802.
5. Under the Competition Act, upon the expiration of the rate caps, PCL&P continued to have the obligation to serve its customers. In the case of those customers who decided to continue to receive generation service from the Company instead of using an alternative generation supplier, PCL&P had the

obligation to acquire energy "at prevailing market prices" to serve those customers. 66 Pa. C.S. § 2807(e)(3).

6. Following the expiration of rate caps, PCL&P has the obligation to procure energy for its default service customers at prevailing market prices. 66 Pa. C.S. §2807(e)(3).
7. Pursuant to the terms of the Competition Act, PCL&P was obligated to procure power for its customers on the open market where commodity rates are set by the prevailing market price for electric generation. 66 Pa. C.S. § 2807(e)(2).
8. PCL&P's default service rates were approved by the Commission at Docket No. P-00052168. *Pa. P.U.C. v. Pike County Light & Power Company*, Docket No. P-00052168 (Order entered August 25, 2005).
9. The current default service rates are Commission-approved rates and the rates comply with the Competition Act, which mandates market-based rates. 66 Pa. C.S. § 2801, *et seq.*
10. Once the Commission approved the rates under the Default Service tariffs, PCL&P was legally bound by the Commission's determination and was unable to diverge from the Commission's rate determination. 66 Pa. C.S. § 1303.
11. PCL&P is required to bill its Default Service customers for electric generation service at rates set in accordance with its tariff and cannot charge any other rate than that set forth in the tariff. 66 Pa. C.S. § 1303; *Bell Telephone Co. of Pennsylvania v. Pa. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. Ct. 1980).

12. "Tariffs have the force of law and are binding on both the utility and the customer." *Pennsylvania Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. Ct. 1995).
13. PCL&P is required to bill its Default Service customers in accordance with its existing Commission-approved Default Service tariff until the Commission approves a new default service tariff. 66 Pa. C.S. § 1303.
14. Under the "filed rate doctrine," the only lawful rate that a utility may charge is that approved by the Commission and a utility may not deviate from the filed rate. *Ciumaichelo v. Independence Blue Cross*, 814 A.2d 800 (Pa. Cmwlth. Ct. 2002); *Philadelphia Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. Ct. 2002).
15. Under the "filed rate doctrine," a rate approved by an agency charged with establishing such a rate is presumed to be lawful and reasonable. *See, Milkman v. Am. Travelers Life Ins. Co.*, 61 Pa. D. & C.4th 502, 2002 Pa. Dist. & Cnty. Dec. LFXIS 94 (C.P. Phila. March 28, 2002).
16. The filed rate doctrine bars claims where the complaint collaterally attacks the filed rate. *Knipmeyer v. Bell Atl. Corp.*, 51 Pa. D. & C.4th 225, 2001 Pa. Dist. & Cnty. Dec. LEXIS 289 (C.P. Phila. May 22, 2001).
17. Direct Energy's Retail Aggregation rates were approved by the Commission. *Petition of Direct Energy Services, LLC*, Docket No. P-00062205 (Order entered June 20, 2006).

18. The Commission authorized an aggregation program proposed by Direct Energy, a Pennsylvania-licensed EGS and the resulting rates are Commission-approved rates. *See, Petition of Direct Energy Services, LLC, Docket No. P00062205* (Final Order entered April 20, 2006).
19. Under the Public Utility Code, “[t]he Commission or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, 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.” 66 Pa. C.S. § 701.
20. The Formal Complainants in this matter have failed to show that PCL&P has done or failed to do anything in violation, or claimed violation, of any law that the Commission has jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa. C.S. §701.
21. Under Section 701 of the Public Utility Code, a complainant challenging utility rates established by the Commission bears the burden of proving that the rates are no longer reasonable. *Duquesne Light Co. v. Pa. PUC*, 715 A.2d 540 (Pa. Cmwlth. Ct. 1998).
22. A customer challenging Commission-approved rates must prove that the rates are unreasonable by demonstrating recent significant changes in circumstances since the Commission set the rates being challenged. *Id.*

23. Absence of a showing that a utilities rates are unreasonable establishes *prima facie* evidence of the facts found in the prior Commission rate order. *Id.*
24. Section 332 of the Public Utility Code places the burden of proof on the Complainants. The proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332.
25. Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), generally provides that the party seeking affirmative relief from the Commission has the burden of proof. *Charles A. Patterson v. The Bell Telephone Company of Pennsylvania*, Docket No. F-8966524, 1990 Pa. PUC LEXIS 19; 72 Pa. PUC 196 (February 8, 1990).
26. "[A] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990); *John Gera v. PPL Electric Utilities Corporation*, Docket No. C-20054657, 2006 Pa. PUC LEXIS 32 (April 6, 2006).
27. A jurisdictional public utility has a duty to "furnish and maintain adequate, efficient, safe, and reasonable service." 66 Pa.C.S. § 1501.
28. A person who or that brings a complaint against a jurisdictional public utility, pursuant to section 701 of the Public Utility Code, 66 Pa. C.S. § 101, *et seq.*, incurs the burden of proving by a preponderance of the evidence adduced at

hearing (consistent with the allegations) that the utility has failed to discharge its statutory service duty. 66 Pa.C.S. § 332(a).

29. In order to prevail on a complaint, the Complainant must demonstrate, according to statutory law and decisional law criteria or recognized equitable principles, that the respondent utility has violated a "law which the commission has jurisdiction to administer" or violated a "regulation or order of the commission." 66 Pa. C.S. § 701. *Mary M. Sobota v. Equitable Gas Company*, Docket No. C-00981661, 1999 Pa. PUC LEXIS 66, 12-13 (October 18, 1999).
30. The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976).
31. The Commission has held that a Complaint, to establish a sufficient case against a utility and satisfy the burden of proof, must show that the utility is responsible or accountable for the problem described in the Complaint. *Patterson, supra.*, 1990 Pa. PUC LEXIS 19, 7-8 (Pa. PUC 1990).
32. Section 332(a) of the Code is routinely construed and applied by the Commission to require a party seeking affirmative relief from the Commission to bear the burden of producing and coming forward with the evidence and to bear the ultimate burden of persuading the Commission by a preponderance of substantial evidence that the relief sought is proper and justified under the circumstances. *Sobota, supra.*, 1999 Pa. PUC LEXIS 66, 12-14.

33. The Complainants have offered evidence that their rates have increased significantly, but they have failed to show, by a preponderance of substantial evidence, that the Company's Commission-approved default service rates are illegal, unjust or unreasonable.
34. The Complainants have presented evidence of outages and interruptions, but they have failed to show that the Company has violated the Public Utility Code or the Commission regulations or rules on service.
35. PCL&P has implemented rates and tariffs and performed all of its service obligations in a manner consistent with the Public Utility Code and the Commission's regulations and orders.
36. The Commission has general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. 66 Pa. C.S. § 501.
37. The Commission power is statutory, and the legislative grant of the power to act in any particular case must be clear. *Felix v. Pa. P.U.C.*, 146 A.2d 347 (Pa. Super. Ct. 1959).
38. The Commission has only those powers expressly provided in the Public Utility Code. *National Fuel Gas Distribution Corp. v. Pa. P.U.C.*, 464 A.2d 546 (Pa. Cmwlt. Ct. 1983).

39. As an administrative body, the Commission is bound by due process provisions of constitutional law and by the principles of common fairness. *Town Development, Inc. v Pa. P.U.C.*, 411 A.2d 1317 (Pa. Cmwlth. Ct. 1980).
40. The power to order the involuntary divestiture of an electric public utility is not expressly granted to the Commission by the Public Utility Code.
41. A Complaint, to establish a sufficient case against a utility and satisfy the burden of proof, must show that the utility is responsible or accountable for the problem described in the Complaint. *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976).
42. Under the Public Utility Code, the Commission lacks the jurisdiction and/or the authority to order the forced sale of PCL&P. 66 Pa. C.S. § 101, *et seq.*
43. The Commission's power is statutory, and the legislative grant of power to act in any particular case must be clear. 66 Pa. C.S. § 101, *et seq.*
44. The Commission derives its authority from legislative action, and its powers are confined to those specifically declared. 66 Pa. C.S. § 101, *et seq.*
45. The Public Utility Code covers only such matters as are expressly or by necessary implication included within its terms. *Allegheny County Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa. 1967); 66 Pa. C.S. § 101, *et seq.*

46. The power and authority to be exercised by the Commission must be conferred by legislative language that is clear and unmistakable. *Process Gas Consumer Group v. Pa. PUC*, 511 A.2d 1315 (Pa. 1986).
47. Under Section 529 of the Public Utility Code, the Commission has statutory power to order the sale of small water and sewer utilities. 66 Pa.C.S. § 529.
48. Under Pennsylvania rules of statutory construction, the inclusion of specific matters in a statute implies the exclusion of all other matters. *Ken R. on behalf of Charles v. Arthur Z.*, 682 A.2d 1267, 1270 (Pa. 1996).
49. Based on the doctrine of *inclusio unius est exclusio alterius*, when the General Assembly granted the Commission the power to order the acquisition of small water and sewer utilities, it did not intend to grant the Commission the jurisdiction, power, or authority to order the forced sale of any and all other types of utilities. *Ken R. on behalf of Charles v. Arthur Z.*, 682 A.2d 1267, 1270 (Pa. 1996).

BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

COUNTY OF PIKE, et al.

Complainants

v.

PIKE COUNTY LIGHT & POWER COMPANY,
Respondent

Docket No. C – 20065942, et al.
(Consolidated)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of Section 1.54 of the PUC's Regulations, 52 Pa. Code § 1.54 (relating to service by a participant).

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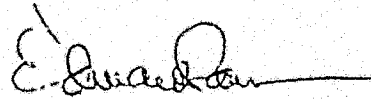
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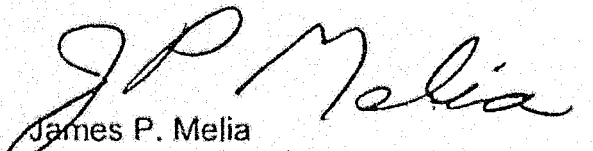
Re: County of Pike, et al. v. Pike County Light & Power Company
Docket No. C-20065942

Dear Secretary McNulty:

Enclosed for filing please find an original and nine copies of the Main Brief of the Large Customer Group in this proceeding.

Copies of this Brief are being served on all parties to this matter as indicated on the enclosed Certificate of Service.

Very truly yours,


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Enclosures

cc: Hon. Ember S. Jandebaur, ALJ (w/Enclosures)
Service List (w/Enclosures)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike, et al.

v.

Pike County Light & Power Company

Docket No. C-20065942

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed on the attached page, in accordance with the requirements of Section 1.54 (relating to service by a party).

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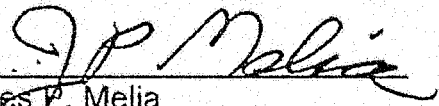
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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County of Pike, et al.,
Complainants

v.

Pike County Light & Power
Company,
Respondent

Docket No. C-20065942

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MAIN BRIEF OF
THE LARGE CUSTOMER GROUP

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I. INTRODUCTION AND SUMMARY OF ARGUMENT.

This Main Brief is being filed by the Large Customer Group ("LCG"). The LCG consists of the following parties. County of Pike, Delaware Valley School District, Samall Properties, Inc., Hotel Fauchere/Fauchere Hospitality, LLC, Three Lane Utilities Corp., Community Building Projects, LLC, and Altec Lansing Technologies. All of these parties are Complainants in this proceeding. Additionally, CenterPoint Properties, Inc., a Georgia property developer with commercial properties in the Pike County Light & Power ("PCLP") service area, is also a member of the LCG.

This proceeding represents a case of first impression for the Pennsylvania Public Utility Commission ("PA Commission" or "Commission"). Specifically, the Administrative Law Judge ("ALJ") and the Commission will be required to evaluate, on the basis of this record, whether the current, excessively high PCLP rates, resulting from prior Commission decisions instituting a rate restructuring plan for PCLP, are unjust and unreasonable given the unforeseeable circumstances that arose subsequent to the expiration of the rate cap. More specifically, Pike County, as the principal complainant, and the additional members of the Large Customer Group ("LCG"), will demonstrate that the impacts of the Commission's restructuring plan, as applied to PCLP, did result in the imposition of unjust and unreasonable rates far in excess of any rates being charged by jurisdictional electric utilities elsewhere in the Commonwealth of Pennsylvania. The LCG contends that the end result of the expiration of the PCLP rate cap, with the adoption of market-based rates, constitutes establishment of rates inconsistent with the just and reasonable standard required by Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, and inconsistent with the intent of the Electric

Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 et seq. ("Restructuring Act").

Additionally, the evidence put forth in this case demonstrates that PCLP's standard of service does not meet the requirements of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, in that its services and facilities are not adequate, efficient, safe and reasonable under even the most minimum standards established under these criteria. This conclusion is supported by substantial, unrebutted evidence of chronically poor service by dozens of residential and business customers.

Evidence of continuing, unreasonably high PCLP rates into the foreseeable future coupled with PCLP's fundamentally unsafe and inadequate service and facilities compels this Commission to exercise its plenary authority under Section 501 of the Public Utility Code, 66 Pa. C.S. § 501 and Commission authority, to require the parent entity, Orange & Rockland Utilities, Inc. ("O&R"), to make PCLP available for sale on the public market for acquisition by the preferred acquirer, Sussex Rural Electric Cooperative ("Sussex") or other interested purchasers. Only in this circumstance will just and reasonable rates, as required by Section 1301, be established within a period of time to allow the residential and business community to survive. Only in this circumstance will there be an opportunity for services and facilities to be restored to a minimum level consistent with Section 1501 requirements.

II. STATEMENT OF THE CASE.

A. Factual History.

PCLP is a wholly-owned subsidiary of O&R. O&R provides electric service to approximately 290,000 customers in counties in the States of New York and New Jersey (as well as a portion of Pike County, Pennsylvania). O&R is a subsidiary of Consolidated Edison, Inc. ("Con Ed"), a holding company with principal offices in New York City. Con Ed owns Consolidated Edison of New York, Inc. ("Con Ed of NY") as well as O&R and Rockland Electric ("Rockland"). OCA Exhibit No.NB-2 (sponsored by Nancy Brockway) shows the size of PCLP relative to O&R, Rockland and Con Ed of New York, by relative operating revenues, and along a number of other measures. Con Ed Energy, a marketer affiliate, was a winner in the initial auction leading to the 129% increase in generation rates as of January, 2006 in the PCLP territory. (OCA St. No. 3, pp. 6-7).

On July 23, 1998, at Docket No. R-00974150, the PA Commission approved a Restructuring Settlement Agreement under which the Commission determined that PCLP would be the provider of last resort ("POLR") for PCLP customers. Under the Restructuring Settlement, the rates would be set in two phases. Historically, PCLP has received 100% of its generation requirements from its parent, O&R and Rockland. At the time of restructuring in Pennsylvania, O&R and Rockland were in the process of opening their New York service territory to retail competition and had agreed to sell off their generation assets. The PCLP Restructuring Settlement provided that, before the sale and during Phase I, the POLR generation rate would be set at 3.4 cents per kWh, to which was added a Competitive Transition Charge ("CTC") of 1.734 cents per kWh.

for a total generation charge of 5.134 cents per kWh. When O&R divested itself of its generation, Phase II would commence, and PCLP's POLR rates would increase based on the treatment of the CTC. Following the sale of O&R's generation assets, PCLP's total generation charge, i.e. the POLR rate and the CTC, was not to exceed the 5.134 cents per kWh. (OCA St. No. 3, pp. 8-9).

By Order entered March 11, 1999, the Commission approved the merger of O&R with ConEd Dkt No. A-110650F0003. On June 25, 1999, the PA Commission entered its Order at Dkt. No. A-110650F0004 approving the sale by O&R of its generation to Southern Company. After application of the proceeds of the sale, PCLP's CTC was decreased to 0.070 cents/kWh, and its POLR rates correspondingly increased from 3.4 cents to 5.064 cents/kWh. (OCA St. No. 3, p. 9).

In February 2001, PCLP filed a Petition with the PA Commission for an exception to the rate cap limitations that it had agreed to in its Restructuring Settlement. After lengthy litigation, in 2002, PCLP entered into a POLR Settlement with interested parties addressing its post-transition POLR rates. Under the settlement approved on August 9, 2002 at Dkt. No. P-00011872, the CTC charge was eliminated in its entirety and the average generation rates increased about 9.7% to 5.65 cents per kilowatt-hour. The POLR Settlement allowed PCLP to increase the POLR rate again as of January 1, 2005, by as much as 5%, or up to 5.93 cents/kWh. These generation rates were to remain in effect through the end of 2005. In the event Commission regulations requiring a particular POLR plan were not in effect by June 1, 2005, PCLP was also required to file a plan for procuring future POLR supply. The POLR Settlement also required PCLP to maintain its delivery rates at then-current rates through December 31, 2004, subject

to certain exceptions. As of January 1, 2005, PCLP invoked the provision of the POLR Settlement allowing it to increase POLR rates by 5%, to 5.93 cents/kilowatt hour. (OCA St. No. 3, p. 9).

On May 31, 2005, PCLP filed a default service implementation plan to establish new generation rates to be effective 1/1/06. The plan proposed a competitively bid request for proposal to meet PCLP's service obligations for the years 2006-2008. The plan utilized a financial swap auction process. The PA Commission approved the plan with modifications on August 25, 2005 at Dkt. No. P-00052168, reducing the length of the contract to be bid from three years to two years. On October 25, 2005, PCLP conducted its auction for POLR service for the period commencing January 1, 2006. The auction produced a POLR rate of 14.4 cents per kWh for the first 1,000 kWh of monthly usage for a residential customer and a rate of 12.4 cents for usage above that level. This represented a generation rate increase of 129%. (OCA St. No. 3, pp. 9-10).

OCA Exhibit No. NB-3 provides a chart showing the recent rates of PCLP residential customers for the period 2001 to the present. There have been no changes in PCLP's distribution rates during this period. For a residential customer using 700 kWh per month, the 2005 auction translated to a total average bill (including both distribution and generation) of \$132 per month, roughly a 73% increase from 2005 bills. This is an increase from about \$75 for the same amount of usage. (OCA St. No. 3, p. 10).

As a result of the numerous formal and informal complaints from customers of PCLP, the Commission, on February 14, 2006, opened a fact-finding investigation at Dkt. No. P-00052168 and required that a report be prepared in 60 days. The

Commission convened a public hearing on February 27, 2006 at the Delaware Valley High School at which two Commissioners and other agency personnel attended. The hearing attracted several hundred PCLP customers as well as representatives of PCLP. While the investigation was proceeding, consideration was given to seeking an alternative POLR supplier. These discussions bore fruit with a proposal from Direct Energy Services, LLC ("Direct"). (OCA St. No. 3, pp. 10-11).

On March 10, 2006, Direct filed a Petition for an Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light and Power Company ("Petition"). The Petition, docketed at P-00062205, set forth a mechanism by which potential aggregators could take over all or part of the POLR obligation at rates lower than those set based on the 2005 Auction. The matter was sent to hearing by Order entered April 6, 2006 and a one-day hearing occurred on April 11, 2006. On April 20, 2006, the Commission issued a Final Order at Dkt. No. P-00062205 that stated that, given the unique situation presented, a Retail Opt-Out Aggregation Bidding Program should be instituted to serve PCLP's customers. The program went forward, and on April 28, 2006, the Commission issued a Secretarial Letter that indicated the consideration of all bid proposals and the approval of Direct as the winning bidder in the Retail Opt-Out Aggregation Bidding Program. (OCA St. No. 3, pp. 11).

The Direct bid ultimately came close to the rates that applied under the results of the 2005 auction. The average monthly bill for a residential customer taking POLR service through Direct and using 700 kWh per month came down slightly, from \$132/month under the 2005 auction results to \$121/month for Direct customers. For a

residential customer using 700 kWh per month, the average monthly bill, for generation service from Direct, is just under \$90 per month on average over the year.

On June 22, 2006, the Commission released the Law Bureau Report entitled "Report on Competitive Market Conditions Regarding the Pike County Light & Power Company" ("Report") at Dkt. No. P-00052168. Among the recommendations contained in that Report are as follows:

- a. The Commission should explore the integration of the Company's energy procurement after 2007 with either its New York affiliate (O&R) or New Jersey affiliate (Rockland).
- b. The Commission should consider having an independent study performed regarding the costs and benefits of the interconnection of PCLP's electric system with PJM as well as other needed distribution/transmission improvements in the region.
- c. The Commission should consider having an independent study performed regarding the costs and benefits of the sale of PCLP to another Pennsylvania EDC or rural electric cooperative.
- d. PCLP shall be instructed to file its next default service plan no later than December 31, 2006 so the Commission and the public have a full 12 months to consider the proposal.
- e. PCLP should consider filing an updated PowerSwitch proposal with the Commission later this year.
- f. If PCLP is to remain in the NYISO for the long term, the Commission should consider the grant of an indefinite waiver of Pennsylvania EDI rules to facilitate entry of more EGSS into the retail market.
- g. PCLP's service territory shall be surveyed for alternative energy/renewable energy potential.
- h. The Commission shall consider the permanent transfer of borderline customer accounts to Metropolitan Edison Company, to the extent it is both technically feasible and that

Metropolitan Edison Company prices are expected to be below the Company's prices for the foreseeable future.

Law Bureau Report at pp. 16-20.

B. Procedural History Before the Commission.

This proceeding began with the County of Pike and several other parties filing formal complaints with the PA Commission on or about February 24, 2006 alleging that PCLP had instituted rates that constituted an unfair, unjust and unreasonable burden on the customers of PCLP and the Milford/Matamoras service area.

The Office of Consumer Advocate ("OCA") and Office of Small Business Advocate ("OSBA") filed Notices of Intervention on April 5 and 24, respectively. An Interim Order for Consolidation of Complaints was issued May 9, 2006 and 21 additional complaints were filed thereafter. A First Interim Order delayed the Initial Prehearing Conference from May 24, 2006 for 60 days.

Subsequently, Pike County filed an Amended Complaint on July 12, 2006 in which it alleged that the rates charged were not just and reasonable under Section 1301 of the Code; that the service was not safe and adequate under Section 1501 of the Code; and that PCLP had no employees or facilities in Pennsylvania. Pike County requested that the Commission order the sale of PCLP to another utility or rural electric cooperative and to take such other actions, including those set forth in the Law Bureau's June 22, 2006 Report, that the Commission determined to be just and reasonable and in the public interest. Subsequently, numerous residential and business customers filed formal complaints alleging unfair and unreasonable rates as well as inadequate service characterized by frequent outages and voltage surges.

On July 14, 2006, ALJ Jandebaur issued a Prehearing Conference Order and Second Interim Order of Consolidation that had the effect of consolidating all of the outstanding complaints at various dockets into one proceeding and requiring active participants to appear and participate at the next Prehearing Conference. On July 25, 2006, counsel for the LCG entered his appearance. Counsel for PCLP entered his appearance on July 28, 2006. Prehearing memoranda were filed by all parties on July 31, 2006. An initial Prehearing Conference was held on August 3, 2006 in Scranton at which time issues were discussed and preliminary determinations were made on which parties would formally participate.

On or about August 4, 2006, PCLP filed Preliminary Objections and Answer and New Matter to the Amended Complaint of Pike County. Additionally, on August 18, 2006, a number of complainants notified the OCA of their intent to withdraw their complaints by the designated date of August 18, 2006. On August 15, 2006, Pike County and OCA filed a Joint Answer to PCLP's Preliminary Objections. On August 25, 2006, Pike County filed its Reply to PCLP's Answer and New Matter.

An additional telephonic Prehearing Conference was held on August 24, 2006 in which a specific schedule was established for the case. At the August 24, 2006 Prehearing Conference, only those parties (residential or small commercial), who were actually present at the hearing were permitted to continue to participate. Many of the complainants elected to withdraw their complaints or their complaints were subsequently stricken for failure to appear.

On September 7, 2006, the OCA filed Petitions signed by 400 residential and 105 business customers of PCLP seeking rate relief. On September 21, 2006, ALJ

Jandebeur issued Interim Order II – Certification of Question to Commission Re: Preliminary Objection Regarding Forced Sale of PCLP.

This Order certified to the Commission the question of whether the ALJ proceeding should be stayed pending the adoption of the Law Bureau Report recommendations. Additionally, on September 21, 2006, ALJ Jandebeur issued an Interim Order Re: Preliminary Objections and Outstanding Motions. In that Order, preliminary objections raised by PCLP with regard to Commission jurisdiction, OCA's rate challenge being barred by the filed rate doctrine and joinder of a necessary party were all denied by the ALJ. The ALJ did grant PCLP's preliminary objection with regard to inclusion, as an issue, of Pike County alleged billing errors of other customers. The Order further acknowledged that many formal complaints of residents and business had been withdrawn and other complaints were relegated to inactive party status due to failure to participate. Additionally, the ALJ did reiterate the complainants' burden of proof under 66 Pa. C.S. § 332 with regard to demonstrating the unreasonableness of current rates. Further, PCLP was determined to bear the burden of proving their services and facilities are adequate, efficient, safe and reasonable under 66 Pa. C.S. § 115(c). Direct Energy was also joined as an indispensable party.

A public input hearing occurred in this matter on October 4, 2006 at the Best Western in Hunts Landing, Matamoras, PA. Approximately 46 customers testified. Briefs were filed by the parties on or about October 5, 2006 with regard to the Material Question forwarded to the Commission for disposition. On October 5, 2006, Interim Order III was issued that formally joined Direct Energy. On October 6, 2006, a second Petition containing 27 residential and 9 business customers was filed in this proceeding

by OCA. On October 16, 2006, PCLP filed a Petition for Interlocutory Review to the Commission on the conclusion of law finding by ALJ Jandebour assigning the burden of proof on PCLP to demonstrate that its services and facilities were safe and adequate. Subsequently, an Errata Notice was issued which placed the burden of proof with regard to demonstration of unsafe and inadequate service on the Complainants.

On October 24, 2006, the Commission entered an Opinion and Order responding to the Certification of a Material Question by ALJ Jandebour. In that Opinion and Order, the Commission determined the proceeding should not be delayed pending completion of the recommendations in the Law Bureau Report nor should the issue of "forced sale" be removed from the scope of the case.

A Prehearing Order was issued on October 25, 2006 on the upcoming evidentiary hearings. Additionally, on October 26, 2006, both PCLP and the OCA filed their Briefs with respect to the Petition for Interlocutory Review as a precautionary step. On November 1, 2006, PCLP withdrew its Petition for Interlocutory Review based on the issuance of the Errata Order correcting the burden of proof determination.

Hearings were subsequently held on November 6, 2006 at which time Complainants presented the testimony of witnesses Forbes, Hessling, Fretta, Kenny and Dalton. Direct Testimony of OCA and OSBA was filed on November 17, 2006. PCLP filed a Motion to Strike Testimony of Nancy Brockway on December 6, 2006. PCLP filed its Rebuttal Testimony on December 11, 2006. OCA and LCG filed answers in Opposition to the Motion. This Motion was denied on January 16, 2007.

Additional hearings in this matter occurred on January 16, 17 and 19, 2007 in Scranton wherein the remainder of Complainants' witnesses were presented as well as

witnesses for OCA, OSBA and PCLP. Some witnesses' testimony was stipulated into the record. A number of witnesses presented surrebuttal testimony orally. Main Briefs are to be filed on February 12, 2007. This Main Brief is being filed on behalf of the LCG in this matter.

III. BURDEN OF PROOF.

The following complainants have the burden of proof in this proceeding: Pike County, Delaware Valley School District, Samall Properties, Inc, Hotel Fauchere/Fauchere Entertainment, LLC, Community Building Projects, LLC, Three Lane Utilities Corp. and Altec Lansing Technologies. This burden is established pursuant to Section 332 of the Public Utility Code, 66 Pa. C.S. § 332. The burden of proof in this proceeding with regard to both the unjustness and unreasonableness of current rates under Sections 1301 and 2807 of the Code, 66 Pa. C.S. § 1301, 2807, and as to the inadequacy of existing service pursuant to Section 1501 of the Code, 66 Pa. C.S. § 1501, is borne by the Complainants comprising LCG and the other active Complainants. The foregoing parties also have a burden of proof of demonstrating the Commission's authority to require O&R to sell the distribution system of PCLP.

IV. STATEMENT OF ISSUES.

The LCG Complainants state the issues as follows:

1. Are the current rates being charged by PCLP just and reasonable under the standards of Section 1301 and consistent with the intent of Section 2801 of the Public Utility Code, 66 Pa. C.S. § 2801?

LCG believes this question should be answered in the negative.

2. Is the service currently being provided by PCLP safe, reliable and adequate consistent with the requirements of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501?

LCG believes this question should be answered in the negative

3. Does the Commission possess the requisite authority to require Orange & Rockland Utilities, Inc. ("O&R") to make available for sale the distribution system of PCLP?

LCG believes this question should be answered in the affirmative.

V. LEGAL STANDARDS TO BE APPLIED.

A. PCLP's Rates, Although Established by Commission Order in Its Prior Restructuring Proceeding, Have Resulted in the Current Imposition of Unjust and Unreasonable Rates Pursuant to Section 1301 Following Removal of the Rate Cap.

The first issue to be decided in this proceeding relates to the unjust and unreasonable rates currently borne by PCLP customers that were imposed following PCLP's adoption of a Generation Supply Plan that utilized a financial hedging/auction process for obtaining PCLP's electricity requirements following the end of the generation rate cap in December 31, 2005. LCG contends that the current rates being paid by PCLP customers are unjust, unreasonable and in violation of the Section 1301 standard of the Code. Section 1301 requires rates to be just and reasonable as follows:

Every rate made, demanded, received by a 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....

66 Pa. C.S. § 1301.

The Section 1301 "just and reasonable" standard was enacted during the era of traditional rate base/rate of return regulation. This standard was established to provide a basis by which parties could determine if rates set by the Commission were fair and equitable to both the utility and the customer. Ascertaining the reasonableness of rates under the Section 1301 standard involves scrutiny of the various components of the rate filing together with consideration of other factors that make up the Commission's ratemaking process.

Since the enactment of the Electric Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 et seq. ("Electric Restructuring Act"), the just and

reasonable standard must now be expanded to accommodate the new realities of electric deregulation. Although the just and reasonable standard is not specifically incorporated within Chapter 28, the importance of that standard in determining whether rates are fairly and equitably developed still applies.

Section 2807(e) of the Electric Restructuring Act establishes the electric distribution company's continuing obligation to provide electric service following implementation of restructuring and the choice of alternative generation by a customer.

Section 2807(e)(3) further states:

If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.

66 Pa. C.S. § 2807(e)(3).

In the present circumstance, rates established under the PCLP restructuring proceeding resulted in relatively stable rates from mid-2002 through 2005. (Dkt. No. P-00011872, Order entered August 9, 2001). PCLP thereafter submitted a Generation Supply Plan on May 31, 2005 as required by the 2002 Settlement Agreement. The Plan called for the acquisition of "financial swap" instruments through a computer-based auction utilizing capacity and energy hedges for varying periods up to a total of three years. The auction results would serve as a basis for setting POLR retail rates. (OCA St. No. 1, pp. 10-11).

Wholesale market generation prices, since the time of the PCLP 2002 settlement, exhibited an upward trend in increasing volatility. Wholesale power supply prices, including those in NYISO Zone G (where PCLP acquires its power), are closely

linked to the natural gas market that is the marginal fuel for electric generation during many hours. These factors drove the price of gas and consequently the price of electricity much higher in the fall of 2005. (OCA St. No. 1, pp. 11-12).

At the time PCLP conducted its auction on October 25, 2005, market pricing results were extremely high and did not generate a great degree of competition. As a consequence, significant higher rates experienced by PCLP customers as of January 2006 were a factor of: (1) poor market timing; (2) the extremely small size of PCLP's POLR load; and (3) PCLP's limited interconnection with only the NYISO. (OCA St. No. 1, pp. 12-14). The negative impacts of the financial hedge auction process are more fully discussed in later sections of this brief. Suffice it to say, however, that the intended results of the PA restructuring plan did not result in opportunities for customers to enjoy competitive market conditions as was the case in other jurisdictional service areas. LCG contends that the rate process resulting from the financial hedging/auction process utilized by PCLP and O&R in October 2005 was essentially "doomed to failure" because of the structural deficiencies inherent in the PCLP service area. Nor can these structural deficiencies be easily corrected or modified. The end result of the 10/25/05 auction was unjust and unreasonable rates for PCLP customers far in excess of other rates being paid by jurisdictional electric utility customers.

It should be noted that, under Section 2807(e)(3), the electric utility is required, following expiration of the rate cap, to acquire sufficient electricity for its customers at prevailing market prices. 66 Pa. C.S. § 2807(e)(3). In most instances, the term "prevailing market prices" defines a market area which allows the electric utility an opportunity to access sufficient suppliers and sources of energy so as to result in

electric rates which are market-based and, simultaneously, just and reasonable. In the instant circumstance, structural deficiencies in PCLP's connection to the NYISO made that result impossible. As a consequence, PCLP's customers are effectively held captive to PCLP's own limited sources of generation which, as experience has shown, may continue to result in significantly higher rates into the future. This is especially true if PCLP continues to utilize financial hedging and the auction process as a mechanism for obtaining its power supply.

LCG contends that the inherent structural deficiencies in PCLP's access to electric power portends a continuing risk of above-average rates into the future. As prevailing market prices under Section 2807(e)(3) will continue to be the standard in a post-rate cap environment, LCG asserts that the rates currently being paid by LCG and all PCLP customers are unjust and unreasonable under Section 1301 as that standard should be applied to the post-deregulatory environment imposed under Chapter 28 of the Code

OCA witness Brockway testified on the subject as follows:

- Q. Judge Jandebaur. Ms. Brockway, I have just one question for you. You have used the phrase intolerably high. And while I understand just a generic understanding that paying way more than your neighbors is intolerably high, I am wondering what the basis of that phrase is other than that?
- A. Ms. Brockway: I would say that there are two bases in addition to that. For many customers, they can't afford this you know. And your honor heard the testimony of the individuals... I'll just point to the testimony of these individuals who talked about inability to pay their bills. Small businesses talked about inability to keep their businesses open. So there's an affordability problem...there is always an affordability problem for low-income customers, but this appears to extend considerably beyond the level of customers who are in poverty to a more general sense of the customers

The other thing I would point to is that we have here an alternative. It would be one thing if there was no reasonable way for any institution, the Commission, any company, any cooperative, ... to solve the problem for these customers, and it was stuck in a geographical place that could not be overcome. But that's not the case here. So to leave the customers with this high level of rates when there are alternatives is, to my mind, intolerable.

(11/16 Tr. 18-19).

The Electric Restructuring Act did not repeal or supersede the "just and reasonable standard" of Section 1301. The Act declared that competitive market forces rather than traditional cost-based generation would be the basis for establishing just and reasonable rates. However, PCLP customers are currently receiving neither the protection of regulation or the benefits of competition. PCLP customers are in a situation where the continuation of high rates now and into the future demands that measures be taken to correct these structural barriers that prevent PCLP customers from accessing more reasonably priced power. What makes this situation eminently correctable is that the ultimate solution –acquisition by Sussex—exists. A determination that rates as set are currently unjust and unreasonable is fundamental prerequisite to reaching that desired goal.

B. PCLP Has Not Met the Section 1501 Standard of Providing Adequate, Efficient, Safe and Reasonable Service and Facilities.

One of the principal issues to be decided in this proceeding is whether or not PCLP's "Facilities" and "Service" are adequate, efficient, safe and reasonable under Section 1501 of the Code. It should be noted that the Code at Section 102 defines "Facilities" as follows:

All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any

manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility...

66 Pa. C.S. § 102.

Additionally, "Service" is defined as follows:

Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them, but shall not include any acts done, rendered or performed, or any thing furnished or supplied, or any facility used, furnished or supplied by public utilities

66 Pa. C.S. § 102.

The Code then proceeds to establish each public utility's obligation with regard to its service and facilities as follows:

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. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service....

66 Pa. C.S. § 1501.

Many PA appellate decisions have interpreted the definitions of both "service" and "facilities". These decisions have traditionally viewed the Commission's authority to regulate service and/or facilities of public utility in a very broad sense. Country Place Waste Treatment Company, Inc. v. Pa. Public Utility Commission, 654 A.2d 72 (1995). Further, when a public utility's failure to maintain reasonable and adequate service is alleged, it is for the Commission to determine whether service provided by the utility is falling short of the statutory standard required of it. Honey Brook Water Co. v. Pa. Public Utility Commission, 167 Pa. Commonwealth Ct. 140; 647 A.2d 653 (1994), appeal denied, 540 Pa. 587, 655 A.2d 518. The public is entitled to efficient service from a public utility at reasonable rates. City of Pittsburgh v. Pa. Public Utility Commission, 172 Pa. Super. 230, 93 A.2d 715 (1953).

The PA appellate courts have held that the Commission has the power to issue orders and regulations to assure that each public utility provides service and maintains facilities necessary or proper for the safety and convenience of the public. Borough of Moosic v. Pa. Public Utility Commission, 59 Pa. Commonwealth Ct. 338, 429 A.2d 1237 (1981). Additionally, the Commission's ability to dictate or impose its authority on the management of utility operations is not completely unfettered. A utility has the right to manage its own affairs to the fullest extent consistent with the public interest but it is within the purview of the Commission to require changes, upgrades or modifications to the provision of service where there is shown to be an abuse of discretion or arbitrary action is established. Pennsylvania Railway Company v. Pa. Public Utility Commission, 187 Pa. Super. 590, 146 A.2d 352 (1958), vacated, 396 Pa. 34, 152 A.2d 422; Lower Chichester Township v. Pa. Public Utility Commission, 180 Pa. Super. 503, 119 A.2d

674 (1956). Public utility law provides the Commission with jurisdiction over matters relating to the reasonableness of utility service, facilities and rates as well as other matters concerning the utility's formulation of reasonable rules and regulations governing conditions under which service, facilities and rates shall be rendered, constructed or imposed. DiSanto v. Dauphin Consolidated Water Supply Company, 291 Pa. Super. 440, 436 A.2d 197 (1991); Elkin v. Bell Telephone Company, 247 Pa. Super 505, 372 A.2d 1203 (1977), affirmed, 491 Pa. 123, 420 A.2d 371; Behrend v. Bell Telephone Company of PA, 431 Pa. 63, 243 A.2d 346 (1968). Additionally, a public utility in the exercise of its managerial functions, may determine, in the first instance, the type and extent of its service to the public within the limits of adequacy and reasonableness but such service must conform with the Commission's regulations and orders. The utility is bound, on the Commission's order, to make such changes in service and facilities as are deemed necessary or in the public interest. Duquesne Light Company v. Pa. Public Utility Commission, 164 Pa. Super. 166, 63 A.2d 466 (1949).

The Commission has also addressed the application of Section 1501 in a multitude of decisions. The Commission has sustained complaints finding unsafe, inadequate and inefficient service in a wide variety of situations involving a utility's failure to provide fundamentally sound and reliable utility service. In St. Francis of Assisi Catholic Church v. PG Energy, Dkt. No. C-20042391, 2005 Pa. PUC LEXIS 16 (Order entered May 19, 2005), the Commission upheld a complaint by a complainant religious institution against PG Energy for failure to timely maintain and inspect metering equipment that resulted in an unreasonably high gas bill. In addition, the utility was required to pay a civil penalty of \$5,000.

In Margaret Peschka v. Equitable Gas Company, Dkt. No. C-00015534, 2002 Pa. PUC LEXIS 10 (Order entered June 28, 2002), the Commission sustained a complaint against Equitable Gas where it was determined that the utility had permitted water to infiltrate the gas line on six separate occasions and a utility employee had submitted a fabricated report to the Commission's Bureau of Consumer Services. A civil penalty of \$1,000 was assessed against the utility. In Denver Braughler v. Pennsylvania Electric Company, Dkt. No. C-00014799, 2002 Pa. PUC LEXIS 3 (Order entered February 22, 2002), the Commission sustained a complaint against the electric utility for failure to provide adequate notice about an impending shut off and for violation of other procedures associated with providing notice of shut-offs to customers. A similar situation occurred in Bernstein & Bernstein, PC v. Duquesne Light Company, Dkt. No. C-892646, 1992 Pa. PUC LEXIS 63 (Order entered May 21, 1992). In this proceeding, complainant law firm alleged violation of Section 1501 of the Code against Duquesne Light Company for failure to provide prior notification of two planned service interruptions that disrupted complainant's law practice. The Commission sustained a portion of the complaint and assessed a civil penalty of \$750. In Berger v. PECO Energy Company, C-00992680, 2000 Pa. PUC LEXIS 21 (Order entered May 9, 2000), complainants experienced electric 27 outages in a 16 month period, 23 of which were reported to and acknowledged by PECO. Complainants also experienced power surges that damaged electrical appliances. The frequent outages affected the daily life of the complainants. PECO failed to respond to complainants' phone calls about service interruptions. The Berger case is particularly relevant to the instant proceeding as it

involves a single customer experiencing multiple outages over a period of a year that significantly disrupted the complainants' lifestyle.

These decisions demonstrate that the Commission will find a violation of Section 1501 even where that inadequate service affects an individual customer. In this case, PCLP's deficient service is chronic and system-wide and the utility is unresponsive.

The record demonstrates an endemic and widespread history of inadequate service that has been experienced by hundreds of PCLP customers including residents and business owners. The impacts of this poor service range from voltage surges that damage electrical appliances and computers to outages of both short and long duration that disrupt the lifestyles of both residential and business customers and force these parties to leave the service area. When coupled with the unreasonably high rates implemented in January of 2006, the evidence presented fulfills the statutory requirements to demonstrate a violation of Section 1501 of the Code. It should be noted that LCG is not seeking monetary penalties (which would not result in any improvements to service) but affirmative relief in the nature of requiring PCLP to make its electrical system available for sale to Sussex.

The foregoing recitation of legal authorities demonstrates both the breadth of Commission jurisdiction over provision of services and facilities as well as the standards imposed by the Commission and the appellate courts in ensuring safe, adequate and efficient service by public utilities. Measurement of this standard is not necessarily purely subjective or objective. It contains elements of both.

From an objective perspective, the evaluation to be made in this proceeding, should evaluate the adequacy and reliability of PCLP service against traditional indices

for outages and the number and frequency of customer complaints, both formal and informal. This is demonstrated in the testimony of OCA witness Lanzalotta. Additionally, a subjective standard must be utilized through evaluation of the testimony of residential and small business customers on the real "day to day" impacts of PCLP's poor service on the quality of life.

It cannot be understated that provision of electricity service is a fundamental component of daily life in the 21st century as is the need for safe and adequate water and wastewater, telecommunications, and gas/oil heating services. When these fundamental components are not present and fail to meet minimum standards, a disruption in the lifestyle of the customers is virtually assured. The evidence presented in this proceeding demonstrates the degree to which the inadequacy of electricity service has diminished the quality of life in the PCLP service area. For this reason, there must be a careful examination of the standards outlined in these cases in evaluating whether or not PCLP's quality of service does or does not meet the Section 1501 standard. LCG contends that, when all of the evidence is reviewed, the standard has not been met with regard to PCLP's fundamental obligation to provide safe, adequate and efficient service consistent with Section 1501 standards.

C. The Commission Has the Statutory Authority to Require That PCLP Be Put Up for Sale.

LCG contends that the Commission possesses the statutory authority to require PCLP to be put up for sale. This authority arises from a number of provisions within the Public Utility Code. Initially, Section 501 of the Code, 66 Pa. C.S. § 501, entitled General Powers provides as follows:

(a) **Enforcement of provisions of part.** – In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof, and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions in this part.

Section 501 has been interpreted to grant extensive general powers to the Commission but this power must be read in light of the enumerated powers set forth in the Code and in conjunction with the purpose of the Commission to regulate and control public utilities in determining cost and service to the public. United Telephone Company of PA v. Pa. Public Utility Commission, 676 A.2d 1244 (1996). Additionally, the Commission has been invested with broad powers to supervise and regulate utilities and to protect the rights of the public. The Commission has the power to make such regulations not inconsistent with law as may be necessary or proper in the exercise of its powers or performance of its duties. Erie Lighting Company v. Pa. Public Utility Commission, 131 Pa. Super. 190; 198 A.901 (1938).

Section 501 is the plenary provision that is supplemented by additional provisions of the Code, primarily Section 1103, which governs the grant of certificates of public convenience. 66 Pa. C.S. § 1103. It is well-settled that any public utility must obtain a certificate prior to the provision of public utility service in the state. 66 Pa. C.S. § 1102. Additionally, Section 1103 requires that certificates be granted only after completing the necessary investigations and hearings following submission of the necessary documents. 66 Pa. C.S. § 1103(a). The Commission may also make a finding or

determination that establishes conditions on the certificate that are deemed just and reasonable. 66 Pa. C.S. § 1103(a)

Although the Commission's Section 1103 authority does not explicitly provide for a revocation or canceling of certificates, Pennsylvania appellate case law has determined that the Commission has authority to revoke or rescind certificates for good cause. Rheems Water Company v. Pa. Public Utility Commission, 153 Pa. Commonwealth Ct. 49, 620 A.2d 609 (1993); Fusaro v. PA Public Utility Commission, 34 Pa. Commonwealth Ct. 14, 382 A. 2d 794 (1978); West Penn Water Co. v. Pa. Public Utility Commission, 10 Pa. Commonwealth Ct. 533, 311 A. 2d 370 (1973). These decisions are only the most recent in a number of decisions that have held that the Commission, having the power to grant authority, also has the implicit power to take away that authority.

As early as 1918, the Pennsylvania Superior Court's determination in Diehl v. Public Service Commission, established this unequivocal right. Diehl v. Public Service Commission, 69 Pa. Super. 419 (1918). Upholding the Commission's revocation of a bus line operator certificate, the Court held:

The Commission has the full power to revoke the certificate granted to Diehl as it had to grant it.

Diehl, 69 Pa. Super. At 421.

This holding was followed in later decisions. Paradise v. Pa. Public Utility Commission, 184 Pa. Super. 8; 132 A.2d 754 (1957); Snyder v. Pa. Public Utility Commission, 187 Pa. Super. 147; 144 A.2d 468 (1958)

The Pennsylvania Supreme Court addressed this issue in its 1933 decision of Day v. Public Service Commission, 312 Pa. 381, 167 A.565 (1933). In this proceeding,

appellant argued that the Commission had no specific statutory authority to revoke a certificate of public convenience. The Court rejected this argument stating as follows:

A certificate of public convenience confers no privilege in itself; it only obtains validity when issued upon the order of the Commission. The conclusion is inevitable that the power to rescind an order entails the authority to revoke a certificate.

Day, 167 A. at 566.

Revocation of certificates routinely occur in motor carrier proceedings. Pa. PUC v. Pegasus Transportation Holdings, Inc., 2006 Pa. PUC LEXIS 72 (2006). Revocation of certificates have been raised as ultimate sanctions in the case of fixed utilities, in a few instances. Application of LP Water & Sewer Company, 1993 Pa. PUC LEXIS 117 (1993); Pa. PUC v. Metropolitan Edison Co., 1980 Pa. PUC LEXIS 56, 54 Pa. PUC 276 (1980).

It proceeds logically then, if the Commission has the plenary authority to revoke a certificate, it also has the authority to require a utility to take action short of revocation such as to require a parent utility to divest itself of a poorly performing, deficient utility charging exorbitantly high rates. The logic behind this argument is that, to revoke PCLP's certificate, without more, while sanctioning the public utility, does not address the underlying problem of poor service and high rates suffered by PCLP's customers. Revocation of a certificate in this instance does not allow for a competing certificate holder (in the case of a revocation of a motor carrier certificate) or an alternative provider to assume PCLP's service obligations. Requiring that O&R put PCLP up for sale accomplishes two desired results: (1) eliminates an under-performing utility that has lost the confidence of its customers and (2) allows a viable, neighboring electric

cooperative to acquire the PCLP system and assume the service responsibilities all within the scope of Commission authority.

As OCA witness Brockway noted, intractable problems with rates and service tend to happen most often in the case of very small utilities. (OCA St. No. 3, p.31). This Commission has been faced with a similar fact pattern in the case of Pa. Public Utility Commission v. Big Run Telephone Co., Dkt. No. C-822983 (Order entered October 15, 1982). Between 1979 and 1981, Big Run Telephone Co. ("Big Run") was the subject of continued litigation before the Commission over rates and service. In 1981, the Commission opened a formal investigation into the operations of Big Run. The OCA sought an order to show cause why the Commission should not rescind Big Run's certificate of public convenience and necessity. The OCA cited the "wide-spread disconnections, the oppressive rates, the unconscionable service and the community of dissatisfaction in Big Run." (OCA Petition at p. 2). The ALJ, Joseph J. Klovekorn, issued his Recommended Decision on September 8, 1982 and found that "an alternative source of service for the Big Run service area would be preferable to continued service by BRTC." (Recommended Decision at 11). Judge Klovekorn made this recommendation:

...on the basis that there is no other way to bring rates down to reasonable levels and on the basis that there is general dissatisfaction with the operations and management of the Big Run Telephone Company, so widespread that relations between the company and the ratepayers could well be termed "poisoned."

R.D. at p. 11.

The ALJ also noted that the residents of Big Run had "expressed a distinct preference" for Bell of Pennsylvania to take over the telephone company from Big Run.

The ALJ concluded that a sale, facilitated by the Commission, was the best solution, even in the absence of a finding that the existing utility was not providing legally inadequate service:

...[E]ven assuming the existence now of legally adequate service, the level of service and rates would definitely improve if the assets of BRTC were sold to another ... company --- one that can provide service more in line with the wishes of the Big Run residents. To this end, this Commission should use its good offices to solicit bids from other telephone companies and act as a broker for the sale of BRTC's assets.

R. D. at p. 11.

The Commission adopted Judge Klovekorn's decision with some amendments on October 15, 1982, and directed that a notice of solicitation of bids for the assets of Big Run be published. Bell of Pennsylvania would be specifically invited to bid. In the event a sale were not effectuated within 60 days, an Order to Show Cause would issue, requiring Big Run justify the continuation of its certificate of public convenience. After the decision, Big Run entered into negotiations with Bell of Pennsylvania. Bell of Pennsylvania acquired Big Run and was able to lower rates and improve service for customers in the Borough. This resolution of the Big Run matter has direct parallels to the situation in PCLP. If PCLP were sold to Sussex, the testimony of OCA witnesses Kaha!, Lanzalotta and Kolling suggest that the level of service would improve and the level of rates would certainly come down. Sussex can provide service more in line with the wishes of PCLP's customers. It is also important to note that the Commission, in adopting the ALJ's recommendation, implicitly acknowledged its authority to require BRTC to enter into negotiations with Bell of PA.

LCG contends that additional analogous authority exists under the Code. The Commission has been required to address the problems of small, nonviable water companies. To this end, the PA Legislature enacted Section 529 of the Code that empowers the Commission to require nonviable water companies be acquired by larger viable water utilities. 66 Pa. C. S. § 529. The rationale behind this legislation was that the rates of these troubled companies are so high while the service quality is so low that there is no realistic way the situation could be remedied short of divestiture. The solution has been to sell the small water company to a larger firm with the assets to make the necessary investments to improve the quality of service at reasonable rates.

LCG contends that the reasons behind forced divestiture of small troubled utilities under Section 529 and the recommended divestiture of PCLP are different yet the two circumstances share the same characteristic that the problems cannot be solved in the context of the current structure of the utility. In the case of PCLP, the unresolvable problem is that PCLP is a small appendage of a large NY utility that operates under a different regulatory scheme and accesses power requirements in a manner that limits price flexibility.

LCG contends that the Commission would have had the power, under Sections 501 and 1103, to either require a failing water utility to put itself up for sale or revoke its certificate. Now, Section 529 goes further and permits the Commission to decide, not only to sell but also to force another utility to purchase it. Although Section 529 is not applicable to electric utilities, Section 501 plenary authority coupled with the Commission's authority to revoke or rescind certificates of public convenience, provides the necessary statutory basis for the relief sought.

Commission decisions from other jurisdictions also provide guidance. Additional support arises from a recent (June 14, 2005) Ohio Commission determination ordering Monongahela Power Company ("Mon Power") to negotiate with Columbus Southern Power Company ("CSP") towards a sale by Mon Power of its Ohio distribution utility to CSP. In re: Monongahela Power, Case No. 05-765-EL-UNC (Order entered June 14, 2005). The two utilities entered into negotiations, and by August 2, 2005, they had entered into a purchase agreement for CSP, a subsidiary of American Electric Power, to buy the Ohio assets of Mon Power.

The Ohio Commission's reasons for requiring the sale are relevant to the PCLP fact pattern. Mon Power, like other Ohio utilities, was facing difficulties in the transition to market-based rates. Its charges as provider of last resort were set to increase substantially at the end of the transition period, and, unlike other Ohio utilities, Mon Power was unwilling to propose a rate stabilization plan.

In both cases, the problem occurs because of price spikes anticipated, or experienced, at the end of the transition period to competition. In the Mon Power situation, the utility was unwilling to make rate adjustments to smooth the path to market rates. In the PCLP situation, the utility has not offered to make similar rate adjustments that would provide meaningful relief to the customers. Even if the utility were willing to make such adjustments, LCG asserts there are superior alternatives, notably the sale of PCLP to Sussex.

The statutory rate scheme in Ohio differs from the provisions of Title 66 of the Public Utility code. The Ohio Commission has the authority to authorize a new electric supplier to take over where an existing supplier is not rendering "physically adequate

service." The Ohio Commission has held that "only the physical adequacy of the service is relevant, under the terms of Section 4933.83(B), Revised Code."¹ The Ohio Commission ultimately approved the transfer of Mon Power because it was in the public interest. Re: Mon Power, 2005 PUC LEXIS 554; 245 PUR 4th 501 (Order entered November 9, 2005). The Ohio Commission facilitated the solution to a problem that affected a minority of Ohio consumers, who otherwise were faced with rate shock on account of the actions of their distribution utility. LCG contends that the instant circumstances, brought on by PCLP, from both a rate and service perspective, are no less compelling and argue for this Commission to arrive at a similar result.

Additional examples of Commission-initiated utility divestitures also exist. In New Hampshire, Connecticut Valley Electric Company ("CVEC") was a small utility on the border between New Hampshire and Vermont, owned by an out-of-state holding company. CVEC charged high rates to customers and objected to New Hampshire's policy initiatives. In the late 1990's, CVEC challenged the New Hampshire Commission by initiating a federal court action to prevent the implementation of the Commission's rulings on restructuring. CVEC also sought and obtained a federal court order preventing the New Hampshire Commission from implementing traditional prudence regulation, pending the outcome of the court proceedings on the restructuring case.

New Hampshire policy makers sought an alternative to continued ownership by the parent company. The Commission informally raised the issue with Public Service Company of New Hampshire ("PSNH") which indicated an interest in buying CVEC on appropriate terms. Ultimately CVEC, Commission Staff and PSNH

¹ Yerian v. Buckeye Rural Electric Cooperative, Case No 02-2548-EL-CSS, Opinion and Order (October 15, 2003)

negotiated a comprehensive settlement of a variety of pending CVEC issues and CVEC was sold to PSNH. ((OCA St. No. 3, pp. 33-34).

Upon conclusion of the sale, CVEC customers began paying the same rate as all other PSNH customers or 20% less than their current CVEC rates. CVEC customers also began experiencing better service, since PSNH's crews could respond on a more timely basis. PSNH customers did not see a rate increase. The cost of the purchase was folded into PSNH's stranded costs restructuring settlement, extending the recovery period by about 2-3 months. This difference in the recovery period under the PSNH restructuring agreement was not noticeable to customers. The transaction was possible because CVEC (10,000 customers) was small in relation to the PSNH (475,000 customers) load. (OCA St. No. 3, pp. 34-35).

LCG contends there is no legal or structural impediment that prevents an electric cooperative such as Sussex from acquiring an investor-owned utility. In Pennsylvania, Wellsboro Electric Company and Citizens Electric Company of Lewisburg are both investor-owned utilities owned by an cooperative utility. The Pennsylvania Commission just recently approved the sale of a small gas company, Gasco Distribution Systems, Inc.'s Claysville Division, to Knox Energy Cooperative Association, Inc. (A-120002F2001, Order Entered September 29, 2006). In Hawaii and Vermont, Citizens Communications sold its local electric subsidiaries to Kauai Electric Cooperative and Vermont Electric Cooperative respectively, which operate the former investor-owned utilities as cooperatives. (OCA St. No. 3, p. 35).

LCG contends, based on a conjunctive reading of Sections 501, 1301, 1501 and additional PA and extra-jurisdictional authority, that the Commission has both the

statutory authority and the duty to invoke its powers to force the divestiture by O&R of the PCLP system. Any lesser action would be an abdication of Commission authority in this matter. If the Commission is unable to reach this decision, LCG contends that an Order to Show Cause be issued as to why PCLP's Certificate of Public Convenience should not be revoked.

D. PCLP's Extraordinarily High Rates Coupled with Grossly Inadequate Service Justify the Relief Requested.

The LCG is asking for this Commission to grant the extraordinary relief of compelling O&R to put the PCLP system on the market to be acquired by an interested purchaser, in this case Sussex. Under less severe circumstances other lesser forms of relief may have sufficed. If this situation had only involved unjust and unreasonable rates, some of the other options suggested by PCLP and the Law Bureau in its Report may have been considered such as financial hedges or integration with Rockland Electric. If the circumstances only involved poor service, then penalties, sanctions and a directive from the Commission to take specific actions in a definite timeframe may have been sufficient to address the issues. Unfortunately, PCLP customers are faced with longstanding service issues exacerbated by intolerably high rates. Extraordinary measures of relief are now required.

VI. PCLP'S RATES, AS APPLIED, ARE UNJUST AND UNREASONABLE.

A. PCLP's Utilization of the Financial Swap/Auction Mechanism in the Face of Volatile Market Conditions Was Imprudent and Directly Resulted in Establishment of Unjust and Unreasonable Rates.

In February 2001, PCLP filed a Petition seeking to increase the POLR rates established in its original restructuring case, due to claimed increases in its costs of procuring generation supply, from the wholesale market. The parties eventually

reached a settlement agreement in mid-2002 establishing a new, higher set of POLR rates that would remain in effect through the end of 2005, with the "rate cap" for generation rates reaching 5.93 cents per kWh in 2005. The settlement had certain other important conditions including a distribution rate cap, the PCLP's commitment to conduct a PJM interconnection study (to determine whether customers would obtain net benefits from interconnecting with PJM) and PCLP's agreement to submit its post-2005 generation supply plan by June 1, 2005. The Commission approved this settlement agreement, as filed, resulting in relatively stable rates from mid-2002 through 2005. (Docket No. P-00011872, Order entered August 9, 2001) (OCA St. No. 1, p. 10).

PCLP submitted a Generation Supply Plan ("Plan") on May 31, 2005 as required by the 2002 Settlement Agreement. The Plan called for the acquisition of "financial swap" instruments through a computer-based auction (utilizing capacity and energy hedges) for varying time periods, potentially up to three years. The auctions would have "ceiling prices" to use as the basis for determining the acceptability of the bids. The auction results, if successful, would serve as the basis for setting POLR retail rates, along with a true-up mechanism to ensure dollar-for-dollar cost recovery.² PCLP's proposal was similar to an auction held earlier in 2005 by its New York affiliate, O&R, for a portion of its load. (OCA St. No. 1, pp. 10-11).

PCPL utilized a hedge mechanism rather than a more traditional mechanism because it believed that its intra-system Power Supply Agreement ("PSA"), approved by the Federal Energy Regulatory Commission ("FERC"), precluded the use of a more

² PCLP's proposal involved a financial swap instrument hedged for differences between a fixed price and the New York day-ahead market. However, load imbalances are resolved in the real time market, and there can be differences in price between the real time and day-ahead markets. This true-up mechanism ultimately was not approved by the Commission.

standard competitive procurement of physical (e.g., full requirements) power supplies to serve POLR loads. PCLP's New Jersey affiliate, Rockland Electric, had obtained a FERC modification to the PSA to permit it to do just that, and there was no reason why PCLP should not do the same. In early 2006, PCLP obtained the needed FERC approval and no longer faced this procurement restriction. After an opportunity for review by the parties, the Commission permitted the auction process to proceed, with certain modifications. (Docket No. P-00052168, Order entered September 23, 2005) (OCA St. No. 1, p. 11).

Wholesale market generation prices, since the time of the 2002 settlement, exhibited an upward trend and considerable volatility. As OCA witness Kahal testified, there was also an upward price trend during calendar 2005, which was exacerbated by a very extreme summer. Prices in both gas and power markets spiked sharply in September 2005 in the wake of the Gulf hurricanes which, for a period of time, seriously disrupted gas supply markets, both the cash market and futures market. Wholesale power supply prices, including in NYISO Zone G, are closely linked to the gas market since natural gas is the marginal fuel for electric generation in many hours. The price spikes persisted from September 2005 through much of the winter of 2006, but have abated somewhat since then due to a combination of a mild winter and gas supply recovery. (OCA St. No. 1, pp. 11-12).

PCLP conducted its auction on October 25, 2005. As Mr. Kahal noted, the auction was "successful" in that it functioned mechanically and produced a winning bidder. However, the pricing results were extremely high and did not generate a high degree of competition or aggressive bidding behavior, unlike competitive procurements

that have occurred in other states. There were only two bids (and only one bid for the capacity product), with the winning bidder being the Company's unregulated affiliate, Consolidated Edison Energy, Inc. ("Con Ed Energy"). (OCA St. No. 1, p. 12).

The all-in cost of power (energy, capacity and ancillary services) was in excess of \$100 per MWh. After reflecting adders for line losses, taxes, etc., this produced residential generation rates in excess of 14 cents per kWh (for the first 1,000 kWh of monthly usage). This resulted in the unprecedented 73 percent bundled rate increase and 129 percent POLR generation rate increase, taking effect on January 1, 2006. As noted by OCA witnesses Kahal and Brockway, the effect of this increase caused "rate shock" and provoked a highly adverse customer reaction. The rate increase prompted the Commission to establish an investigation to review both the causes of the rate problem and potential mitigation options, both near term and long term. (Dkt. No. P-00052168; Order entered February 14, 2006) (OCA St. No. 1, pp. 12-13; OCA St. No. 3, p. 12).

As observed by OCA witness Kahal, the PCLP rate shock impact far exceeded other similar occurrences in the electric market in the northeast. For example, Baltimore Gas & Electric Company ("BGE") in Maryland experienced a generation (POLR) rate increase in excess of 100 percent (compared to its capped rates), but that percentage increase started from a much lower base figure. A phase-in plan has been adopted in Maryland limiting the initial (bundled) rate increase to 15 percent. Other utilities (and/or regulators) that have experienced or anticipated this problem are exploring strategies for avoiding future rate shock such as the use of resource portfolios and a staggered (or "laddered") power procurement method. This includes the PCLP's

New Jersey affiliate, Rockland Electric, which acquires power for its POLR customers using three-year staggered contracts. (OCA St. No. 1, p. 13). On its face, LCG asserts that PCLP's utilization of the hedging and auction process during times of extreme market volatility demonstrates, at best, imprudence and, at worst, irresponsibility toward the ratepayers where a fundamental commodity like electricity is left to the vagaries of the market.

Moreover, the Commission-sponsored Direct Energy opt-out aggregation program provided only modest savings to customers relative to the PCLP POLR rates. Direct Energy could provide these savings because of some moderation since last October in wholesale power prices, but it cannot correct the Company's underlying structural problems that have led to the extremely high generation costs. (OCA St. No. 1, pp. 13-14).

LCG contends that PCLP's (and O&R's) reliance on the financial swap/auction mechanism in 2001 in the face of volatile market conditions was imprudent and directly resulted in the establishment of unjust and unreasonable rates in violation of Section 1301 of the Code. These decisions resulted in the adoption of a prevailing market rate for generation which reflected an aberrantly high cost of power—a result which could have been avoided if other sources of generation had been available to PCLP.

B. Structural Problems Unique to the PCLP System Make Reliance on Market-Based Mechanisms for Procuring Power Directly from the NYISO Imprudent and Risky.

As noted by OCA witness Kahal, PCLP's price spike from its October 2005 procurement is attributable to the following factors: (a) poor market timing; (b) the extremely small size of its POLR load; (c) direct interconnection with only the New York

ISO market; and (d) restrictions under the PSA (OCA St. No. 1, p. 14). A discussion of these four factors follows.

As Mr. Kahal noted, principal concern must be given to the small size of the load and the absence of a PJM interconnection that limited the interest of wholesale suppliers to participate in the auction. PCLP's load is very small and bidders incur significant administrative costs when participating in an auction. Mr. Kahal illustrated the impact in his testimony at p. 16. The table below (extracted from Kahal testimony) 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 PCLP'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

As can be seen, the New York ISO market price premium over PJM as of October 2005 was about \$20 per MWh. (OCA St. No. 1, p. 15).

Market prices have declined significantly since that time, and the New York versus PJM differences have somewhat narrowed. Mr. Kahal considered the following comparisons for forward years 2007, 2008 and 2009 as of November 3, 2006 (again, for on-peak block energy):

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

This date indicates a reduction from October 2005 in New York prices (for future years) of about \$15 per MWh (or about \$20 compared to last October's price for 2006 supply) and a New York/PJM differential of about \$15 per MWh. (OCA St. No. 1, p. 16).

On balance, Mr. Kahal's analysis demonstrates that, if PCLP were to go to the market today for POLR power in the NYISO, it might be able to reduce its costs by 1.5 to 2.0 cents per KWh – a 10 percent reduction in bundled rates and roughly a 15 percent reduction in generation POLR rates. A PJM interconnection could provide further reductions on the order of another 1.5 cents per KWh. Mr. Kahal concludes that "there could be the potential for total savings of 3 to 3.5 cents per KWh at current markets prices and if a PJM interconnection were deemed feasible (ignoring for the moment the cost of that interconnection). This would be a very large rate reduction, although it still leaves PCLP's rates very expensive by historical standards and in relation to rates charged by other Pennsylvania utilities." (OCA St. No. 1, pp. 16-17).

Mr. Kahal offers this additional caveat:

Even these results must be considered with caution, however. I base this analysis on published data from wholesale power markets, and this assumes that the Company can successfully and competitively procure power from these markets. Given the Company's small load, we cannot be certain of that. More importantly, PCL&P is not

procuring power today and has no announced plans to do so any time soon. We have no idea what market conditions will be the next time it seeks to procure POLR supply. Hence, the cost reductions that are identified above may not be available next time PCL&P procures POLR power supplies from the wholesale market.

(OCA St. No. 1, p. 17).

With regard to the restrictions under the PSA, Mr. Kahal testified there is no way to unambiguously determine the impact of that restriction since the principal "driver" of the high costs obtained from the October 25, 2005 auction was market timing. However, Mr. Kahal observed that the bidder market response to that auction was poor, with only two bidders, one being an affiliate, and this may have been influenced by the financial swap approach. Mr. Kahal noted that physical product auctions conducted by utilities for POLR have elicited far more active bidding (e.g., procurements in Maryland, New Jersey and Illinois). A less active bidding process means a higher price outcome, all else equal (OCA St. No. 1, pp. 14-15).

Kahal concludes that reliance on market-based mechanisms for procuring power from the NYISO are risky and exposes PCLP customers to further price volatility. The LCG concurs in this finding and urges the ALJ to make the same finding that the current market-based, NYISO limited sources for procuring power supplies really exposes PCLP customers to a double risk—to market volatility and to the limited opportunities of the NY interchange market..

C. PCLP's Small Load Presents Another Structural Impediment to Procuring Lower Cost Power.

PCLP's small service area and load are yet another impediment to obtaining reasonably priced power. As witness Kahal observed, the small POLR load elicits less

interest from the market 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). Kahal testified that, as a rule, the larger the load the more active the bidding and the lower the market price results are likely to be. Alternatively, customers will be harmed by a weak competitive procurement process. (OCA St. No. 1, p. 17). An additional problem with a small load 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). In Mr. Kahal's opinion, this approach would appear to be impractical for full requirements service for PCLP's 16 MW POLR load. (OCA St. No. 1, pp.17-18).

LCG contends that the nature of PCLP's small service area and the structural limitations of not being able to access the PJM power sources create insurmountable obstacles to the establishment of just and reasonable rates as required by Section 1301 of the Code. As a result, consideration must be given to alternatives that allow PCLP to access the PJM interchange so as to benefit from its cost advantages over the NYISO.

D. PCLP's Proposed Interconnection with the PJM Is Fictional.

PCLP submitted an updated feasibility study of interconnecting with PJM by extending a 69 KV line to PPL's Twin Lakes substation. PCLP estimated a project

investment of \$13.6 million (translating into an annual revenue requirement of \$2.7 million using a 20 percent carrying charge rate) and annual benefits (energy savings) of \$2.2 million. Since annual costs are estimated to exceed annual benefits, the study concludes that the interconnection would not be cost effective. (OCA St. No. 1, p. 18).

Mr. Kahal noted in his testimony that the \$2.7 million levelized annual cost may be too high since it is based on a 20 percent levelized carrying charge rate which is not supported in the study. Even at a lower 15 percent figure, the interconnection project would barely be a "break even" for customers, assuming the accuracy of the PCPL's cost data. PCLP witness Regan offers this option in his testimony but readily admitted on cross examination the PCLP has no real intention of constructing the line nor has it begun any preliminary planning for the project. (OCA St. No. 1, p. 18; PCLP St. No. 2 pp. 2-3; 1/16 Tr. 101-102).

As the testimony of Mr. Kahal establishes, the existing structural realities of the PCLP system create insurmountable obstacles to ever obtaining reasonably priced power. All of the options leave the customer base too exposed to the vagaries of the electricity market. LCG asserts that none of the options put forth by O&R/PCLP in their case presents any timely and effective solution to the combined issues of high rates and poor service. None of the options is superior to the Sussex proposal.

E. The Impact of Current Rates on the Service Area Has Been Devastating.

1. Introduction.

The rate increase is having a devastating impact on the Milford/Matamoras service area. As testified by OCA witness Brockway who attended the 10/4/06 public input hearings, businesses are closing, those that remain open are cutting back on staff

and local expenditures, consumers are finding it hard to continue to pay their bills and, with the adverse impact of the increase on the housing market, businesses and homeowners are likely to see a reduction in the value of their properties. Public entities such as school districts and municipalities are finding it difficult to cover the sudden increased expenses and will have to pass on their increased electricity bills through higher taxes. Residential customers provided compelling and often emotional testimony on the sacrifices they have had to make to pay their bills. (OCA St. No. 3, p. 13).

The public input and complainant hearings provide the Commission with many examples of the significant economic disruption and hardships experienced by small businesses. The information provided, by way of example, ranged from laying off employees and reducing operations to closing businesses. (Testimony of Jan Hurwitz, 10/4 Evening Tr. 92-95; Testimony of Kris Pranski; 10/4 Evening Tr. 67-69). Testimony was also provided that the small business customers have taken steps to try to limit usage, such as by eliminating summer air conditioning, and cutting back on other expenses. (Testimony of Marsha Van Lenten; 10/4 Evening Tr. 19-21; Testimony of James Cox; 10/4 Evening 23-24) But despite these efforts, many testified that they are struggling to stay afloat. Several explained that they may not make it through the next year. (Testimony of Nancy Simonet; 10/4 Evening Tr. 78-79). Small businesses cannot raise their product prices because of the electric rates without becoming non-competitive with businesses outside the PCLP service area (Testimony of Ed Nickles 10/4 Morning Tr. 15). As one witness put it, they face a "Catch 22" – an impossible dilemma caused by conditions out of their control, where no option is viable. (Testimony of Ed Nickles; 10/4 Morning Tr. 15-16). (OCA St. No. 3, pp. 13-14).

2. The Service Area.

PCLP serves about 4,400 residential and commercial customers in Pike County, PA. Pike County is in the far northeast corner of Pennsylvania. Tourism is a mainstay of the local economy. In the last 15 years, small businesses have opened to cater to the influx of population and the tourists who come to enjoy the dramatic landscape along the Delaware River, the well-preserved small-town feeling of centers like Milford and Matamoras, and the bucolic feeling of the rural countryside. Services are the core of the Pike County economy, according to the Rural Policy Research Institute. Self-employment is over 20% of the non-farm private employment in the County, one of the highest county percentages in Pennsylvania. There is no industry in the County. The number of residents 60 and older grew by 15% or more in Pike County between 1990 and 2000, one of only 5 counties in Pennsylvania to become a retirement destination county. (OCA St. No. 3, p. 14).

As Ms. Brockway testified, the demographic effects of the rate increase are obvious. Residential customers are almost 80% of the customer accounts, and commercial customers are 20%. Residential customers represent 41% of the customer base by usage, with commercial accounts using 59%. Pike has no industrial accounts. By comparison, as of 2003, residential usage for the major electric distribution companies in Pennsylvania was 34% of total usage, and industrial was 33%, with commercial making up the difference. Pike's customer base and distribution usage base is thus heavily skewed towards residential and commercial accounts. (OCA St. No. 3, p. 14).

3. PCLP's Current Rates Far Exceed Rates of Other PA Jurisdictional Utilities.

Ms. Brockway testified that no other Pennsylvania utility has faced so severe a rate shock as a result of restructuring. Rates for other Pennsylvania utilities, even very small ones, have remained lower, even after their generation rate caps have expired. Pennsylvania utilities have developed post-rate cap POLR rates both before and since the January 1, 2006 PCLP rate increase, but no utility has seen results that were as drastic or as high as the Pike auction results. (OCA St. No. 3, p. 15).

Pike has by far the highest POLR charges of any Pennsylvania utility. Exhibit NB-4 shows average monthly 2006 POLR bills for residential consumers for 9 Pennsylvania electric utilities (Penelec, MetEd, Citizens, Wellsboro, PPL, UGI, Duquesne, PECO and PCLP). As can be seen, Pike has by far the highest POLR bills for residential customers using an average of 700 kWh per month. Customers of Citizens and Wellsboro, the two other tiny Pennsylvania electric utilities, were only 42% and 45%, respectively, of PCLP's POLR charges – Note that Citizen and Wellsboro are tied into PJM. (OCA Ex. No. NB-4; OCA St. No. 3, p. 15).

By comparison, overall bills for residential customers in the neighboring Metropolitan Edison Company ("Met Ed") and PPL Electric Utilities ("PPL") service territories average \$67 and \$71 respectively for a customer using 700 kWh per month. Customers just over the line separating PCLP and either Met Ed or PPL currently pay only a little over half as much as PCLP customers. Customers of the second highest priced utility in the state, PECO, pay about \$102 per month on average during their summer months (less in non-summer months), about \$19 per month less than PCLP customers under the Direct aggregation and \$30 per month less than the PCLP rates.

Customers of the two other very small investor-owned utilities, Citizens and Wellsboro, pay about \$52 and \$62 per month on average, respectively. Exhibit NB-5 shows these comparisons in tabular and graphic form. (OCA Ex. No. NB-5; OCA St. No. 3, pp. 15-16).

Ms Brockway further put the PCLP rate situation in context. Other Pennsylvania customers will see some increases, but likely not as high as the increase experienced by PCLP customers. For example, Penn Power recently conducted a solicitation to obtain generation supply to meet its POLR needs. The solicitation, for residential customers, produced an average retail rate for that class of 8.25 ¢/kWh. UGI-Electric also recently established POLR prices for 2007 to 2009. Those prices, on average, for residential customers range from 8.933 ¢/kWh to 9.796 ¢/kWh. The UGI-Electric increases are reflected in Exhibit NB-6. PCLP POLR rates will remain by far the highest in the state. (OCA St. No. 3, p. 16). Ms Brockway agrees with Mr. Kahal that the structural deficiencies of the PCLP system, having only access to the NYISO, is a continuing factor in its inability to access lower price power.

LCG asserts that the fact that PCLP rates, in a post-rate cap environment, far exceed the rates paid by customers of all other PA jurisdictional electric utilities is prima facie evidence of the failure of deregulation to bring the benefits of competition to PCLP customers and further militates for a radical solution that allows PCLP to break free from the constraints, both geographic and otherwise, that created this situation.

4. The Impact on the Residential and Business Community Is Unprecedented.

The attendance at the October 4 public input hearing, as well as the attendance at the February 27, 2006 PUC fact-finding, hearing was largely unprecedented. Several

hundred residential and business customers attended the February 27, 2006 fact-finding session at the Delaware Valley High School and over 150 attended the October 4, 2006 public input hearing at the Best Western at Hunt's Landing in Matamoras. PCLP customers were angry, frustrated, and indeed fearful of the impact that the electric rate situation in Pike County will have on their lives and livelihoods. Witness Brockway stated it best:

I have been to innumerable public hearings in which customers express their opposition to a rate hike. It would be surprising if customers welcomed rate increases, of course. And over the years I have seen many customers express frustration or anger over utility rate increases. But I have almost never experienced the level of concern and deep apprehension that I saw from the customers who came to testify before the Commission, and the people I spoke to outside the hearing. People in Pike County are gamely trying to hold on until some relief may come, but they are deeply fearful regarding their future and the future of their community.

(OCA St. No. 3, pp. 16-17).

An overview of the impact of the PCLP rate increase on the Milford/Matamoras community was presented by LCG witness Harry Forbes who is Chairman of the Pike County Commissioners. Mr. Forbes presented testimony both on behalf of the County, as a residential customer, and on behalf of the residents and businesses of the PCLP service area. (11/6 Tr. 15-16). Mr. Forbes has held his position as County Commissioner for 11.5 years and additionally is active on a number of boards and committees within Pike County including the Chamber of Commerce of Pike County, the Industrial Development Authority, Economic Development Authority and the Northeast Economic Development Council. (11/6 Tr. 17). Mr. Forbes testified initially as to the lack of notice or forewarning by PCLP prior to the imposition of the rate increase. Mr.

Forbes was simply visited by a PCLP representative approximately a week before the increase took effect, in January 2006. This representative informed him that the service area would be seeing an approximately 73% increase. (11/6 Tr. 18).

Mr. Forbes' extensive involvement in the community makes him well suited to assess the impact of this rate increase on the Milford/Matamoras residential and business communities. From his perspective as an elected official, Mr. Forbes testified that the County has been forced to shift some offices outside of the service area in order to limit electric usage. Some of these facilities have been moved into the PPL service area. Some facilities have been moved into the Blooming Grove region as an additional energy reduction measure. (11/6 Tr. 20). The witness further testified that consideration is being given to constructing either a new courthouse or administration building and relocating that facility outside of the service area. (11/6 Tr. 20-21). Mr. Forbes presented LCG Exhibit No. 6 which provides a detailed listing of county facilities and electric usage comparing 2005 and 2006. This exhibit illustrated a significant increase in electric costs over that time period. (11/6 Tr. 21-22). The impact of this rate increase will also likely affect the County budget process into the future. Mr. Forbes testified that not only will current PCLP customers have to bear this increase but all Pike County taxpayers will have to share in paying the additional electric bill. (11/6 Tr. 23).

Mr. Forbes testified that the Pike County area is currently experiencing one of the largest rates of population growth within the U.S. and certainly within the state of Pennsylvania. (11/6 Tr. 24-25, LCG Ex. Nos. 1-2). However, the electric rate increase has imposed severe constraints on the economic health of the Milford/Matamoras area. Mr. Forbes observed that some businesses have closed, relocated operations to

smaller quarters or restricted their electric usage. Family-owned businesses have been required to have their family members seek other employment. (11/6 Tr. 26). In many instances, the electric bills for the small businesses exceed the rents of those businesses. (11/6 Tr. 26).

The LCG presented the testimony of Mr. William Hessling who is the Business Administrator on behalf of the Delaware Valley School District, which is one of the largest employers in the PCLP service area. Mr. Hessling has wide responsibilities for the DVSD with regard to budgeting, financial reporting, taxes and administration, investments, insurance and transportation. (11/6 Tr. 51). Mr. Hessling testified that, beginning in January 2006, DVSD had experienced, for those facilities located in the PCLP service territory, an approximate 129% increase in generation rates and a 73% overall increase in electric distribution and generation rates. This worked out to approximately \$23,000 a month in increased electric expenditures for DVSD. (11/6 Tr. 53; LCG Ex. No. 3). Mr. Hessling testified that DVSD's facilities are located in the service territory of PCLP, Met Ed and PPL. Consideration had been given previously to interconnecting some of the PCLP facilities to sources located in the Med Ed and PPL territories but these were ruled out as not feasible. (11/6 Tr. 54). Annualized impact on DVSD from the increase in electric rates is approximately \$274,000 per year just counting the main campus. Moreover, this increase was not anticipated in the DVSD budget and so DVSD was required to access funds in reserve accounts in order to meet the higher electric bills. (11/6 Tr. 55-56). DVSD may, in the future, as a result of the higher electric rates, be required to restrict expenditures on hiring additional teachers and ultimately raise school taxes. (11/6 Tr. 56-57). The school district has contracted

for performance audits and installed digital controls in an effort to reduce electric usage and have done about as much as possibly can be done under the circumstances. (11/6 Tr. 57-58).

The impact on small businesses was also supported by the testimony of Mr. Joseph Fretta who operates Fretta's Italian Food Specialties in Milford. This business is 100 years old. Mr. Fretta relocated to the Milford area in order to take advantage of the more relaxed lifestyle and lower cost of living. (11/6 Tr. 102-103). Mr. Fretta has been particularly impacted by the increase in electric bills instituted in January 2006. Mr. Fretta's business utilizes 18 refrigeration compressors, electric lighting and other food preparation appliances. Mr. Fretta has attempted to cut back in terms of employees and electrical usage but, due to the nature of the business, these cutbacks have not made much impact. (11/6 Tr. 104). Mr. Fretta is currently in arrears in his electric bills and makes good faith attempts to pay approximately 30-33% of each bill as it comes due. However, the arrearage continues to grow. He does not have a formalized payment arrangement with PCLP. (11/6 Tr. 105). The impact of the electric bills is significant and now exceeds his mortgage in terms of size of expense. (11/6 Tr. 106).

The increase in electric expense has had the biggest impact on employees with cutbacks in employee numbers and hours even during a high volume period such as Thanksgiving and Christmas holidays. (11/6 Tr. 107). Mr. Fretta testified that he is unable to raise his product prices commensurate with the increase in electric costs. His customers are local residents and tourists but they can purchase their food products elsewhere outside the service area where prices are lower. Additionally, the electric

rate situation has created volatility and uncertainty with regard to how his business may succeed in the future. (11/6 Tr. 108-109).

Impacts on small businesses were also the subject of testimony of Richard Snyder who testified as the owner or partner in a number of the complaints in this proceeding, including Samall Properties, Inc., Hotel Fauchere/Fauchere Hospitality, LLC, Community Building Projects, LLC and Three Lane Utilities Corp. Samall Properties and Community Building Projects are entities that own rental properties, housing many small businesses within the Milford business district. Hotel Fauchere/Fauchere Hospitality owns and operates a restored hotel in the downtown Milford area that is now open for tourists. Three Lane Utilities is a small water and wastewater utility serving portions of Matamoras area. (LCG St. No. 1, pp. 1-2). Mr. Snyder is active on the Milford Enhancement Committee, the Chamber of Commerce for Pike County and sits on the Board of Directors of Wayne Bank. Mr. Snyder is active in the economic development of the Milford area and has spent considerable amounts of time working to improve the lifestyle of this area. (LCG St. No. 1, pp. 3-4).

Mr. Snyder currently has 42 tenants across his various businesses, which include Milford Professional Park and Sawkill Business Center owned by Samall Properties, Inc. and the historic Milford Schoolhouse, Old Lumberyard Shops and the Joy Bar Building owned by Community Building Projects, LLC. Additionally, Fauchere Hospitality, LLC operates the Eagle and Eaglet residences, Emerson House and Hotel Fauchere all located in Milford. Mr. Snyder also has a residence and operates a llama breeding farm in the service area. (LCG St. No. 1, p. 2; LCG Ex. No. 4).

Mr. Snyder provided a list of 42 tenants in LCG Ex. No. 4. Mr. Snyder testified that, since the imposition of the rate increase, several tenants have informed him that they are not able to renew their leases due to the higher electric rates. Several tenants have already terminated their lease. There are a number of vacant properties that are now difficult to rent. Mr. Snyder is aware that, in a community heavily reliant on tourist activity, small retail operations such as retail tenants will not be able to raise their prices adequately to cover the higher electric cost and will thus not operate at a profit. (LCG St. No. 1, p. 5).

Additionally, Mr. Snyder rents some of his properties to governmental agencies. These tenants negotiate fixed rent leases that do not allow for annual increases. As a result, higher expense such as electric rates are not recoverable from these tenants and must be absorbed by the businesses. Mr. Snyder's companies, as a consequence, suffer a loss on these tenants. (LCG St. No. 1, p. 6). Mr. Snyder also testified that he is experiencing longer vacancy rates for tenant spaces as well as having more difficulty attracting prospective tenants. Once tenants learn about the high electric rates, they decide not to locate in the service area. (LCG St. No. 1, pp. 6-7).

Mr. Snyder, through his involvement with the Milford business community, is uniquely suited to assess the effect of the electric rate increase on local businesses. Mr. Snyder observed that the higher PCLP electric rates are having a devastating effect on the business community. Mr. Snyder testified that he has observed a number of small businesses close in the downtown Milford area and he is aware that other businesses may face a similar fate. (LCG St. No. 1, pp. 7-8).

Additionally, LCG presented as a witness Mr. Darrin Hervieux who is employed as the Operations Manager of Altec Lansing Technologies, Inc. The Altec Lansing facility in Milford serves as the headquarters and distribution point for 60% of all U.S. sales. Altec Lansing is a producer of high quality audio components, primarily speakers and speaker related products. The Milford facility employs approximately 130 people and is one of the largest employers in Milford. (LCG St. No. 2, p. 1) Mr. Hervieux sponsored LCG Ex. No. 5 that provides a comparison of electric costs from January 2006 through August 2006 at the new cost per kWh versus the average cost per kWh prior to the increase. Mr. Hervieux calculated that the cost increase for the Altec Lansing facility for this eight-month period over the prior year was approximately \$37,870.

Mr. Hervieux testified that the increased electric rates will have a detrimental impact on Altec Lansing's business operations. The company has had to modify its budget for 2006 to accommodate the larger electric rate increase. The higher electric rates could cause Altec Lansing to review its plans to add new equipment and make facility upgrades in the future. The electric rate increase comes at a particularly bad time since Altec Lansing has recently invested in expanding its Milford distribution facilities which also increases its need for electric power. (LCG St. No. 2, p. 3).

The impact on the residential and business community was also highlighted by the testimony of numerous individuals at the 10am public input hearing held on October 4, 2006. Mr. Edward Nickles, Sr., President of the Pike County Chamber of Commerce also testified on behalf of the small business community in Milford. Mr. Nickles'

organization represents 450 small businesses in the PCLP service area. He testified as follows:

I can't begin to tell you the amount of hardship this has placed on our business community. Many of these businesses are small enterprises and cannot afford this increase. Many are struggling now because of fuel increases and many have told me that their electric bill will now exceed their rent or mortgage payment. This will likely cause many businesses to close their doors, with no one wanting to take their place due to the high rates. We will lose valuable services. The fact is, some have already closed, and other are barely hanging in.

Those who were forced to raise prices to try and recoup this exorbitant rate increase are no longer competitive with businesses outside of the PCLP service area and are therefore losing customers and business. This has created a "Catch 22". If you raise your prices, you lose business and therefore lose money. If you try to hold your prices, you may keep your customers but you still lose money.

(10/4 Morning Tr. 15-16).

Mr. Nickles also testified as the owner of the Nickles Office Plaza in Milford. He testified that his electric bill, for the first eight months of 2006, increased 82.5%. This has affected both Mr. Nickles' real estate business as well as his home building business since new home starts are now depressed as a result of the higher electric rates. (10/4 Morning Tr. 18-19).

Mr. Nickles concluded his remarks as follows:

The Public Utility Commission is supposed to protect the citizens of Pennsylvania and provide fair and equitable rates for its utility users. We, the citizens of the Pike County Light & Power area, have no choices. We are not able to buy power from our neighboring utility companies, whose rates are half of what PCLP is charging.

We need relief from these exorbitant rates. We need choices. Require PCLP to hook up to Met Ed, Sussex Coop or PPL. Or better yet, have them sell off their Pike County system to one of the adjoining companies.

(10/4 Morning Tr. 22).

Another small business owner, Mr. Peter Regas, testified to one monthly bill for the Milford Diner of \$4,928. This bill compared to last year's bill for the same time period of \$2,870. Mr. Regas also operates properties with other tenants who have indicated that they themselves will be closing. (10/4 Morning Tr. 31-33).

Difficulties in operating a small business while faced with higher electric rates were addressed by the following 10/4/06 morning session witnesses:

1. Ms. Patricia Dudkinski, owner of Stencil Creations, testified she has had to cut back on lighting and appliances in her business. (10/4 Morning Tr. 37-38).
2. Mr. Thomas Hoff, owner of a commercial building housing other small businesses and Chairman of the Milford Municipal Authority, testified to loss of tenants. (10/4 Morning Tr. 43-44).

Evening session witnesses also echoed the small business themes:

1. Mr. James Cox, owner of Olde Factory Antiques, has seen his bill go from \$2000-\$3000 annually to \$6000-\$7000 annually. (10/4 Evening Tr. 23-24).
2. Kris Pranski, owner of the former Station House Products and Pike County Communications had to close his business because of the electric rates. (10/4 Evening Tr. 67-68).

Many of these 10/4/06 evening witnesses testified to having to cut back on electric usage such as for decorative lighting and air conditioning. (10/4 Evening Van Lenten, Tr. 19; Astrimger, Tr. 53-54; Simonet, Tr. 78-79; Lieberman, Tr. 85-86; Heller, Tr. 102-104; Grigal, Tr. 107-108; Cotterill, Tr. 111-112).

Additionally, other business owners testified at the evening session on the overall impact of the rate increase on the community. Davis Chant, who owns the largest real estate firm in the Pike County area, testified to the impact of the higher electric rates on depressed home sales in the Milford/Matamoras service area. He has seen a precipitous drop in interest in home sales since the imposition of the rate increase. (10/4 Evening Tr. 60-66).

Jan Hurvitz, who owns a computer firm in the Milford area, has also been negatively impacted. In 2004, Ms. Hurvitz rented 3,200 square feet, operating 17 computer workstations and 12 servers. The business ran 12 hours a day, 6 days a week. Since the imposition of the rate increase, Ms. Hurvitz has scaled her business back to 1,100 square feet with 5 computer workstations and 3 servers. Lighting has been converted to fluorescent. Time of operation was cut back to 8 hours a day, 5 days a week. Some of the work has been outsourced to Kentucky and employees have been laid off. Incredibly, prior to the cutbacks, Ms. Hurvitz's electric bill averaged approximately \$730 per month. With a two-thirds cutback in area of operation and overall electric load, the bill still averages approximately \$683 per month. (10/4 Evening Tr. 92-94)

Another small business owner, Charles Lieberman, who is employed by the law firm of Abrahamsen, Moran & Conaboy, testified to the impact of the higher electric rates on his law office budget. He has been unable to rent a second floor apartment due to the increase. Additionally, potential clients who are seeking to reside in the area decide to move elsewhere when they discover the nature of PCLP rates. (10/4 Evening Tr. 85-86).

The October 4, 2006 public input hearing also brought out many residential customers who have been burdened by the high rates to the point of having to cut back on electric usage and/or reduce other aspects of the budget. (10/4/06 Morning Session – Comis Tr. 40-41; Paquette; Tr. 51-52; Stagg, Tr. 58-62; Seidenstricker, pp. 68-71); 10/4/06 Evening Session – Goodin, Tr. 27-28; Rushton Tr. 29-31, Cotterill Tr. 33-35; Coackworthy Tr. 38-39; Hild Tr. 45-48; Boumenson Tr. 57-58; Schroeder Tr. 72-73; Nemecek Tr. 115-116; McCutchen Tr. 117-118; Skylar Tr. 125-126; and Hudgens Tr. 130-132). Many of these witnesses were senior citizens who live on fixed incomes or were single mothers who are trying to raise families on a single income. The ALJ and the Commission must also consider the customer-initiated petition (450 signatures), filed in his case by the OCA, that signifies the public outcry over the current rate situation. While petitions typically carry little weight in general rate proceedings, the petition produced in this case is predicated on the pent-up frustration of a customer base that believes their situation is not being addressed.

On balance and based on the largely unrebutted evidence of record, LCG contends that PCLP's current rates are having a devastating effect on the Milford area. Rates cannot be just and reasonable if, simultaneously they are unaffordable and were arrived at utilizing a defective market-based process. LCG contends that the current and anticipated future level of unremittingly high rates will not and cannot be corrected until changes to the structural deficiencies inherent to the PCLP service area are corrected. In order to take that step, the ALJ and the Commission must first recognize that current rates are unjust and unreasonable.

VII. PCLP'S SERVICE FAILS TO MEET THE SECTION 1501 STANDARDS.

A. OCA Expert Testimony Concludes PCLP's Service Practices to Be Deficient.

OCA policy witness Brockway spent considerable time examining customer attitudes towards PCLP on the issue of customer service. Brockway noted that most PCLP customers who discussed service quality at the hearings described the poor service as "an injury to which the rate hike has added an insult". (OCA St. No. 3, pp. 17-18). Witnesses complained about frequent blackouts and brownouts, lack of advance notice of planned outages and difficulty getting accurate information about outages. Numerous witnesses described PCLP as unresponsive to these concerns. A number of witnesses described electronic equipment they said was ruined by low voltage or by power surges while PCLP was working on the system. Some witnesses asserted that PCLP did not use safe procedures in performing maintenance. Many witnesses said they felt that they received worse service than customers of Orange and Rockland, PCLP's parent company across the river. (OCA St. No. 3, p. 17-18). Witness Chant summed up the prevailing attitude of customers testifying at the public hearings:

If I look back on the service we've been getting in Milford and the Pike County Light and Power service area, I would say it's just a stepchild type service.

(10/4 Evening Tr. 63;OCA St. No. 3, p. 18).

A principal concern has been the relocation of PCLP service and billing facilities from Milford to Port Jervis and Middletown, NY. All the work on PCLP's lines is done by crews from O&R in New York State. PCLP used to maintain a staffed equipment depot in Pike County, but discontinued it in 2004. (OCA St. No. 3, pp. 19).

In addition to deterioration in reliability since the take-over of PCLP's parent company by Con Edison, it appears that customers have become more concerned about reliability since the rate increase. From the statements of witnesses at the various hearings, it would appear that customers are no longer willing to tolerate service that has been poor, but reasonably priced, now that prices have increased sharply. If one were to look only at the reports of PCLP's customer surveys, it would appear that Pike customers have few complaints about Pike's customer service. However, these surveys do not tell the whole picture. The number of PCLP customers surveyed ranged from about 20 to about 55, depending on the survey. These are small sample sizes. Most importantly, these surveys are "transaction based" --- they ask customers who have called the utility about a specific call the customer initiated, rather than asking randomly selected customers about issues regarding their utility service generally. The evidence from the fact-finding hearing and the public hearings suggests that many PCLP customers are in fact dissatisfied with Pike's customer relations. (OCA St. No. 3, pp. 18-19).

Brockway testified that customers were very angry that the utility had given very little advance notice of the huge rate increase they experienced in January of 2006. She observed that customers also complained that the utility did not provide advance notice of planned shut-offs (and some even alleged that the utility misrepresented whether a given outage was planned or forced). (OCA St. No. 3, p 19). This echoes the testimony of Commissioner Forbes who stated that he received a visit from an O&R representative 1-2 weeks before the rate increase took effect. (11/6 Tr. 18).

B. LCG and Public Input Testimony of Residential and Business Customers Concluded PCLP's Service to Be Deficient.

There is ample record evidence to support LCG's assertion that the standard of service provided by PCLP does not meet the Section 1501 requirements. Several witnesses testified on behalf of LCG as well as at the public input hearings repeatedly raised issues about the quality of PCLP service. LCG witness Snyder on behalf of Small Properties/Community Building Projects/Hotel Fauchere/Three Lane Utilities testified as to several instances of service outages that had resulted in significant disruption of his business interests. Most significantly, Mr. Snyder testified that, on July 2006, he had just opened the Hotel Fauchere in Milford having invested \$8 million to restore this historic structure to its prior condition. The hotel was initially built in 1880. The opening included both the hotel and the hotel dining room. An electric outage on that day resulted in a pump burnout which set off a smoke alarm, disrupted guests and caused an evacuation of the hotel at great inconvenience and cost. There was significant financial loss associated with this outage. (LCG St. No. 1, p. 9).

On June 1-2, 2006, a 16-hour outage at the Milford Professional Park closed all of the tenants' businesses down for that two-day period. One of the tenants was a dialysis center that was required to transport its patients to another dialysis clinic located in Honesdale, 60 minutes away. Mr. Snyder testified that it took PCLP personnel two days to identify the cause of the outage and determine that it was, in fact, the fault of the utility. There was also a residual problem with sewage at the location due to the power failure. Additional closures at the Milford Professional Park occurred on July 3-4, 2006. (LCG St. No. 1, pp. 9-10).

Mr. Snyder, as a customer of PCLP, has also experienced significant voltage fluctuations that have caused damage to electronic equipment at his residence. Mr. Snyder has invested in surge protectors at his residence as well as a generator. Mr. Snyder emphasized that electric outages and voltage fluctuations are so frequent that it has become a fact of life in the Milford area that customers accepted as long as rates were reasonable. (LCG St. No. 1, p. 10).

LCG witness Harry Forbes, Chairman of the Pike County Commissioners, testified about the impact of power outages on a more global basis. As County Commissioner, he has personal experience with the impact of outages on day-to-day operations of county government. For example, the frequency of outages has resulted in additional burdens placed on emergency service personnel for traffic direction and other emergency functions. (11/6 Tr. 27). Electric outages also result in the closure of county offices with the exception of one building that is being maintained by a generator system. (11/6 Tr. 27). Electric outages also create disruption in the traffic flow along Route 209 that traverses the Milford and Matamoras areas. These outages create additional burdens on police, fire and ambulance personnel who must be dispatched to direct traffic during these outages. Outages are a major problem during the summer tourist months when the Pike County population increases from 50,000 to approximately 150,000. (11/6 Tr. 27-28).

Closure of the local PCLP service facility now requires PCLP maintenance crews to travel from either Port Jervis or Middletown, New York which can add as long as an hour to the outage time while affected customers are waiting on repairs. (11/6 Tr. 29). As a customer of PCLP, Mr. Forbes has personally experienced surges and voltage

fluctuations that damaged sensitive electronic equipment. In some cases, surge protectors protected his equipment but the frequency and magnitude of such voltage fluctuations have overwhelmed these devices. (11/6 Tr. 30). As an elected official, Mr. Forbes is also a constant recipient of complaints from both residents and businesses about the diminution in service quality in the PCLP service area, the absence of PCLP maintenance personnel and the length of time for repairs to be made. (11/6 Tr. 31-32).

LCG witness William Hessling, testifying on behalf of the Delaware Valley School District, testified that the frequency of outages has caused the District to install generators and battery back-up technology at the Route 209 campus. This has resulted in expenditures of over \$100,000 for installation at the various DVSD campuses. LCG witness Hessling did keep limited records regarding the frequency of outages that he testified to as follows based on information received from their electrical consultant, NRG Controls North. The frequency of the outages at the DVSD main campus were as follows: 8/11/04, 12/28/04, 1/4/05, 3/24/05, 5/30/05, 6/10/05, 6/17/05, 8/8/05, 10/29/05 and 2/19/06. (LCG Ex. No. 3, p. 7). No duration of these outages were recorded. This is simply a snapshot of outages as recorded by DVSD's electrical consultant. (11/6 Tr. 59-62).

Additionally, testimony provided by Mr. Joseph Fretta, a small business owner in the Milford area, provided a perspective on the frequency of outages and their effect on the small business community. Mr. Fretta operates a small specialty Italian food store which is heavily reliant on refrigeration equipment. Mr. Fretta has experienced particular difficulties with voltage surges and fluctuations that have resulted in damage

to compressors requiring replacement at significant cost. Replacement of burned out compressors now cost approximately \$1,600 per refrigeration unit. (11/6 Tr. 111).

Witness Peter Kenney, a retired attorney, testified extensively to the problems he has experienced with electric outages. Mr. Kenney stated that outages have become more frequent on a monthly basis and have disrupted not only appliances but computer service and the Internet. (11/6 Tr. 123). Mr. Kenney has looked into getting an alternate source of electric power such as a generator but the cost of these alternatives were prohibitive. (11/6 Tr. 123-124). Outages have caused Mr. Kenney to stock up on candles and have caused severe water shortages as his water pump is electrically operated. (11/6 Tr. 124). Moreover, his attempts to contact PCLP through use of the 1-800 number brought little or no result (11/6 Tr. 124-125).

The frequency of outages also affects the Cummins Hill section of the service area where Mr. Kenney resides. When he experiences outages, the entire Cummins Hill area (approximately 150 residences) is also without power. (11/6 Tr. 125-126). Mr. Kenney testified that he has not detected any decrease in the frequency of outages in recent history as opposed to testimony presented by other witnesses such as Mr. Forbes. (11/6 Tr. 126-127).

On cross-examination, Mr. Kenney testified that he had experienced approximately 12-15 significant outages during 2005 and several outages in 2006. (11/6 Tr. 136). These were supplemented by numerous other smaller outages of only a couple of minutes or less duration. (11/6 Tr. 136). Mr. Kenney did not maintain detailed records of the outages by date and time because of the sheer frequency of these

outages and the perceived lack of response he was receiving from PCLP. (11/6 Tr. 136).

Many residential and business customers testified at the October 4, 2006 public input hearing regarding the poor quality of service in the PCLP service area. Ed Nickles who operates Nickles Office Plaza and also owns and operates a home construction business, testified as follows.

In addition, we have constant power outages which are costly to every business in this network. Many times I have to shut down and send employees home, have no phones, loss of data in our computers. Just recently during a brownout, it fried one of our computers. Who pays for the lost equipment, wages and business? Not Pike County Light & Power, we do.

(10/4 Morning Tr. 19).

Peter Regas owner of the Milford Diner testified as follows:

The service we have this year, since the (rate) increase, we have three interruptions that hurt the business. Not even a letter from them saying I'm sorry... we couldn't provide you energy, and sorry that you lost any business, but you have to pay the bill. Three times interrupted, one was for four hours I don't recall the other ones.

Last year it was higher. It was about 16 interruptions, no letter. Nothing to say I'm sorry, can you delay to pay the bill for two weeks, because we lost business for one day or two days or three days.

(10/4 Morning Tr. 33).

Thomas Hoff, Chairman of the Municipal Authority of Milford, testified as follows:

The outages and interruptions are recorded electronically in our plant. Whenever there is a line hit, that is just a blip, or whether there is a frank outage, that is recorded on the computers. The implications of that are the computer advises our employees that the plant is in trouble. The generator kicks on, the employee jumps out of bed and goes

to the water plant to reset the equipment for the Milford water supply.

More specifically, from 5-18-05 until 6-10-06, which I believe is 13 months, there were 15 outages. That means things stop. That is a little better than one a month. There were 21 interruptions, for a total of 36 events. So added up that's about three a month that we've had to react to.

(10/4 Morning, Tr. 44-45).

The evening session of the October 4, 2006 public input also generated a lot of additional service complaints from residents and businesses. Davis Chant, owner of Chant Realty, testified that he has been a resident of the PCLP service area for close to 15 years. Service outages have been a constant fact of life during his residence. Mr. Chant testified to one service outage, several years ago, which personally cost his realty company "an amount in five figures" due to the loss of business opportunities resulting from the loss of phone service caused by an outage. (10/4 Evening, Tr. 62-63) The frequency of service outages has taken a great toll in terms of requiring volunteer service by the public in order to direct traffic or take care of other situations necessitated by the power outages. (10/4 Evening Tr. 63-64).

Dr. Lisa Coaldo maintains a dental practice in Milford. She testified to the frequency of power outages that have required her to shut down her office and send patients home with their mouths packed with gauze because the outage has occurred in the middle of a dental procedure. She testified that patients who are senior citizens and small families are delaying dental work because of the increased costs of electric rates. (10/4 Evening, Tr. 88-89).

Jan and Phil Hurvitz operate a small computer services firm in Milford. Although high electric rates have caused them to scale back significantly their scope of business,

outages and power surges have also cost them significantly in terms of lost business opportunities and damaged equipment. (10/4 Evening, Tr. 94-95).

Numerous other witnesses testified as to the impact of power outages on their daily life including as follows: **10/4/06 Evening Witnesses**--Van Lentin Tr. 19; Cotterill Tr. 33-39; Kiger Tr. 42; Hild Tr. 46-50 and Astrimger Tr. 53.

Although not a part of the record, it should also be noted that several dozen customers, out of several hundred attendees at the February 27, 2006 public hearing at the Delaware Valley High School, testified to chronically poor service quality as a major issue. The substance of this hearing was covered in the testimony of OCA witness Nancy Brockway. (OCA St. No. 3, pp. 16-17).

On balance, PCLP's chronic, unremittingly deficient and inadequate service to the Milford/Matamoras area is supported not only by OCA expert witness testimony but also by the sheer volumes of residential and business customer testimony. It should also be noted that PCLP did not, to any degree, rebut any of these individual residential and business customer complaints other than to ask whether or not they had filed a formal complaint reflecting the poor service. It is also noteworthy that there has not been one "on the record" expression of regret or apology by PCLP for the hardships suffered by these customers. LCG contends that the un rebutted testimony of its own witnesses as well as witnesses at the public input hearing demonstrates PCLP's service to be chronically deficient and not in compliance with Section 1501 of the Code.

C. PCLP Service Is Deficient When Measured Against Industry Standards for Safe and Reliable Service.

OCA witness Peter Lanzalotta provided compelling and un rebutted testimony regarding the reliability of the PCLP system. Lanzalotta conducted extensive discovery

on PCLP examining data relating to outages (number and duration) and the impact of outages on customers. Electric system reliability performance, as reflected in PCLP's reliability data, reflects a substantial degradation in the PCLP electric service reliability performance since 1999, when ConEd and O&R were merged. (OCA St. No. 2, p. 8).

Mr. Lanzalotta testified that reliability index data is typically used in Pennsylvania to look at electric service reliability performance. These data include the reliability indices SAIFI³, CAIDI⁴, and SAIDI⁵. For each of these indices, a higher number reflects worse performance. These indices are defined in footnotes below. In all cases, outages associated with Major Events are excluded. (OCA St. No. 2, pp. 9-10).

Witness Lanzalotta defined a Major Event as an outage where at least 10% of the customers in an electric utility service area experience a sustained electric service interruption. He stated that reliability index data that excludes outages that occur during

³ SAIFI refers to the System Average Interruption Frequency Index, and is calculated by dividing the total number of sustained customer service interruptions by the total number of customers served. For a calendar year period, SAIFI represents the average number of sustained electric service interruptions per customer served during that period. SAIFI may be calculated for time periods other than a calendar year as well. Outages occurring during Major Events are excluded for purposes of reporting and determining compliance with state reliability regulations.

⁴ CAIDI refers to the Customer Average Interruption Duration Index, and is calculated by dividing the sum of the individual customers' minutes of sustained electric service interruption by the total number of individual customer interruptions. For a calendar year period, CAIDI represents the average number of minutes of electric service interruption for each customer service interruption during that year, or, put another way, the average outage duration. CAIDI may be calculated for time periods other than a calendar year as well, and is sometimes calculated in hours, rather than in minutes. Outages occurring during Major Events are excluded for purposes of reporting and determining compliance with state reliability regulations.

⁵ SAIDI refers to the System Average Interruption Duration Index, and is calculated by dividing the sum of the individual customers' minutes of sustained electric service interruption by the total number of customers served. SAIDI can also be calculated by multiplying SAIFI times CAIDI. For a calendar year period, SAIDI represents the average number of minutes of electric service interruption experienced by the average customer for the year. SAIDI may be calculated for time periods other than a calendar year as well, and is sometimes calculated in hours, rather than in minutes. Outages occurring during Major Events are excluded for purposes of reporting and determining compliance with state reliability regulations.

Major Events is what is used to evaluate whether the level of electric service reliability has been maintained at pre-restructuring levels under Chapter 28 of the Public Utility Code. However, reliability index data that includes all outages, including Major Events, is more indicative of the electric service reliability experienced by PCLP electric customers for the purposes of these cases.⁶ (OCA St. No. 2, p. 10).

Witness Lanzalotta analyzed Reliability Index data for PCLP for the period 1994 through 2005 are contained in Table 1, below. Table 1 has two sets of data. One set of data, on the left side of Table 1, includes all outage data, including those outages that occur during Major Events. The second set of data, to the right side of Table 1, excludes outages that occur during Major Events.

Table 1

Year	Including Major Events			Excluding Major Events		
	SAIFI	CAIDI	SAIDI	SAIFI	CAIDI	SAIDI
1994	3.25	84	274	0.44	114	50
1995	1.58	142	224	0.38	179	67
1996	1.64	115	189	0.22	208	45
1997	1.15	112	129	0.47	140	67

⁶ This is because the PCLP electric system is so small, that the lockout of the substation breaker, on either of the two circuits that are the primary sources of electric supply to the PCLP service area, is considered a Major Event, whereas, on larger electric systems, which typically can include hundreds of distribution circuits, the lockout of a single distribution circuit is not considered a Major Event. This difference in system size means that, for the PCLP electric system, the reliability index data that excludes Major Events, excludes so much outage data, that the resultant indices are typically less useful than are the similar indices for larger utility systems. The reliability index data that include all outages, including those that occur during Major Events, is most useful for purposes of this case when looking at electric service reliability from the perspective of the electric service customer.

1998	1.33	132	176	0.42	247	103
1999	1.18	121	143	0.51	161	83
2000	2.61	140	366	0.51	357	183
2001	2.58	145	376	0.35	200	69
2002	4.09	115	471	1.05	224	234
2003	3.74	112	420	0.52	184	96
2004	3.04	318	965	0.52	172	90
2005	7.79	141	1,102	1.85	109	202
94-99 ave	1.69	118	189	0.41	175	69
00-05 ave	3.98	162	617	0.80	208	146
Ratio	2.35	1.38	3.26	1.97	1.19	2.11

(OCA St. No. 2, pp.10-11).

Mr. Lanzalotta observed that, by any of these measures of electric service reliability, PCLP's reliability has declined since 1999, when PCLP's parent company merged with ConEd. Looking at the average reliability performance during the 1994 to 1999 period leading up to the merger, as compared to the 2000 to 2005 time period which follows this merger, the frequency of service interruptions, SAIFI, the average length of such service interruption, CAIDI, and the average annual minutes of electric service interruptions per customer, SAIDI, have all increased since 1999. The ratio at the bottom of Table 1 reflects the amount of this increase by dividing the post-1999 reliability performance by the reliability performance in the years leading up to and including 1999. Lanzalotta noted that, even if Major Events are excluded, SAIFI (outage frequency) and SAIDI (average outage minutes per year) have roughly doubled for the

average PCLP electric customer since 1999. If Major Events are included, SAIFI has more than doubled since 1999 while SAIDI has more than tripled over the same period. (OCA St. No. 2, p. 11).

Mr. Lanzalotta further observed that PCLP electric service reliability performance, as seen from the customer's perspective, is most accurately reflected by the outage data that includes outages that occur during Major Events. This data is shown by itself in Table 2, below:

Table 2

Year	Including Major Events		
	SAIFI	CAIDI	SAIDI
1994	3.25	84	274
1995	1.58	142	224
1996	1.64	115	189
1997	1.15	112	129
1998	1.33	132	176
1999	1.18	121	143
2000	2.61	140	366
2001	2.58	145	376
2002	4.09	115	471
2003	3.74	112	420
2004	3.04	318	965
2005	7.79	141	1,102

94-99 ave	1.69	118	189
00-05 ave	3.98	162	617
Ratio	2.35	1.38	3.26

(OCA St. No. 2, pp. 11-12).

As shown on Table 2, electric service reliability in the PCLP electric service area has declined since 1999, the year in which O&R, PCLP's parent company, was merged with ConEd. Comparing the six years before the merger with the six years since the merger, (1) the frequency of electric service outages (SAIFI) has increased from 1.69 outages per customer per year to 3.98 outages per year, an increase of 2.35 times, (2) the average duration of each outage (CAIDI) increased from 118 minutes to 162 minutes, an increase of 1.38 times, and (3) the annual average minutes of outage per customer (SAIDI) has increased from 189 minutes to a significant 617 minutes (more than 10 hours) per year, an increase of 3.26 times. Moreover, the annual average minutes of electric service outages per customer, as reflected by the SAIDI index, increased from 2004 to 2005. In 2004, the average PCLP electric customer saw 965 minutes of electric outages, more than 16 hours. In 2005, this increased to 1,102 minutes of electric outages per customer, more than 18.5 hours. The pre-merger average was 189 minutes of outages per customer per year, about 3 hours, 9 minutes per year (OCA St No. 2, pp. 12-13).

Witness Lanzalotta also analyzed the causes of these outages as shown in Table 3:

Table 3

Analysis of PCL&P's Sustained Outages by Cause and By Year					
Cause of Outage	Customer-Minutes of Sustained Outages				
	2001	2002	2003	2004	2005
Animal	282,680	12,803	396	259	17,010
Customer Problem			187,474		
Equipment Failure	11,804	135,979	499,580	85,569	263,310
Lightning	389,469	678,356	26,523	1,264,668	535,321
NoCause/Other	2,850	257,052	30,626	18,510	47,120
Non-Company Accident	51,651	70,047	418,899	1,192,847	937,109
Company Overload	121,735	144,093	956		21,881
PreArranged-Company		637	170,700	32,049	659,943
Tree Contact	707,346	702,550	480,180	1,582,852	2,348,484
Work Error Company		8,296	48		3,066
Total	1,567,535	2,009,813	1,815,382	4,176,754	4,833,244

This data is in the form of customer-minutes of electric service outages by year, by outage cause, and includes all outages, even those that occur during Major Events. The total PCLP customer-minutes of outages in 2004 and 2005 exceed 4 million customer minutes, while, in the three previous years, the total was as high as 2 million customer minutes only in 2002, with 2001 and 2003 well below 2 million. The number one contributor to these increases in 2004 and 2005 is tree contact. Other significant contributors to these increases are lightning, non-company accidents, and planned outages. Mr. Lanzalotta observed that some categories of outages are within PCLP

control such as equipment failure, pre-arranged outages and tree contact. Note that the customer minutes of outages due to tree contact in 2005 are more than the total customer minutes of outages from all causes in 2001-2003. Lanzalotta concluded that PCLP's electric system seems to be becoming more susceptible to these outage causes. (OCA St. No. 2, pp. 13-14).

Lanzalotta was critical of the significant amount of planned outages associated with the upgrade of the Matamoros Substation. For a system so prone to unplanned outage to have to inflict large amounts of planned outages is not indicative of safe, reliable and adequate service. Mr. Lanzalotta observed that, even without the outages in 2005 due to planned outages by the PCLP, 2005 still had more than 4 million customer minutes of outages, just as 2004 did. At that level, the PCLP's electric customers would still be experiencing a big increase over the levels in 2001, 2002, and 2003, only one of which had as many as 2 million customer minutes of electric outages. (OCA St. No. 2, p. 14).

Reliability improvements since 2005 have been extremely modest. Through the 12 month period ending with the 2nd quarter of 2006, (1) the Company's SAIFI was down to 4.28 outages per year per customer, from 7.79 in 2005, (2) its CAIDI had increased from 141 minutes in 2005 up to 168 minutes, and (3) its SAIDI was down to 719 minutes of outage per customer per year, from its 2005 level of 1,102 minutes. While outage frequency has improved, outage duration has gotten worse, resulting in an improvement in annual average minutes of outage per customer. Lanzalotta observed that all of the reliability indices for the twelve months ending with the second quarter of 2006 are still less reliable than the post-merger (2000-2005) average reliability indices.

The witness concludes that reliability performance, while improving over the dismal 2005 levels, is still below both PCLP's pre-merger reliability performance and its post-merger average reliability performance. (OCA St. No. 2, p. 14). LCG contends that the empirical studies performed by Mr. Lanzalotta definitively demonstrate that PCLP's service is deficient on both an historical and a current basis.

D. The Relationship Between PCLP and the Customer Base Is Irretrievably Broken.

OCA witness Brockway analyzed the relationship between PCLP and its customers as being similar to the description used by ALJ Klovekorn in his 1982 Recommended Decision in the Big Run Telephone Company case discussed earlier—that is: "poisoned." Ms. Brockway testified that many customers have no confidence in the utility's ability or willingness to address their concerns in any meaningful way. They have given up on the hope of getting decent service at reasonable rates from PCLP. (OCA St. No. 3, p. 19).

Ms. Brockway noted that customers testified at both the February 27, 2006 fact-finding hearing and the October 4 public input hearing that they do not believe that PCLP is acting in the interests of its customers. (OCA St. No. 3, pp. 19-20). The customers express a belief that PCLP's parent company, O&R, runs PCLP for its own benefit, ignoring the needs of its customers. According to Ms. Brockway, this mistrust extends to all aspects of the relationship between customer and utility, from rate levels to customer service. Customers testified that they believe that their utility misrepresents the facts in communications with the customers. Many customers at the fact-finding hearing and the public hearings in this docket expressed skepticism about the objectivity of PCPL's auction process leading to the POLR contract with an affiliate.

Customers are deeply frustrated with their situation, and feel victimized by their utility. They believe that the utility treats them dismissively. They characterize their request to be served by another utility as a request to be freed, to be let go. (OCA St. No. 3, p. 20; 10/4 Morning Tr 22).

As Brockway noted, the frustration of the public is perceptible in reading the transcript of the February 27, 2006 hearing. One witness characterized the rate shock as "just one small example of a long history of a utility that has just treated this small little area of Pennsylvania as a whipping boy to take high rates." Another witness stated:

I know that many of us here tonight feel that we are kind of a forgotten child in a little corner of Northeastern Pennsylvania. Although we are Pennsylvanians, we're being held hostage by a New York company that has no regard for our situation and whose sole interest in reaping outrageous profits off the backs of our hardworking citizens.

(OCA St. No. 3, p. 20 citing Tr. February 27, 2006, p. 54, lines 11-25).

The absence of formal complaints prior to the initiation of this proceeding is also explained by Ms. Brockway. She testified that the surge of complaints after the price increase was extraordinary. Prior to the increase in rates, customers had not previously complained about service quality in proportion to their own experiences. Brockway concluded that some customers had grown accustomed to sub-standard service, or felt that complaining was useless. The magnitude of the rate increase has been so high that customers are not now willing to tolerate such problems with their service. (OCA St. No. 3, p. 21).

Ms. Brockway, who has attended many public input hearings, believed the number of witnesses to be extraordinary, particularly for a small utility. A total of forty-

two (42) customers spoke at the February 27, 2006 fact finding proceeding, and an additional seventeen (17) were on the list but had to leave before their names were called. Thirty-five (35) customers spoke at the hearings on October 4, 2006. Of these, thirty-two (32) had not spoken at the February 27, 2006 fact-finding. Additional testimony was given at the hearings in early November. Over sixty-five (65) separate customers have taken the time to address the Commission at one or more of the public hearings out of a customer base of only about 4500 customers. Ms. Brockway stated that it is unusual to see over sixty customers speak at utility commission hearings in the rate case of a major utility with hundreds of thousands of customers:

It is all the more noteworthy in the case of such a small utility. To put this in context, if the same percentage (1.4%) of PPL customers came out to speak at a public hearing, that would be over 17,000 customers. I would add that over 500 individuals and business owners signed a Petition filed with the PUC that calls for the sale of the Company to another entity.

(OCA St. No. 3, pp. 21-22).

Ms. Brockway's analysis of customer attitudes indicated that relations were poor between the customers and the utility because PCLP is controlled by its out-of-state owners, O&R, and in turn Con Edison. In her view, PCLP customers do not trust O&R or its corporate parent to make decisions in the interests of PCLP customers. (OCA St. No. 3, p.22).

Ms. Brockway's policy assessment of the current state of relations between PCLP and its customers is one of "a captive customer base asking to be set free". (OCA St. No. 3, pp. 22-23) where she states:

I have not tried to look behind the structure of the fall 2005 auction process, and do not assert any imprudence in that process, nor favoritism between Pike and its corporate affiliates. However, what can be observed is that Pike is a tiny utility with very limited inter-ties, all into the NY wholesale market, all presently through its corporate parent, and with no independent staffing to explore alternative sources of power. These factors keep Pike a de facto captive of the NY market and the NY utility regulatory system, and limit the number of potential sellers of power for POLR use by Pike customers.

Pike is still an appendage of a New York regulatory system that is not compatible with the Pennsylvania system – particularly for such a small entity. Rather than opening up alternatives for Pike, the situation actually got worse with restructuring, because Pike just followed the New York model. Worst of all was the financial swap auction in late 2005, which produced results that are qualitatively worse than any other Pennsylvania utility. The high prices from that auction were partly the result of unfortunate timing, but not even the subsequent Direct Energy bid was very helpful given the situation.

(OCA St. No. 3, pp. 22-23).

On balance, LCG contends that, based on the unrebutted evidentiary record, the relationship between PCLP and the customers is irretrievably broken to a point that divestiture of the utility is the only prudent and realistic option.

E. Sussex Rural Electric Cooperative Presents a Complete Resolution of This Service Situation.

The interest of Sussex in acquiring the PCLP system was addressed by Robert Kolling, Executive Director of Sussex. Mr. Kolling provided historical, financial and operational details on Sussex. Sussex is a locally owned and managed, tax exempt electric utility cooperative which was incorporated in the State of New Jersey in 1937. It is the only member-owned electric cooperative in the State of New Jersey. The primary objective of Sussex is to provide reliable electric service to its members at the lowest

possible cost. The Sussex service territory represents the northwestern portion of Sussex County with 11,806 consumers and a small portion of Orange County in New York State, serving 158 consumers. Sussex is governed by a Board of Directors and operates under the day-to-day operation of Mr. Kolling. The Sussex business office is 15 miles from downtown Milford. (OCA St. No. 4, pp.1-2).

Sussex' tax exempt status was granted by the Internal Revenue Service and requires that 85 percent of its revenue must come from the sale of electricity and that any margin generated from this activity be refunded to the members in the form of Capital Credits, the retirement of which is determined by the Board of Directors. (OCA St. No. 4, p. 1).

Sussex is not subject to state commission regulation for retail service. The owners of Sussex are its 11,000 customers who vote on the Board of Directors. Any dissatisfaction with rates or service is communicated directly to the Executive Director and the Board who may be removed by a vote of the cooperative members/customers. (1/17 Tr. 79). Sussex maintains a 24-hour phone line for customer service issues and is very responsive to customer needs. Sussex commits to maintaining service personnel in Milford should it be permitted to serve PCLP customers. (1/17 Tr. 80). Sussex is a member of the PA Rural Electric Association ("PREA"). PREA is a statewide association that provides its members with a number of services including a safety department, legislative and public affairs, education for members and staff.

Sussex is very current in customer service technology. Sussex is 100% automated meter reading ("AMR") for its members and will integrate the same system in Pike County over the first three years. AMR gives Sussex members a way to track their

daily usage and helps locate and determine outages. Sussex has a load management system in which it can send a signal to a device that turns the member's electric hot water tank off. This helps control the peak electric demand. Sussex also has an Electric Thermal Storage ("ETS") rate for its members that choose to install this type of equipment for heating their homes. Sussex has the member install a second meter on the house and all KWH usage for this service is sold to members at a cost of \$0.58757 per KWH. This is off peak and the cost per KWH reflects them not contributing to our system peak. (OCA St. No. 4, p. 3).

Allegheny Electric Cooperative ("Allegheny") is Sussex' generation and transmission provider. Allegheny works with Sussex to provide cost-based power to its members and secure the wheeling of that power to all its members. Sussex is a member of both cooperatives and has a seat on each board. Allegheny is a member of the PA-MD-NJ Interchange ("PJM") and it receives generation through the PJM. (OCA St. No. 4, p.3). Allegheny serves a peak load of 655 MW and serves indirectly about 222,000 retail customers. It serves this load with a combination of resources that includes the following:

- (1) Nuclear. Allegheny owns ten percent of the Susquehanna Steam Electric Station (Susquehanna), a 2,360 MW, two-unit nuclear plant operated by PPL Corporation which also owns the remaining 90 percent. In 2005, Susquehanna accounted for 62 percent of Allegheny's total power supply, and the plant operated at a capacity factor of 88.8 percent.
- (2) Hydro. Allegheny purchases low-cost hydro from the New York Power Authority's (NYPA's) Niagara and St. Lawrence projects (about 33 MW). Allegheny also owns the two-unit Raystown hydro plant (42 MW). Together, these sources provide about 10 percent of Allegheny's total requirements.
- (3) Market Purchases. Since 2001, Allegheny has been obtaining about 30 percent of its supply under a wholesale contract with Williams Energy Marketing & Trade (Williams). A portion of the Williams energy is at fixed contract rates with hourly

and monthly caps on the energy that must be supplied at those rates. Additional requirements above the caps are supplied at spot market prices.

- (4) Coordinated Load Management System (CLMS). Allegheny sponsors a load management program for its members, which in 2005 provided a peak demand reduction of about 50 MW (about 8 percent of its peak load). Allegheny estimates that in 2005 this program provided \$4.4 million of cost savings. Sussex itself offers its customers participation in an Electric Thermal Storage (ETS) program at a large rate discount.

(OCA St. No. 1, pp. 25-26).

If permitted to acquire the PCLP system, Mr. Kolling stated that Sussex would tie into an existing 34.5 KV line in New Jersey 1.1 miles from the Milford Bridge on State Route 206. This tie is needed to give the consumers of PCPL a main feed that would help reliability and tie them to the PJM grid. The total distance of the line to be built would be 2.4 miles at a cost of \$115,000 to \$150,000 per mile with a ceiling price to construct of \$400,000. (1/17 Tr. 67-68). Mr. Kolling estimated the time required to complete the interconnection, once the parties agree, would be six months which includes planning, design, permitting and construction. (1/17 Tr. 67-69). Permitting requirements are minimal with the only required approval being road occupancy permits from the PA Department of Transportation. (1/17 Tr. 69). No zoning or environmental permits (federal, state or local) are required even to cross the Delaware River using an aerial crossing. The only required approval is from the Delaware Water Gap Conservancy, a non-profit entity, who has already expressed interest in approving the crossing. (1/17 Tr. 69).

Mr. Kolling testified that the average wholesale price for power for Sussex in 2006 has been \$0.5759 per kWh from Allegheny. The current cost to residential members, which is 92% of total connected meters, is a monthly facility charge of \$8.96 and a cost of \$0.1046 per kWh to members. In New Jersey, these rates are subject to sales tax

which brings the total cost to \$9.59 for the facility charge and \$0.1117 per kWh. This compares favorably to the high price per kWh paid by PCLP. Kolling stated that service from Sussex provides clear benefits including rate stability, reliable service, involvement in the community and the flexibility to provide choices to the different revenue and rate classes (OCA St. No. 4, p. 3).

As noted by OCA witness Kahal, Sussex has a peak demand of about 40 MW and a power supply energy requirement of about 150,000 MWh per year. A PCLP acquisition would increase the size of Sussex by about 40 to 50 percent. Sussex charges its New Jersey customers a bundled service rate of 10.38 cents per kWh and a facility charge of \$9.50. There is no separate delivery charge. For example, a residential customer using 700 kWh per month would pay approximately \$82.16 under Sussex's current rates, as compared to \$132.31 under PCLP's current default rates (roughly a 60 percent premium). Using the Direct Energy generation rates, the 700 kWh residential bill is about \$121 per month (about a 48 percent premium). Sussex presents a clear advantage from a rate perspective. (OCA St. No. 1, p. 24). Mr. Kolling testified that many factors will influence what rates the consumers of Pike County may have to pay but stated with assurance that a 20% reduction in their current rates was highly likely with rate parity to the Sussex membership in five years. On cross-examination, Mr. Kolling seemed very assured of the 20% reduction. (1/11 Tr. 66; OCA St. No. 4, p. 4). Mr. Kahal agreed with this assessment. In evaluating the Sussex proposal, he stated:

While power supply costs could change somewhat over time, I believe that on a long-run basis they are likely to remain reasonably stable. The largest asset, Susquehanna (a two-unit plant), has about 20 years remaining on its Nuclear Regulatory Commission (NRC) operating license and there are reasonable prospects for a 20-year NRC

license extension. It is also my understanding that the owner (PPL Corporation) intends a power uprate of the plant by about 10 percent, and as a co-owner, Allegheny will share in any uprate (as well as uprate costs). At the present time, Allegheny's large original investment in Susquehanna has been largely recovered, and as a result it seems unlikely that its "all-in" cost of power from this plant will increase significantly over time.

The cost of hydro should also remain stable over time. The owned Raystown hydro project is less than 20 years old and Allegheny has entered in to a new 18-year agreement with NYPA for the low-cost purchased hydro generation.

Since the vast majority of Allegheny's power supply comes from "locked in," stable-cost resources, I conclude Allegheny's blended costs should remain relatively stable over time. While the wholesale rate may not be fixed over the long term at 5.8 cents, I do not expect large changes. In addition to this relative stability, it is virtually certain that the Allegheny rate will be far below the POLR prices that PCL&P could offer its customers.

(OCA St. No. 1, pp. 26-27).

Mr. Kahal observed that a stand-alone PCLP must meet the requirements of Pennsylvania's alternative energy portfolio standards regulations, which is a further complication to its procurement problems, particularly if PCLP remains tethered to the New York market. According to Kahal, this issue would be resolved under a Sussex acquisition. Allegheny's CLMS program provides compliance with this statutory and regulatory requirement, while at the same time providing customer savings. (OCA St. No. 1, p. 28).

LCG witness Forbes, testifying on behalf of Pike County, stated unequivocally that he believed acquisition of the PCLP system by Sussex was the only realistic option to correct the existing service and rate inequities. Mr. Forbes indicated that he concurred with the Commission Law Bureau Report that indicated that investigation into

acquisition by Sussex should be pursued. (11/6 Tr. 31). Mr. Forbes further indicated that he has independently, on behalf of the County, closely examined the ability of Sussex to provide service with regard to its electric rates, general reliability, customer service and redundancy of distribution system facilities. (11/6 Tr. 33)

All the OCA witnesses (and a good many of the consumer witnesses) agreed that the only systematic way to reduce the current high prices and to keep prices from staying at exorbitant rates in the future is for PCLP to be acquired by Sussex and thereby benefit from interconnection with PJM. As Mr. Lanzalotta explains, it is much more costly for Pike to interconnect with PJM through Met Ed or PPL than through Sussex. (OCA St. No. 2, p. 8). In addition, as Mr. Kahal explains, Sussex has access to lower cost power through its contract with Allegheny. (OCA St. No. 1, p. 26). As OCA witness Brockway observed, Sussex has expressed its willingness to buy Pike at a reasonable cost, and has approached Con Edison to discuss such a transaction. A copy of a letter from Sussex CEO Robert Kolling to Con Ed regarding this issue is in the record as Exhibit NB-7. (OCA St. No. 3, pp. 4-5). However, Con Ed has failed to even suggest a meeting.

OCA witness Lanzalotta testified that connecting the PCLP system to the Sussex system will not immediately improve the reliability performance of the PCLP system because it will take time for Sussex to correct some of the existing PCLP system deficiencies. However, as Sussex's planning, maintenance, and operating philosophies are increasingly reflected in the PCLP distribution system, the reliability performance of the PCLP system should increasingly reflect that of the Sussex system in this aspect. (OCA St. No. 2, p. 15). Combining the PCLP system with the Sussex system should be

expected to have an immediate effect on reducing the duration of electric service outages. This is because outage duration tends to reflect the utility's commitment to restoring service when outages occur. Mr. Lanzalotta observes that Sussex is more successful in quickly restoring electric service after outages on its own system, Mr. Lanzalotta asserts that Sussex' improved service response (as demonstrated by its commitment to maintain service crews in Milford) should have a more immediate impact on lessening the duration of electric service outages on the PCLP system (OCA St. No. 2, p. 15). Mr. Lanzalotta demonstrates in Table 4 of his testimony reproduced below that Sussex customers experience fewer annual average minutes of service outages than PCLP customers over the past six years, even including major outages (which PCLP excludes).

Table 4

Sussex Reliability Data - Sustained Interruptions			
	Ave Hours		Ave Min
	Per Customer		Per Customer
2000	2.23		133.8
2001	1.01		60.6
2002	7.54		452.4
2003	2.15		129.0
2004	8.00		480.0
2005	3.35		201.0
2006	2.09	estimate ⁷	125.1

The data reflecting average minutes of electric service interruptions per customer per year, as kept by Sussex, is roughly equivalent to the SAIDI reliability index for the

⁷ Data for 2006 reflects performance through September 2006. The 2006 annual performance was estimated by extrapolating the last four months of the year, using the average monthly performance for the first eight months.

PCLP electric system, which also reflects the average minutes of service interruptions per customer per year. Since Sussex includes all outages in its reliability data, and does not exclude outages that occur during "Major Event" types of system problems, the proper comparison is against the PCLP SAIDI with Major Events included. Table 5 below reflects this comparison.

Table 5

Annual Minutes of Outages Per Customer		
	PCL&P	Sussex
2000	366	134
2001	376	61
2002	471	452
2003	420	129
2004	965	480
2005	1,102	201
2006 (est.)	719	125
Average (7yrs)	631	226
Ratio	2.79	

Although the reliability performance of both utilities varies significantly from year to year, the Sussex electric service customers have experienced fewer annual average minutes of outages in every year since 2000. The seven-year average annual minutes of outage per customer is 226 minutes for Sussex, versus 631 minutes for PCLP, more than 2.7 times the annual outage minutes for Sussex.

OCA witness Lanzalotta estimated that the cost of interconnection of Sussex to the PCLP system to be in the range of \$1-2 million which included a 15% contingency factor. This is much higher than the \$400,000 estimate of Mr. Kolling but far less than PCLP's \$13.6 million estimate for the PPL Twin Lakes 69 kV interconnection. Sussex is

located to the east of the Milford load area and is separated by the Delaware River. The cost is based on three components. First, there is a cost to run a 34.5 kV line from existing Sussex facilities to interconnect with PCLP in the town of Milford (\$345,000). Second, there is the cost to cross the Delaware River (\$275,000). Third, there is the cost to reconfigure the PCLP system (\$230,000 to \$1.1 million). (OCA St. No. 2, pp. 6-7).

The cost to connect and integrate the PCLP and Sussex systems are far less than the cost of alternatives that require miles of 69 kV line extensions and/or the construction of a new substation with a 69kV to 34.5 kV substation transformer, as was assumed in PCLP's prior PJM interconnection studies. PCLP's prior studies assume the construction of an 8-mile 69 kV transmission line, at a cost of \$1 million per mile. The Sussex interconnection makes use of an existing 34.5 kV circuit that is a mile or less away from PCLP's service area, so a shorter line can be used for the interconnection. Also, the 34.5 kV line that Sussex would use for the interconnection is much less expensive per mile-- \$115,000-\$150,000 per mile as estimated by Kahal and Kolling. Finally, the Sussex interconnection makes use of existing substation facilities on the Sussex system, rather than requiring the construction of a new \$3.6 million substation, as PCLP's prior interconnection studies assumed. The effect of all this is to enable an interconnection for the PCLP service area to PJM for \$1 million to \$2 million, as compared to the PCLP's estimates of \$13.6 million. (OCA St. No. 2, pp. 7-8).

LCG contends that the evidence put forth by OCA witnesses Kolling, Kahal, Lanzalotta and Brockway all militate toward selection of Sussex as the entity best able geographically, operationally, financially and economically to acquire the PCLP system.

Following acquisition, PCLP ratepayers will experience significantly lower rates and an improved quality of service. As will be demonstrated in the next section of the brief, no other alternative comes close to meeting PCLP customer needs as does the Sussex option.

F. PCLP Presents No Comparable Options to the Acquisition by Sussex.

A number of alternative options for addressing the rate and service issues facing PCLP customers were presented during the course of this proceeding. Some of these options were identified as part of the Law Bureau Report issued June 22, 2006. Additional options were identified and discussed by OCA and PCLP witnesses. PCLP witnesses O'Brien, Holtman and Regan all addressed the merits of these options to some degree in their direct testimony. (PCLP St. Nos. 1-3). In this section of the Main Brief, LCG will assess all of the other options presented with its recommendation as to the feasibility of those options. Nonetheless, LCG contends that the best solution to the current rate and service problems of PCLP customers continues to be acquisition of the PCLP system by Sussex.

1. Financial Hedging.

The wisdom of continuing reliance on financial hedging mechanisms was identified as one of the issues in the Law Bureau Report. (Report, p. 16). PCLP witness Holtman testified extensively on O&R's intentions to utilize financial hedges of energy and capacity as a means for securing default service supply for the period commencing January 1, 2008. In fact, PCLP, on January 9, 2007, filed a Petition with the Commission seeking approval of a default service supplier arrangement utilizing financial hedge mechanisms. (PCLP St. No. 3, p. 3). The contents of that Petition

largely mirrors the description of the financial hedge mechanism in Mr. Holtman's testimony.

Mr. Holtman explained that financial hedges of energy and capacity purchases would be made from the NYISO spot market for the Hudson Valley Zone to which PCLP is connected. Hedges would be acquired through a web-based, declining price auction for a period of January 1, 2008 through December 31, 2010. PCLP would integrate its proposed auction with hedging procurement efforts of O&R. The amount of energy and capacity hedged would decline by 1/3 each year from 2008 through 2010 and thereafter PCLP would obtain financial hedges for 1/3 of its requirements for three year terms utilizing "layered" hedges (OCA St. No. 3, pp. 3-4). During the auction process, there will be opportunity for input by interested parties. Although there are other alternatives to implementing a three-year hedge term, PCLP/O&R believe the three-year hedge term presents the greatest potential for insuring stable market prices. (PCLP St. No. 3, pp. 6-8).

Mr. Holtman admits that hedging mechanisms present very real risks to customers because the prospect of hedging 100% of PCLP's 2008 requirements and 67% of the 2009 requirements creates a risk of one time unusual market conditions occurring during that time frame. (PCLP St. No. 3, p. 4) Other factors identified by Holtman include the limited interconnection to the NYISO, no discount for fixed-price load-following physical energy purchases and the need to pay an administrative premium in order to stimulate supplier interest in the PCLP market. (PCLP St. No. 3, p. 5).

LCG does not agree with nor support PCLP's continued reliance on financial hedges and the auction process as the ultimate solution to the problems facing the PCLP service territory. As Mr. Kahal noted in his direct testimony, utilization of a financial hedge mechanism is merely a continuation of "business as usual" or the "status quo" that does nothing to address the underlying structural problems with the PCLP system and its physical isolation from the PJM Interchange. Mr. Kahal noted that PCLP received only two bids (one from its affiliate in October 2006) and it is unlikely to attract a greater number of bidders next year. (OCA St. No. 1, pp. 21-22). PCLP even admitted the limitations of its own "stand alone" procurement mechanism in its comments to the Commission of March 3, 2006. (OCA St. No. 1, p. 22).

Integrating PCLP's procurement efforts with the procurement efforts of O&R does not significantly reduce the rate volatility associated with PCLP's limited connection to the NYISO. While multiple suppliers competing for the same customers depress prices, perceived market volatility and the need to offer a risk premium to attract enough suppliers puts upward pressure on prices. (11/16 Tr. 139) Mr. Holtman admitted, during cross examination, that the most recent financial hedge offering for O&R only attracted two bidders for a system serving 250,000 customers. Moreover, the trend in number of bidders has been one of decline from the first auction in April 2005 through October, 2006. (11/16 Tr. 151-152). Mr. Holtman stated that he would like to generate more supplier interest for the financial hedge/auction process but had no concrete suggestions as to how to do so. (11/16 Tr. 152-153).

For these reasons, LCG does not believe that the financial hedge/auction mechanism offers sufficient assurance to PCLP customers to justify continued reliance

on this mechanism where PCLP customers have yet to recover from the results of the 2006 auction. As Mr. Kahal noted, a "status quo" solution is no solution at all.

2. The Power Switch Program.

PCLP witness O'Brien has proposed that O&R's ESCO referral program captioned Power Switch, be utilized in the PCLP service territory. Under the Power Switch arrangement, customers sign up with O&R for retail choice and are either assigned to an alternate supplier or can choose a supplier among those participating in the program. Customer membership in Power Switch can be initiated by either mail, telephone or website interaction. Under the program, customers are guaranteed savings of 7% off the commodity portion of the electric bill for two billing periods only. The 7% discount has been agreed to by all of the ESCOs participating in the Power Switch program. Following that two-month period, the Service Agreement proceeds on a month-to-month basis and the customer is wholly dependent upon market prices.

The Power Switch program was criticized by OCA witnesses. Ms. Brockway testified that conversion to Power Switch does not address the fundamental structural problems facing the PCLP system. A temporary 7% discount off the current default rate will not offer much relief to PCLP customers. Further, there are only two alternative suppliers that are interested in Power Switch who would want to even serve the PCLP service territory. Additionally, these suppliers rely on the NYISO whose costs are running 10-15% above the costs of PJM. (11/17 Tr. 11-13). Additionally, Mr. Kahal opined that retail choice, such as Power Switch, will not succeed in the PCLP territory due to the small customer base, lack of industrial customers and limited retail marketer interest. (OCA St. No. 1, p. 31). Further, the Commission itself addressed the issue of

retail competition as a means of mitigating PCLP's rate shock problem. In its April 20, 2006 Order at Dkt. No. P-00062205, the Commission noted:

No party argued that adoption of the New York O&R retail supplier protocols and procedures, combined with voluntary purchase and receivables program, would be sufficient to attract competitive offers to the Pike County service area. ...Among the barriers were significant market entry costs, such as customer acquisition costs, customer information and service record costs, sales costs and startup costs which can be spread over a small number of customers.

(Order at pp. 10-11).

Moreover, as Mr. Kahal noted, Commission waivers of regulatory requirements such as EDI standards are unlikely to change the reality that retail competition in the PCLP territory will likely never succeed. (OCA St. No. 1, p. 32). LCG contends that the evidence does not support retail choice, via Power Switch, as a realistic option to addressing PCLP rate issues.

3. PCLP Integration with a New Jersey Affiliate.

The Law Bureau Report of June 22, 2006 cited, as one potential solution, that PCLP be permitted to integrate with O&R's New Jersey affiliate Rockland Electric. For various reasons, LCG does not believe this to be a primary solution to the service and rate difficulties of the PCLP service area. OCA witness Kahal addressed this issue. He noted that PCLP's New Jersey affiliate, Rockland, participates in the annual statewide New Jersey fixed price wholesale auction that is used for provision of Basic Generation Service ("BGS"). He observed that BGS bidding has been robust and competitive and the ladder contract approach has helped mitigate rate shock. Rockland clearly benefits since 90% of its load is located within PJM with only a small portion in the NYISO. (OCA St. No. 1, p. 29). Kahal supports integration of PCLP load into the load of the

affiliate Rockland as the "second best option" behind the Sussex acquisition. Such a solution would require interconnection with PJM. Thereafter, the PCLP load could be included in the annual Rockland BGS auction and PCLP could reimburse Rockland for the cost of serving its load at the BGS rate. PCLP would obtain advantages of contract laddering and economies of scale associated with a larger auction. (OCA St. No. 1, pp. 29-30).

There are difficulties with this approach. Mr. Kahal noted that approvals from both the Pennsylvania and New Jersey are required. Moreover, since a three-year laddering approach is used, the PCLP load would not be fully integrated into the Rockland load until June 2010. PCLP would be required to procure higher cost power for the first 2/3 of its load. Additionally, there is no certainty that New Jersey will retain the BGS framework or adopt a new POLR model. There is a time element involved to physically connect PCLP with Rockland. (OCA St. No. 1, p. 30).

OCA witness Brockway testified on the concept of integration of PCLP load with Rockland load through an interconnection to PJM. However, like Kahal, she concludes that this alternative is less preferable to the Sussex acquisition but more preferable than PCLP making its own direct interconnection to PJM for purposes of procuring energy. (OCA St. No. 3, pp. 25-26).

LCG does not endorse the Rockland integration option over the Sussex acquisition option for the reasons stated herein by various OCA witnesses. Further, O&R/PCLP has not indicated its willingness to consider this option either. Given O&R/PCLP's continuing intransigence and unwillingness to operate proactively in this

matter, LCG would only support this option: (1) if Sussex acquisition is not selected and (2) O&R/PCLP affirmatively support this option as well.

4. Examination of Potential for Alternative and Renewable Energy in the PCLP Service Area.

This option was also proposed in the Staff Report. However, OCA witness Brockway determined that it is unlikely that sufficient alternative and renewable power opportunities exist in the PCLP area to independently reduce the high bills facing PCLP customers. Moreover, this solution does not resolve the fundamental problem with the relationship between PCLP and its customers nor does it address the reliability concerns with regard to the poor service. (OCA St. No. 3, pp. 26-27). LCG contends that this option does not in and of itself present a solution to the problems facing the PCLP service area.

5. Construction of a 69 kV Interconnection with PPL.

PCLP witness Regan testified to an interconnection study performed by the utility that was attached as Appendix B to the Law Bureau Report. This Interconnection Study proposed the construction of a 69 kV transmission line to connect PCLP/O&R with PPL at its Twin Lakes Substation. (PCLP St. No. 2, pp. 2-3). Mr. Regan emphasized that only through construction of a 69 KV line could the reliability problems faced by PCLP be significantly improved. This line construction would be complemented by O&R upgrades of three 69 kV lines terminating at its Port Jervis substation, to be completed in 2008. (PCLP St. No. 2, pp. 2-3).

OCA witness Lanzalotta addresses this option as a potential solution to PCLP's reliability problems. He noted that PCLP's own projections estimated the cost of this line would be about \$13.6 million to include the following: (1) construction of a 69 kV

line (\$8 million); (2) construction of a new distribution substation (\$3.6 million); and (3) reconfiguration of PCLP distribution system leading from the west rather than the east (\$2 million). (OCA St. No. 2, p. 4).

LCG contends that it was unclear in the testimony as to whether PCLP actually intends to construct the 69 kV line to the PPL Twin Lakes Substation. Cross examination of PCLP witness Regan revealed that PCLP has done no planning, design or engineering work with regard to this line. PCLP has done no site permitting. Nor have been significant discussions with PPL regarding the construction of this line. (1/16 Tr. 101-102). Moreover, Regan contended that the upgrade of three 69 kV lines feeding into the Port Jervis substation would improve PCLP reliability in the future without the need for the PPL Twin Lakes 69kv line extension. (1/16 Tr. 103).

LCG contends that this proposed option is not a realistic alternative to the other options being presented. PCLP appears to be taking no substantive steps toward even beginning the design and planning for this interconnection. Additionally, the \$13.6 million investment is far in excess of the estimates associated with the Sussex acquisition under either Kolling's (\$400,000) or Lanazalotta's (\$1-2 million) estimates. Additionally, PCLP witness Regan's assertions that the upgrade of three 69 kV lines serving the Port Jervis substation would be sufficient to improve reliability in the PCLP service area is not substantiated. PCLP demonstrated no particular interest in addressing service reliability issues prior to the initiation of this proceeding although the evidence indicated service issues long predated the January 2006 rate increase. For O&R/PCLP to now suggest that upgrades at Port Jervis in 2008 (which could have been done previously) will correct long-standing reliability problems indicates a disingenuous

attitude toward the quality of service problems suffered by the customer base. PCLP's lack of commitment is also illustrated by its putting forward a 69 kV line project that it has no intention of building. LCG rejects the 69 kV PPL Twin Lakes option as unrealistic and overpriced. The upgrades at the Port Jervis substation, on the other hand, should have been examined previously and the evidence is not convincing that these efforts will significantly improve reliability in the Milford region.

6. Interconnection with Met Ed at the Walker Substation.

OCA witness Kahal identified, as an alternative to the 69 kV connection to the PPL Twin Lakes substation, interconnection between PCLP and Met Ed at its Walker substation. Mr. Lanzalotta observed that its Walker substation, located near the PCLP service territory, has 34.5 kV distribution facilities that extend towards the Milford load center in the southern portion of PCLP service area. The substation has a 69 kV to 34.5 KV transformer and sufficient circuitry to allow service to the PCLP service area along Route 6 toward Milford. Additionally, the cost of this option to add an additional substation transformer would be around \$500,000 to \$600,000. (OCA St. No. 2, pp. 5-6).

PCLP witness Regan spent considerable time in his testimony criticizing the various deficiencies with Mr. Lanzalotta's Met Ed Walker substation alternative. In summary, Mr. Regan characterized Mr. Lanzalotta's proposal as not constituting good utility design or practice. Additionally, the Met Ed Walker substation proposal would increase exposure to PCLP load centers, corridor congestion along Route 6 and be hampered by PPL's limited transmission line capacity. Mr. Regan opined that there would be adequacy of service and voltage quality issues serving load centers between

8 and 14 miles away from the source. Mr. Regan also took issue with cost estimates developed by Mr. Lanzalotta for this option as well as with the sizing of the transformer that would be required. (PCLP St. No. 2, pp. 4-5). Not surprisingly, Mr. Lanzalotta, on surrebuttal, did not disagree with any of the criticisms raised by Mr. Regan. Mr. Lanzalotta was merely looking at all available options and agreed that the Met Ed Walker substation option would not be a long-term viable solution to PCLP's service and reliability difficulties. (1/16 Tr. 55).

Consequently, LCG contends that this option should not be considered as a potential solution to the problems facing the PCLP service area. LCG submits that many of the options proposed could have been examined and in fact implemented prior to the events that gave rise to this proceeding. It is clear from the record that O&R and PCLP have chosen to be more reactive and critical of potential solutions than of advancing proposals on their own. For this reason, as well as on the basis of the evidence presented, the ALJ and Commission should analyze carefully the sincerity and intent of O&R/PCLP to pursue any of these options in a timely manner. Moreover, the Sussex acquisition option only makes more sense when viewed in comparison to the other options discussed and argued about between the parties.

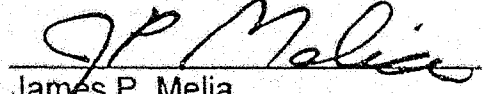
VIII. CONCLUSION

The Large Customer Group contends that the current situation facing the PCLP service area is dire and requires immediate intervention and action by this Commission in order to correct long standing rate and service issues. LCG contends that the current structural characteristics of PCLP, with its limited access to the NYISO, makes the prospect of lower cost power too uncertain to gamble with the future of the PCLP

service area. O&R/PCLP's utilization of the financial hedge/auction process to procure lower cost power has not proven successful and the future prospects appear to be equally questionable. Aggregation of PCLP load into the O&R load, while offering some hope of lower rates, does not provide sufficient certainty to justify the continued exposure of the PCLP service area to unreasonably high rates. Further, some of the other options proposed by PCLP such as Power Switch, aggregation of PCLP load with Rockland Electric or interconnection with PPL/Met Ed all present less than satisfactory resolutions of the outstanding problems. Additionally, the chronically inadequate service provided by PCLP is an additional burden to customers over and above the unbearably high rates. For all of the foregoing reasons, the LCG contends that the only logical resolution of these outstanding issues is to require O&R to put PCLP on the market for sale to an appropriate acquiring party, Sussex Rural Electric Cooperative.

Further, LCG contends that the ALJ and Commission should find and determine that: (1) PCLP's current rates following the cessation of the rate cap are unjust and unreasonable under Section 1301 of the Code; (2) that PCLP standard of service is deficient and does not meet the standards under Section 1501 of the Code; and (3) this Commission has the authority to require O&R to put PCLP on the market for sale by an appropriate acquiring party.

Respectfully submitted,


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Dated: February 12, 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike

v.

Pike County Light & Power Company

Docket No. C-20065942, et al.

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I. STATEMENT OF THE CASE

On February 24, 2006, the County of Pike filed a Formal Complaint in which it averred that Pike County Light & Power Company (Pike, PCL&P, or Company) had instituted rates that constituted an unfair burden on the Company's customers. Specifically, on January 1, 2006, Pike implemented an average increase in generation rates of 129% and an average increase in overall electric rates of 73%. The County's Complaint was docketed at C-20065942.

The Office of Consumer Advocate (OCA) intervened in the County's Complaint proceeding on April 5, 2006. The Office of Small Business Advocate (OSBA) intervened on April 24, 2006.

Prior to the filing of the County's Complaint, but subsequent to the January 1, 2006, rate increase, the Pennsylvania Public Utility Commission (PUC) entered an Order to initiate an investigation into the competitive electric market in Pike's service territory. Initiation of a Fact Finding Investigation of the Competitive Market Condition Re: Pike County Light & Power Company, Docket No. P-00052168 (Order entered January 27, 2006). Pursuant to its powers under Sections 331(a) and 2811(b) of the Public Utility Code, 66 Pa.C.S. §§ 331(a), 2811(b), the Commission directed its Law Bureau to conduct a sixty day investigation and to report back to the Commission with appropriate recommendations. As part of the investigation, on February 27, 2006, a Public Input hearing was held in the Pike service territory at which 42 individuals testified regarding the impact of the rate increase on the Pike service territory. Commissioner Bill Shane presided over the Public Input hearing and Vice Chairman James Cawley also was in attendance.

While the Law Bureau investigation was underway, the Commission took action in a separate docket to approve a Petition filed by Direct Energy, an electric generation supplier, to implement a Retail Aggregation Program for Pike customers. After pleadings, hearings and briefs, the Commission issued an Order on April 20, 2006, approving a retail aggregation program for Pike customers. 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). Direct Energy subsequently won the bid to become the retail aggregator, and all of Pike's customers, except the largest commercial customers, were assigned to receive their generation service from Direct Energy on an opt-out basis. While the purpose of the retail aggregation program was to provide a lower priced alternative to Pike generation rates, the process resulted in only modest rate reductions. As noted by Commissioner Shane in his Statement at the Public Meeting of May 4, 2006, at Docket P-00062205:

Despite the good intentions and significant efforts of all involved, the results have been personally disappointing. Most of the consumers will see some marginal savings compared to Pike's default rates. However, several hundred residential and commercial customers may experience higher rates in 2007.

Petition of Direct Energy, Commissioner Shane Statement at 2. Commissioner Shane went on to note:

It is obvious to me that the status quo cannot provide any reasonable result for Pike's customers. I am therefore looking forward to the results of the fact-finding proceedings (Docket No. P-00052168). I am worried about the apparent lack of concern demonstrated by Pike and its affiliates for the long-term best interests of the company and their customers.

Id. Commissioner Shane urged the Commission to consider a number of alternatives at that time, including "the acquisition of Pike's service territory by another operating public utility or rural electric cooperative." Id. at 2-3.

On June 22, 2006, the Commission released the report that arose from the Law Bureau investigation. The Report, captioned "Report on Competitive Market Conditions Regarding the Pike County Light & Power Company," produced eight recommendations for future action. Those recommendations were as follows:

- a. The Commission should explore the integration of the Company's energy procurement after 2007 with either its New York or New Jersey affiliates (O&R and RECO).
- b. The Commission should consider having an independent study performed regarding the costs and benefits of the interconnection of the Company's electric system with PJM, as well as other needed distribution/transmission improvements in the region.
- c. The Commission should consider having an independent study performed regarding the costs and benefits of the sale of the Company to another Pennsylvania EDC or a rural electric cooperative.
- d. The Company should be instructed to file its next default service plan no later than December 31, 2006, so that the Commission and the public have a full 12 months to consider its proposal.
- e. The Company should consider formally filing an updated PowerSwitch proposal with the Commission later this year.
- f. If the Company is to remain in NYISO for the long term, the Commission should consider the grant of an indefinite waiver of Pennsylvania EDI rules to facilitate entry of more EGSs into its retail market.
- g. The Company's service territory should be surveyed for alternative energy/renewable energy potential.
- h. The Commission should consider the permanent transfer of borderline customer accounts to Metropolitan Edison Company, to the extent that it is both technically feasible and that Metropolitan Edison

Company prices are expected to be below the Company's for the foreseeable future.

See, Law Bureau Report at 16-20.

Shortly after the issuance of the Law Bureau Report, on July 12, 2006, the County filed an Amended Complaint at Docket No. C-20065942. In its Amended Complaint, the County alleged that the rates charged by Pike are not just and reasonable, in violation of Section 1301 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1301, and that the Company's service is not safe and adequate, in violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501. The County also alleged that there are no Pike employees headquartered in Pennsylvania and that Pike maintains no office in Pennsylvania. The County requested that the Commission implement the recommendations contained in the Law Bureau Report and specifically that the Commission "should mandate that the Company be sold to another Pennsylvania electric distribution company or a rural electric cooperative." Amended Complaint at ¶9. As stated by the County in its Amended Complaint:

The sale of PCL&P should be mandated due to: 1) the inferior service quality of PCL&P, 2) the lack of local control and employee services in Pike County on the part of PCL&P, and 3) PCL&P's excessive rate levels as compared to those of other Pennsylvania electric utilities.

....

The magnitude of the present rates, the overwhelming customer desire for another utility provider (as heard at the Public Input session) and the lack of local control and local employees on the part of PCL&P mandate that PCL&P should be sold to another service provider.

Amended Complaint at ¶¶10, 14.

On August 4, 2006 the Company filed Preliminary Objections to the Amended Complaint of Pike County. In its Objections, the Company argued that: (A) the Commission lacked jurisdiction to grant the relief requested; (B) that the rate claims of the County were barred by the Filed Rate Doctrine; (C) that the County's claim should properly be brought against Direct Energy, which was the electricity supplier for the County; (D) that a forced sale was moot because the Commission had addressed that issue in other proceedings; and (E) that a billing issue that was also raised in the County's Complaint was moot because the issue did not directly involve the County.

The County and the OCA filed a Joint Answer to the Company's Preliminary Objections that addressed the Company's claims. The County and OCA argued that: (A) the Commission had jurisdiction to order the requested relief and in fact has used that power in past proceedings; (B) the Filed Rate Doctrine was inapplicable because the Company's Complaint sought prospective, not retroactive, rate relief; (C) the participation of Direct Energy was permissible, but not required, as the County's Complaint was against PCL&P; (D) no Commission action, pending or otherwise, precluded the County from seeking its requested relief; and (E) the billing errors were relevant because they supported the broader relief requested in the Complaint.

In an Interim Order dated September 19, 2006, the Administrative Law Judge denied the Company's Preliminary Objections A and B with respect to Commission jurisdiction and the filed rate doctrine. The Judge also rejected Objection C that the complaint must be dismissed for failure to join Direct Energy, but the Judge did find Direct Energy's interest to be essential to the case and therefore ordered that Direct Energy be joined as an indispensable party.

The Judge agreed with the Company that the billing error at issue in Preliminary Objection E did not affect the County itself and therefore granted that Objection.

The Judge addressed Preliminary Objection D in a separate Interim Order, dated September 21, 2006. In that Order, the AIJ certified to the Commission the question of whether this complaint proceeding should be stayed pending Commission action on the recommendation in the Commission Law Bureau Report regarding the sale of PCL&P to another utility or a rural cooperative.

On October 24, 2006, the Commission entered an Order answering the certified material question in the negative. The Commission ruled that this complaint proceeding should be permitted to go forward. With respect to the Company's argument that the case should not be permitted to go forward because the County had not made a *prima facie* showing of inadequate service or unjust and unreasonable rates, the Commission responded:

Our observation on this point is that evidentiary hearings have yet to be held; to foreclose a party from pursuing relief requested in its Complaint because it has not made a factual showing in advance of a hearing would be quick justice indeed.

County of Pike v. Pike County Light & Power Company, Docket No. C-20065942, *et al* at 15 (Opinion and Order entered October 24, 2006).

Hearings in this Complaint case were held, starting with a Public Input hearing in Matamoras on the morning and evening of October 4, 2006. Testimony was provided by 35 witnesses at those hearings. A summary of the testimony at the October 4 hearing is attached to this Brief as Appendix B.

Evidentiary hearings were held in Scranton on November 6, 2006, and on January 16, 17 and 19, 2007, for the purpose of presenting and cross-examining the testimony of the formal complainants and expert witnesses in this case.

Direct and Surrebuttal Testimony in support of the County's Complaint was presented by Harry Forbes, the Chairman of the Pike County Commissioners. Testimony was also presented at the evidentiary hearings by Formal Complainants William Hessling (on behalf of the Delaware Valley School District), Peter Kenny, John Dalton, Joseph Fretta, and Richard Snyder (on behalf of Samall Properties, et al). In addition, written testimony by Darrin Hervieux (on behalf of Altec Lansing Technologies), Frank Lacey (on behalf of Direct Energy) and Robert Knecht (on behalf of OSBA) were submitted for inclusion in the record.

The Office of Consumer Advocate presented written direct and oral surrebuttal testimony by four witnesses:

Matthew I. Kahal, an expert with 25 years experience in energy and utility economic and financial issues, who has been called upon to testify in approximately 300 proceedings before two dozen state and federal regulatory commissions. OCA Statement No. 1 at 1-2 and Appendix A; Jan. 16, 2007, Transcript at 22 *et seq.*

Peter J. Lanzalotta, a registered professional engineer with 30 years experience in electric utility system planning and operations. OCA Statement No. 2 at 1 and Exhibit PJJ-1); Jan. 16, 2007, Transcript at 50 *et seq.*

Nancy Brockway, a consultant on a wide range of energy and utility matters who served as a member of the New Hampshire Public Utilities Commission from 1998 to 2003 and previously served as General Counsel for the Massachusetts Department of Public Utilities. OCA Statement No. 3 at 1-2 and Exhibit NB-1; Jan. 17, 2007, Transcript at 7 *et seq.*

Robert Kolling, the President and Chief Executive Office of the Sussex Rural Electric Cooperative. OCA Statement No. 4 at 1; January 17, 2007, Transcript at 22 *et seq.*

The Company presented written rebuttal testimony of three witnesses: Angelo Regan, Joseph Holtman, and James O'Brien.

The hearings concluded on January 19, 2007 and a briefing schedule was established.

The OCA submits this Main Brief in support of the relief requested by the County of Pike in its Complaint. Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs are attached to this Brief as Appendix A.

II. QUESTION PRESENTED

Where an electric utility is not capable of providing safe and adequate service to its customers at just and reasonable rates, and where the utility's relations with its customers have deteriorated to the point where the customers through their elected officials have requested a new electric service provider, should this Commission exercise its authority to order the sale of the utility to another electric distribution utility or rural electric cooperative?

Suggested Answer: Yes

III. SUMMARY OF THE ARGUMENT

The customers of Pike County Light & Power Company, through their elected representatives and in their own words, have stepped forward in this case to express their dissatisfaction with the service, rates, and lack of community presence of this Company.

PCL&P is a tiny part of a massive New York utility with no employees or offices in Pennsylvania. Pike's customers are still reeling from a massive 129% increase in generation rates and 73% increase in overall rates that was imposed on them in January 2006 with little notice or preparation. This rate increase occurred soon after a period in which the reliability performance of the Pike system had deteriorated to a new low in the years 2004 and 2005. As in the case of Big Run Telephone Company, in which this Commission ordered the sale of a troubled utility in comparable circumstances, the relations between the utility and its customers have become "poisoned" and the Commission must act in order to "restore tranquility" to the affected community.

As noted by OCA witness Brockway, the current situation for Pike customers has become "intolerable," not just because the rate increase was so high and unaffordable to so many residential and small business customers, but also because a solution to this catastrophic situation is at hand – in the form of a good faith offer from Sussex Rural Electric Cooperative – to purchase PCL&P. As demonstrated by OCA witness Kahal, the opportunity to purchase low cost power from Sussex and its wholesale supplier, the Allegheny Electric Generation and Transmission Cooperative, is simply too good to pass up. Generation costs for Allegheny are less than half the price that Pike is able to secure through the volatile and high cost New York wholesale market price differential that is likely to continue in the long term. As shown by OCA witnesses Lanzalotta and Kolling, an interconnection between Pike and a nearby 34.5 kv

line within the PJM system on the New Jersey side of the Delaware River is a reliable and feasible means of bringing desperately needed relief to Pike customers.

This Commission has the authority to act to provide this relief, as demonstrated by the Big Run case as well as other decisions by this Commission and Commissions in other states. The Commission should exercise that authority to require PCL&P to enter into good faith negotiations for a sale of the utility to Sussex Rural Electric Cooperative or to another utility that is in a position to provide reliable service at reasonable prices to Pike customers.

IV. BURDEN OF PROOF

The burden of proof in this case falls on the Complainants, the County of Pike *et al*, to justify the relief that they have requested. 66 Pa.C.S. § 332(a); Burleson v. Pa. Pub. Util. Comm'n, 66 Pa. Commw. 282, 443 A.2d 1373 (1982), affirmed 501 Pa. 433, 461 A.2d 1234 (1983); Schellhammer v. Pa. Pub. Util. Comm'n, 157 Pa. Commw. 86, 629 A.2d 189 (1993). The Office of Consumer Advocate, as an Intervenor in this proceeding, has presented substantial evidence in support of the County's effort to meet that burden.

V. ARGUMENT

A. Introduction

The Public Utility Commission is confronted here with an extraordinary set of circumstances. The people of Pike County Pennsylvania, through their elected representatives, the County Commissioners, have told the Commission of their extreme dissatisfaction with their regulated public utility and have asked this Commission for a new electric utility to serve a portion of their County. Currently, Pike County Light & Power Company serves approximately 4500 customers in the eastern portion of Pike County. Harry Forbes, an elected Commissioner and Chairman of the Pike County Board of Commissioners, stated clearly the feelings that exist in Pike County:

I believe in my heart in reviewing what the customers of Pike County Light territory, me being one of them, and the County as a whole, have been put through by Pike County Light and Power the best direction is to sever relationships and move in a new direction...

Jan. 19 Tr. at 68. Mr. Forbes' assertions were supported by over 60 formal complaints by residents and businesses in Pike County against the Company; by a Formal Petition signed by over 500 residents and businesses in the Company's service territory asking for a new utility; and by extensive public input testimony. The record is clear; Pike County Light & Power Company is no longer welcome in the territory it serves.

While the immediate circumstances giving rise to this outcry are a result of the catastrophic rate increase that shocked customers in January 2006, the ingredients for customer concerns had been accumulating over a number of years.

As early as 1983, in a case that gave rise to what has been called nationwide the "Pike County Doctrine," this Commission held, and the Pennsylvania Commonwealth Court affirmed, that Pike ratepayers should not have to pay excessive costs for power that Pike was purchasing from its New York parent company. Pike County Light & Power Co. – Elec. Div. v. Pa. PUC, 77 Pa. Commw. 268, 465 A.2d 735 (1983) (Pike County). In Pike County, the Commission disallowed charges to Pike by its parent company, Orange & Rockland (O&R), under a FERC-approved Power Supply Agreement. The Commission found that lower cost supply was available to Pike from a neighboring Pennsylvania utility, and therefore disallowed amounts in excess of the cost of the lower priced supply. The Commonwealth Court confirmed Pike's obligation to secure the most economical power to meet its obligations and upheld the Commission's determination that the existence of the FERC-approved Power Supply Agreement did not insulate the Company from failure to obtain the least costly supply. Id. at 274, 465 A.2d at 738.¹

At the time of the restructuring of the Pennsylvania electric utility industry in the late 1990's, Pike again followed the path selected by its New York parent. O&R divested its generation assets, thereby placing itself and its small Pennsylvania subsidiary in complete reliance on the New York wholesale markets. OCA St. 3 at 8; Application of Pike County Light & Power Company for Approval of Restructuring Plan, Docket No. R-00974150 (Order entered July 23, 1998)(where the Commission found in Ordering Paragraph 12, "That Pike County Light & Power Company's parent, Orange & Rockland, will be divesting itself of its generating assets by auction, and that Pike County Light & Power Company will be allocated a share of the results

¹ The Pike County Doctrine was subsequently affirmed in the context of a Pennsylvania local gas distribution company that purchased gas in the wholesale gas markets from an affiliated supplier. Kentucky West Virginia Gas Company v. Pa. PUC, 650 F. Supp. 659 (M.D. Pa. 1986), *affirmed* Kentucky West Virginia v. Pa. PUC, 837 F.2d 600 (3rd Cir. 1988). In Kentucky West, the Court held that the Pennsylvania statute requiring an intrastate natural gas company to pursue a least cost fuel procurement policy did not conflict with federal law.

of such divestiture.”) The restructuring path followed by Pike and its New York parent left Pike customers exposed to a far more volatile set of conditions than the customers of other Pennsylvania utilities. OCA St. 3 at 23. While a rate cap was put in place as part of the Company’s Restructuring Settlement, Pike soon thereafter sought a rate cap exception. OCA St. 3 at 9. Under a Settlement that included the OCA, the Company was allowed to increase its generation rates slightly to address the situation in which it had found itself. OCA St. 3 at 9; Petition of Pike County Light & Power Company for Exception to Rate Cap Limitations Pursuant to 66 Pa. C.S. Section 2804(4)(iii)(D), and for Expedited Proceedings Pursuant to 66 Pa. C.S. Section 2804(4)(iv), Docket Number P-00011872 (Order entered August 9, 2002).

Most significant – and unique among Pennsylvania consumers – Pike customers have been exposed to the vagaries of the New York wholesale electricity market, which has consistently higher prices than the PJM Interconnection that serves nearly all of the rest of Pennsylvania’s electric utilities. OCA St. 1 at 16. Without generation resources of its own, or its parent, Pike has had little or no alternative but to rely on these New York markets to meet its customers’ needs.

In May of 2005, following the expiration of the settlement rate cap, the Company filed its proposed plan for securing default generation service for non-shopping customers. The Company proposed a financial swap auction process that was similar to one previously used by its New York affiliate, Orange & Rockland. The Commission approved the proposal, with modifications. OCA St. 3 at 10; Pennsylvania Public Utility Commission v. Pike County Light & Power Company, Docket No. P-00052168 (Order entered September 23, 2005). The Company held its auction for financial swaps on October 25, 2005. The results of the auction

produced catastrophically high generation rates, in excess of 14 cents per KWh for residential customers in 2006. OCA St. 1 at 12.

Adding to the unique situation faced by Pike customers, while Pennsylvania electric restructuring was ongoing in 1999, Orange & Rockland was acquired by Consolidated Edison (Con Ed). As part of the Con Ed corporate family, Pike represents 0.1% of the company's customer base, and 0.1% of the electric utility revenues. OCA St. 3, Exh. NB-2. Pike County went from being a minuscule part of O&R to an infinitesimal part of Con Ed.

Subsequent to Con Ed's acquisition of Pike, the Company removed its last employees from Pike County in 2004. OCA Cross Exhibit 7. Also subsequent to the Con Ed acquisition, the service quality declined. OCA St. 2 at 12. The quality of service deteriorated considerably in 2004 and 2005, to the point where in 2005 the *average* customer suffered through over 1100 minutes of outage that year. OCA St. 2 at 12.

As these facts make clear, Pike is a tiny tail of a very large dog focused on non-Pennsylvania utility operations. At the Public Input Hearings held October 4, 2006, Pike customers testified that they have suffered poor treatment for years. In particular, customers expressed a feeling of "second class citizenship" when compared to customers of Pike's parent company, Orange & Rockland, in New York. At the Public Input Hearings, one long-time customer, Mr. Davis Chant, summarized this feeling where he stated:

[I]f I look back on the service we've been getting in Milford and the Pike County Light and Power service area, I would say it's just a stepchild type service. I mean, you're in a situation where power goes out, and we have to have public citizens who are volunteers sometimes spend hours and hours directing traffic or taking care of situations that do come to pass, because we don't have any electric power.

Oct. 4, 2006 Tr. at 63.

The statistical data fully supported the dismay that Pike customers expressed over their quality of service from a reliability standpoint. OCA witness Lanzalotta detailed Pike's poor service in 2004 and 2005 as compared to service prior to the Con Ed takeover:

Of particular note are the annual average minutes of electric service outages per customer, as reflected by the SAIDI index in 2004 and 2005. In 2004, the average PCL&P electric customer saw 965 minutes of electric outages, more than 16 hours. In 2005, this increased to 1,102 minutes of electric outages per customer, more than 18.5 hours. The pre-merger average was 189 minutes of outages per customer per year, about 3 hours, 9 minutes per year. It is little wonder that PCL&P's electric customers are displeased with the reliability of their electric service.

OCA St. 2 at 12-13.

With the deterioration of Pike's reliability and customer service seen after the acquisition by Con Ed, the customers of Pike were not satisfied with their utility service. However, in December of 2005, the situation became intolerable as the Company notified the County that they would be receiving an enormous rate increase starting on January 1, 2006. Pike County Commissioner Harry Forbes described the notice received by the County as follows:

Back in December of 2005, the community representative for Pike County Light and Power came through to my office. He presented to me a sheet that stated that the company had just gone through PUC hearings and was getting a 73 percent rate increase.

Nov. 6 Tr. at 18. Mr. Forbes elaborated further, where he testified:

There was a lack of response, a lack of communication. And I highlight strictly even just recently with this rate increase when you look at it. To walk into a elected official's office, and that's what Barry Short was dispatched to do in December of 2005, and tell everybody they were getting a 73 percent rate increase, in my opinion was reprehensive. It was just something that should not have been done that way.

Jan. 19 Tr. at 26. As Commissioner Forbes testified, the Company provided County and local officials and customers with little notice or time to prepare for these shocking rate increases.

The Company clearly finds no fault in the manner in which the County and its residents were informed of the rate increase. Company witness O'Brien, Vice President -- Customer Relations for Pike, acknowledged that he was aware of the expected rate increase in October of 2005. Jan 17 Tr. at 109. When asked if better communications with the County and customers would have had a beneficial impact on customer concerns, Mr. O'Brien responded as follows:

I have to be perfectly honest and say, no, I do not. I mean, it's hard to justify from a political perspective, you know, that kind of increase other than, you know, informing them.

Jan. 17 Tr. at 111. The Company's position appears to be that the method in which Pike informed the County of the 73% overall increase, and 129% generation rate increase, less than a month prior to that increase, was the best it could do. The County and Pike customers clearly disagree with this assessment.

The resulting rate increases produced tremendous rate shock in the Pike community. With little notice, Pike's rates became by far the highest among Pennsylvania Electric Distribution Companies. OCA St. 3 at 15. OCA witness Brockway summarized the impact that the rate increase has had on the County, where she testified:

The rate increase is having a devastating impact on Pike County. According to the testimony presented at the public hearing, businesses are closing, those that remain open are cutting back on staff and local expenditures, consumers are finding it hard to continue to pay their bills, and with the adverse impact of the increase on the housing market, businesses and homeowners are likely to see a reduction in the value of their properties. Public entities such as school districts and municipalities are finding it difficult to cover the sudden increased expenses, and will have to pass on their increased electricity bills through higher taxes. Residential customers provided compelling testimony of the sacrifices they have had to make, from limiting their living space to foregoing health care due to the inability to pay their bills.

OCA St. 3 at 13.

The situation has become intolerable for Pike customers. As Ms. Brockway further testified under questioning from the Administrative Law Judge:

Judge Jandebour: You used the phrase intolerably high. And while I understand just a generic understanding that paying way more than your neighbor is intolerably high, I'm wondering what the basis of that phrase is other than that.

A. I would say that there are two bases in addition to that. For many customers, they can't afford this, you know. And Your Honor heard the testimony of the individuals with sensitivity to the question that's been raised about --- how much I can rely on these testimonies, I'll just point to the testimony of these individuals who talked about inability to pay their bills. Small businesses talked about inability to keep their business open. So there's an affordability problem. And it's broader than the general --- there's always an affordability problem for low-income customers, but this appears to extend considerably beyond the level of customers who are in poverty to a more general sense of the customers.

The other additional thing I would point to is that we have here an alternative. It would be one thing if there was no reasonable way for any institution, the Commission, any company, any cooperative, any institution to solve the problem for these customers, and it just was stuck in a geographical place that had limitations that could not be overcome. But that's not the case here. So to leave the customers with this high a level of rates when there are alternatives is, to my mind, intolerable.

Jan. 17 Tr. at 19.

As OCA witness Brockway explained, the current situation in Pike does not have to continue indefinitely. A nearby electric company stands ready and able to service Pike's customers with much more reasonably priced power. That alternative is the Sussex Rural Electric Cooperative (Sussex) in New Jersey.

The Sussex Cooperative is headquartered in Sussex, New Jersey and is in close proximity to Pike County. Sussex serves approximately 12,000 customers in Sussex County,

New Jersey. Sussex is a member of the Pennsylvania Rural Electric Association (PREA), and is a member of the Allegheny Electric Cooperative, Inc. (Allegheny). Allegheny provides generation and transmission service in order to meet all of Sussex's needs, and is a member of the PJM Interconnection. OCA witness Matthew Kahal testified that an acquisition by Sussex is by far the best alternative to the customers of Pike. As explained by Mr. Kahal, "if Pike County is acquired by Sussex, this will result in a significant decline in the rates that Pike County customers pay even immediately." Jan. 16 Tr. at 29. Mr. Kahal further explained that, as Pike became further integrated with Sussex, customers could experience the Allegheny Electric bulk power rate of approximately 5.8 cents per kwh. Tr. at 29. Sussex CEO Robert Kolling testified that he envisions that customers of Pike would be fully integrated into Sussex in approximately five years. OCA St. 4 at 4. Importantly, OCA witness Kahal testified that, due to Allegheny's existing mix of long-term generation supplies, the Allegheny rates should remain stable well into the future. Jan 16 Tr. at 29.

Clearly, the Sussex option would provide customers with the lowest, PJM-based generation rates that are available. In addition, Sussex has demonstrated that it is ready, willing and able to serve these customers in a reliable, customer friendly manner. Sussex provides service to its customers using the PJM transmission system through its open access requirements and would continue to access the PJM grid in a similar manner in order to serve Pike's load. Jan. 17 Tr. at 25-26.

Sussex CEO Kolling explained numerous benefits that could be brought to bear if an acquisition is completed. First, Pike customers would likely see immediate rate reductions of approximately 20% as compared to current rates. OCA St. 4 at 4. Pike customer rates would be brought to parity with Sussex rates in five years. OCA St. 4 at 4. Second, Mr. Kolling testified

that Sussex has 2.5 to 3 consumer outage hours per year. Jan. 17 Tr. at 79. Mr. Kolling also testified that two of the Sussex linemen currently reside in Pike County, and that Sussex would maintain a service crew in Pike County. Jan. 17 Tr. at 80. Finally, Mr. Kolling explained that Sussex provides 24 hour telephone coverage for outage issues. Outage information is directly transferred to service crews from the call recipient. Jan. 17 Tr. at 80.

The Commission has the authority to require Pike to negotiate a sale with Sussex under Pennsylvania law. In the Law Bureau's Report regarding the condition of Pike County Light & Power Company, the Commission's Law Bureau noted that:

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

Law Bureau Report at 19. In the Big Run case referred to by the Law Bureau, the Commission instituted an investigation into the operations of a telephone utility after receiving considerable public outcry against the service and rates of the Company. In that case, the presiding ALJ recommended that the company be put up for sale:

[O]n the basis that there is no other way to bring rates down to reasonable levels and on the basis that there is general dissatisfaction with the operations and management of the Big Run Telephone Company, so widespread that relations between the Company and the ratepayers could well be termed "poisoned".

Pa. PUC v. Big Run Telephone Company and Citizens Utilities Company of Pennsylvania,
Docket No. C-822983 (Recommended Decision of Joseph J. Klovekorn, Administrative Law

Judge September 9, 1982) (Big Run). The current situation in Pike County closely resembles the situation addressed in Big Run.²

Recently, the Public Utility Commission of Ohio was faced with a situation that closely parallels the current situation in Pike County. The Ohio Commission was faced with a small utility, Monongahela Power that was part of a much larger out-of-state utility. As part of its restructuring process, the Ohio Commission sought to have each electric distribution company implement what it termed a "rate stabilization plan." Monongahela Power, through its out-of-state management, refused to take part in the statewide Ohio transition plan. As a result, the Ohio Commission ordered the company to enter into negotiations for the sale of the company with a neighboring Ohio utility that was willing to provide stable rates to its customers. In the Matter of the Certified Territory of Monongahela Power Company, 2005 Ohio PUC LEXIS 306 (June 14, 2005) (Monongahela Power). The Ohio PUC's approach in Monongahela Power mirrored that of the Pennsylvania Commission's approach in Big Run.

The people of Pike County need relief from the high rates and poor service of the Pike County Light & Power Company. As long as Pike remains a miniscule part of a giant New York utility focused on operations in the New York ISO generation markets, Pike customers will not see rates that are just and reasonable in Pennsylvania. They are also less likely to get adequate service based on Pike's record of poor reliability and lack of community presence. Pike must be directed to enter into good faith negotiations with Sussex, or another utility that is willing to consider buying them, so that customers of Pike may experience safe, adequate and reliable electric service at reasonable prices.

² A copy of the Big Run Recommended Decision and Commission Order is attached to this Brief as part of Appendix C.

B. As A Result Of Structural Flaws In The Current Ownership And Generation Procurement Framework, Pike Is Unable To Provide Service At Just And Reasonable Rates In Accordance With Pennsylvania Law.

1. Introduction.

Unquestionably, the impetus for the filing of the Complaint by the Pike County Commissioners and the 60 other Formal Complainants, and the 427 residential and 114 business signatories to the Petition filed with the Commission to remove PCL&P from Pennsylvania, was the catastrophic rate increase that was imposed on those customers in January, 2006.

It is not just that the rate caps have expired for Pike customers and that they are paying wholesale market prices. Rate caps have expired in other parts of Pennsylvania without such catastrophic results. OCA St. 3 at 16. It is the fact that Pike is now isolated from competitive forces both at the wholesale and retail level. There has been no active retail market in Pike since restructuring, and the wholesale auction conducted by Pike in the New York ISO market, that governs current default rates, produced only two bidders for generation (one being Pike's affiliate, Con Ed Energy) and only one for capacity. Pike customers are subject to the vagaries of the New York ISO spot wholesale market without any reasonable protections.

The OCA submits that, going forward, Pike's current configuration cannot produce just and reasonable rates as required under Pennsylvania law. 66 Pa.C.S. § 1301. The OCA further submits that the structural impediments surrounding Pike will not result in electric service under the Electric Generation Customer Choice and Competition Act that is "available to all customers on reasonable terms and conditions." 66 Pa.C.S. § 2802(9). As explained below, the Commission must recognize the inherent problems with Pike's current service in order to fashion appropriate relief.

2. The Magnitude Of The Rate Increase Resulting From Pike's Generation Procurement Framework Created Tremendous Rate Shock In The Pike Communities.

The impact that the Pike supply procedures have had on customers is without equal in Pennsylvania. The current Pike rates are completely out of line with the generation rates paid throughout the Commonwealth and are wreaking havoc on the community. Pike customers are currently paying by far the highest rates for Provider of Last Resort (POLR) service of all Pennsylvania EDCs. OCA St. 3 at 15. As set forth by Ms. Brockway:

Pike has by far the highest POLR charges of any Pennsylvania utility. Exhibit NB-4 shows average monthly 2006 POLR bills for residential consumers for 9 Pennsylvania electric utilities (Penelec, MetEd, Citizens, Wellsboro, PPL, UGI, Duquesne, PECO and Pike). As can be seen, Pike has by far the highest POLR bills for residential customers using an average of 700 kWh per month. Customers of Citizens and Wellsboro, the two other tiny Pennsylvania electric utilities, were only 42% and 45%, respectively, of Pike's POLR charges – Note that Citizen and Wellsboro are tied into PJM.

OCA St. 3 at 15.

Importantly, as the rate caps of other EDCs have expired, their customers saw increases, but not as drastic as the increase experienced by Pike customers. As Ms. Brockway testified:

For example, Penn Power recently conducted a solicitation to obtain generation supply to meet its POLR needs. The solicitation, for residential customers, produced an average retail rate for that class of 8.25 ¢/kwh. UGI-Electric also recently established POLR prices for 2007 to 2009. Those prices, on average, for residential customers range from 8.933 ¢/kwh to 9.796 ¢/kwh.

OCA St. 3 at 16. The comparable generation rates for Pike residential customers in 2006 were over 14 cents per kwh for the first 1000 kwh of use. Therefore, even with respect to the other

EDCs that are no longer operating under rate caps, PCL&P's rates are by far the highest in the Commonwealth.

On a total bill basis, Pike's residential customer using 700 kWh per month, the total average bill (including both distribution and generation) increased to \$132 per month in January 2006, roughly a 73% increase from 2005 bills. OCA St. 3 at 10. This was an increase from about \$75 for the same amount of usage. OCA St. 3 at 10. These rates are nearly double the rates of Pike's neighboring Pennsylvania utilities, Met-Ed and PPL. As OCA witness Brockway detailed.

Today, overall bills for residential customers in the neighboring Metropolitan Edison Company (Met-Ed) and PPL Electric Utilities (PPL) service territories average \$67 and \$71 respectively for a customer using 700 kWh per month. Thus, customers just over the line separating Pike and either Met-Ed or PPL currently pay only a little over half as much as Pike customers.

OCA St. 3 at 15. Not only are Pike's customers paying total rates substantially higher than their neighbors, they are paying rates that are higher than what were the highest rates paid in the state by customers of PECO Ms. Brockway continued:

Similar customers of the second highest priced utility in the state, PECO, pay about \$102 per month on average during their summer months (less in non-summer months), about \$19 per month less than Pike customers under the Direct aggregation and \$30 less than the Pike rates.

OCA St. 3 at 15. By any measure, Pike's rates are considerably higher than the rates paid by customers of other EDCs throughout Pennsylvania.

The increase has had a tremendous impact on Pike customers. As set forth by Ms. Brockway, "rate shock" is a term coined in the early 1980's to refer to the large rate increases then forecast to be imposed when new nuclear power plants came on line. OCA St. 3 at 12. Although the term is not precisely defined, as stated by Ms. Brockway:

the rate increases forecast in the early 1980's, to which the term "rate shock" was applied, were in the range of 15% to 50%. By contrast, Pike County customers have just experienced a rate increase at 5 times the minimum definition of "rate shock" from putting over-budget nuclear plants into rate base. To put this in perspective, it should be remembered that these more modest rate increases of the 1980's were so disturbing that they ultimately helped lead to the abandonment of traditional cost-based regulation of generation in many states, including Pennsylvania.

OCA St. 3 at 12. Ms. Brockway further testified that:

No other Pennsylvania utility has faced so severe a rate shock as a result of restructuring. Rates for other Pennsylvania utilities, even very small ones, have remained lower, even after their generation rate caps have expired. Pennsylvania utilities have developed post-rate cap POLR rates both before and since the January 1, 2006 Pike rate increase, but no utility has seen results that were as drastic or as high as the Pike auction results.

OCA St. 3 at 15.

The only relief that has been made available to Pike customers came through the Commission-approved Direct Energy aggregation program. OCA witness Brockway provided the following summary of the Direct Energy program:

On March 10, 2006, Direct filed a Petition for an Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light and Power Company (Petition). The Petition set forth a mechanism by which potential aggregators could take over all or part of the POLR obligation, hopefully at rates lower than those set based on the 2005 Auction. On April 20, 2006, the Commission issued a Final Order which stated that given the unique situation presented, an Opt-Out Retail Aggregation Bidding Program should be instituted to serve Pike's customers. The program went forward, and on April 28, 2006, the Commission issued a Secretarial Letter which indicated the consideration of all bid proposals, and the approval of Direct as the winning bidder in the Retail Opt-Out Aggregation Program.

Unfortunately, the Direct bid ultimately came in close to the rates that applied under the results of the 2005 auction.

OCA St. 3 at 11.

Under the Direct Energy Aggregation, the average monthly bill for a residential customer taking POLR service from Direct Energy through the Commission-approved opt-out aggregation program that was put in place in June 2006 (as a result of the opt-out initiative) and using 700 kWh per month came down slightly, from \$132 per month to \$121 per month. The Direct Energy aggregation rates are still extremely high in comparison to other Pennsylvania electricity rates. The results of the Direct Energy aggregation only further show the inherent problems in Pike. Even where the Commission has gone to considerable lengths to bring competition to benefit Pike customers, only minimal improvement over existing high rates was possible. Moreover, despite these incredibly high default service rates, no retail competitors have come forward to offer savings to Pike residential customers.

3. The Extremely High Rates Have Had Devastating Impacts On Customers And The Community.

Those extraordinarily high rates have not been without significant consequences to ratepayers and the community. OCA witness Brockway highlighted the problems that the rate increase have caused on the Pike community, summarizing the public input testimony as follows:

Based on my attendance at the October 4 public input hearing, my review of the transcript of the February 27, 2006 PUC fact-finding hearing, and my discussions with Pike customers, I believe that Pike customers are angry, frustrated, and indeed fearful of the impact that the electric rate situation in Pike County will have on their lives and livelihoods. I have been to innumerable public hearings in which customers express their opposition to a rate hike. It would be surprising if customers welcomed rate increases, of course. And over the years I have seen many customers express frustration or anger over utility rate increases. But I have almost never experienced the level of concern and deep apprehension that I saw from the customers who came to testify before the Commission, and the people I spoke to outside the hearing. People in Pike County are gamely trying to hold on until some relief may come, but they are deeply fearful regarding their future and the future of their community.

Pike County Commissioner Forbes directly addressed the impact of the generation rate increase on the Pike County business community in his Direct Testimony:

What has happened over the past 11 months, we've had several businesses, smaller businesses that have had to close or elected to close. We've got others that have shifted their operations to their homes, where they were permitted or law permitted them to, and closed down their storefronts because of the electric usage within the area. We've had others that have had two family services, using the example of where they had to cut back. One family had to go back to work or get an outside job where the business would no longer support them. We've had others that are currently talking about closing, depending on how they get through this winter period, the winter period in Pike County, because the tourism slows down for the business owners. And in turn, when the rates of their electric surpasses their rents, it's getting that much harder for them. You can only pass on so much to your customer base. So you have a lot of these smaller operations that cannot afford to continue to operate in the area.

Nov. 6 Tr. at 26.

The customers of Pike have clearly expressed their outrage and concern over the rate increase. See, Summary of Public Input Testimony, attached to this brief as Appendix B. As the testimony of the complainants, public, and County makes clear, the impact on the community of the massive rate increases has been devastating.

4. Pike's Unique Location And History Create A Structural Barrier To Just And Reasonable Service.

a. Introduction

In 1996, the Pennsylvania General Assembly passed legislation, and Governor Ridge signed into law, the Electricity Generation Customer Choice And Competition Act (Electric Choice Act). 66 Pa.C.S. § 2801 et seq. Under the Electric Choice Act, the retail sale of electric generation was opened up to competitive forces. In passing the legislation that opened

up competition in the electric generation market, the General Assembly made several key findings, including:

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.

The "just and reasonable" rate standard of Section 1301 of the Public Utility Code was not repealed by the enactment of the Electric Choice Act. 66 Pa.C.S. § 1301. Rather, the Act declared that competitive forces rather than traditional cost-based regulation would be used to bring about just and reasonable rates for electric generation. In the case of Pike County customers, however, customers are receiving neither the protection of regulation nor the benefits of competition. As a result, their rates cannot be deemed just and reasonable.

As the General Assembly made clear, one purpose of the Electric Choice Act was to bring competition to bear on the electric marketplace in order to reduce electric rates and position the Commonwealth for success in the future. However, for those residing in Pike County Light & Power Company's service territory, the method of restructuring chosen by the Company has brought economic disaster. As demonstrated by the 2005 auction that resulted in the catastrophic rate increases currently being experienced, market participants have shown little or no interest in Pike either at the wholesale or retail level. Rather than bringing business into Pennsylvania, a lack of competition at the wholesale level has brought high rates that are driving businesses out of the service territory. Rather than lowering rates, rates have increased above those paid by neighbors in Pennsylvania and across state lines. And perhaps most importantly, the structural impediments faced by Pike customers will not diminish unless this Commission takes significant, vital steps to secure the future of Pike's customers.

Pike's rate experience, and its prospects for the future, are unique among Pennsylvania utilities. In other words, it is not just that Pike customers are paying, by far, the highest rates in Pennsylvania, (OCA St. 3 at 15); it is not just that the current rates are forcing businesses to close their doors and reducing the prospects for economic growth, (Forbes Direct Testimony, Nov. 6 Tr. at 26); the situation exists that as long as Pike remains in its current configuration, as a tiny appendage to a New York utility with no generation and totally dependent on the volatile and expensive New York ISO, there is little hope for an improvement in conditions. That is, there is little hope that rates can be just and reasonable.

OCA witness Kahal addressed the structural problems that have caused rate shock in Pike as follows:

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 St. 1 at 14.

- b. Pike's Location In The New York ISO Makes It Dependent On The High Priced New York Market To Meet Its Power Supply Needs.

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 Pike. OCA witness Kahal examined the relationships between the prices paid in these two markets. At the time of the auction that resulted in Pike'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 St. 1 at 15-16. As the above chart demonstrates, 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 St. 1 at 16. While the current differential between the markets has lessened to approximately \$15 per megawatt hour, the percentage difference remains consistently at 20 percent or greater.

This price differential does not just affect Pike. For example, Direct Energy acknowledged that it was able to achieve only small savings over existing rates in light of the fact that Pike operated in the New York market. Direct Energy St. 1 at 3. As long as Pike remains structurally dependent upon the New York market, Pike's customers will not have access to the lower wholesale market prices of PJM, or other generation supply options.

c. Pike's Small Size

In addition to its location in the New York ISO, Pike's small size makes it unable to attract competition, even from wholesale suppliers. Pike is located in a different wholesale market than the rest of Pennsylvania (in fact, Pike is the only Pennsylvania utility that is not in a Regional Transmission Organization). 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. The New York Public Service Commission has taken a very different approach to restructuring that state's electric utilities than was taken in Pennsylvania. OCA St. 3 at 23.

Pike's small peak load of 16 MW places the company at a disadvantage for the procurement of reasonably priced generation for its customers. Pike'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 of which was from Pike's affiliate, Con Ed Energy), and only one bid -- Con Ed -- was submitted for the provision of capacity (the reliability component of energy supply). Company witness Holtman acknowledged that the 2005 auction could not be considered competitive. Tr. at 147.

OCA witness Kahal explained why the small size of Pike's load is a structural impediment to reasonable service, as follows:

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 St. 1 at 17.

As Mr. Kahal testified, Pike's small size impedes the procurement of power from the competitive market and leaves their customers at the whim of the NY ISO market. The lack of size further limits the Company's ability to split up the procurement process to avoid bad market timing. In other words, because the load is so small, it is not reasonable to break it up even further because there will be even less interest from suppliers to expend the resources to participate in that process.

In its own testimony, and in the context of its proposed default service plan for 2008 and beyond, Pike clearly recognized the structural impediments that it faces. Pike witness 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. To the Company's credit, it has proposed to integrate future default supply auctions with its parent O&R's financial hedge transactions in order to bring greater wholesale competition to Pike. PCL&P St. 3 at 4.

The OCA submits that simply moving the procurement into a larger New York supply pool will not remedy the underlying issues regarding the prices in the New York market. Pike, as a small part of a very large utility operating primarily in the New York, and to a lesser extent New Jersey, regulatory arenas, is not structured to address Pennsylvania's restructuring approach and the need to provide reasonable default service to its customers.

d. The Commission Has Recognized That Structural Problems Exist In Pike's Service Territory.

The Commission has recognized the unique position that Pike finds itself in among Pennsylvania Electric Distribution Companies (EDCs). In response to the disastrous 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 Pike'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). In its Order, the Commission directed the Law Bureau to conduct a sixty day investigation into the electric market in the Company's service territory. The Commission provided a series of questions regarding barriers that existed to the successful implementation of the Electric Choice Act. Also, the Commission sought a review of the preliminary benefits of a sale of Pike to an adjacent EDC. The Law Bureau completed its Report in June 2006, and the Report was released by the Commission later that month.

After receiving comments from interested stakeholders on the questions presented by the Commission, the Law Bureau made several recommendations to address the structural problems with Pike's procurement of power. Included in the Law Bureau Report was a recommendation to explore the integration of Pike's default load with the procurement plans of its New Jersey and New York affiliates. Law Bureau 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. Law Bureau Report at 19. Clearly, the Law Bureau's recommendations reflected an understanding that Pike was uniquely situated among Pennsylvania EDCs.

As the Law Bureau's Report highlighted, since restructuring, Pike has become a "fish out of water" among Pennsylvania's electric distribution utilities. Pike is the only Pennsylvania Electric Distribution Company that is a member of the New York ISO. Currently, all other Electric Distribution Companies are members of Regional Transmission Organizations (RTOs), as designated by the Federal Energy Regulatory Commission (FERC).³ 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. The Law Bureau Report makes clear, extraordinary measures may need to be taken to remediate the situation.

e. Pike's Structural Problems Prevent Other Viable Alternatives For Rate Relief.

The Company's rate problems are not likely to be remedied through minor adjustments to the existing situation. Options such as relying on retail competition, or procurements with Orange & Rockland, provide little guarantee that future rates relief will take place.

³ In order for FERC to award the designation of RTO, a transmission organization must achieve wide-ranging geographic scope and operational independence, among other characteristics and functions, as detailed in the FERC's landmark Order 2000. The New York Independent System Operator has not been recognized as an RTO by FERC. See, New York Independent System Operator, Inc., et al., 96 FERC ¶61,059, 2001 FERC LEXIS 1709 (2001)

i. Retail Competition Will Not Bring Relief In The Foreseeable Future.

There is little hope that retail competition will bring relief to this situation. In essence, the retail providers face all of the same structural issues as Pike. OCA witness Kahal explained why retail competition is not a likely solution:

[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 St. 1 at 31. Mr. Kahal explained that even Pike has:

...candidly acknowledged the barriers to this happening.

Other [post rate cap] 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 St. 1 at 32. Mr. Kahal noted that the Commission has agreed with the OCA and the Company assessment of retail competition as a solution to the problem:

The Commission in its April 20, 2006 Order in Docket No. P-00062205 sought to be supportive of future opportunities for retail competition, but at the same time it was realistic about near-term benefits. The Order noted:

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. (pages 10-11)

OCA St. 1 at 32. The OCA submits that retail competition will not provide relief in the foreseeable future.

ii. The Company's New Proposal To Add Pike To Its New York Parent's Power Auctions Is Not Sufficient To Solve Pike's Problems.

The Company has recently proposed to integrate the procurement of supplies with its New York parent, Orange & Rockland. PCL&P St. 3 at 4. It is important to note that the Company still indicates that it cannot guarantee that this strategy will be successful. PCL&P St. 3 at 10. While the integration of supply with a larger load should help address the impact of Pike's small size on Pike default rates, it does not alleviate the structural problems inherent in Pike. OCA witness Kahal addressed the Company's new proposal:

I'm gratified that [Company witness] Holtman recognizes the same structural problems that I do. His integrated Orange & Rockland procurement proposal recognizes the problem of Pike County's small size load. He also recognizes the timing problem, which is why his proposal proposes a series of laddered three-year contracts. Unfortunately, it doesn't address one of the structural problems, and that is the linkage to the New York generation market.

Jan. 16 Tr. at 27.

While Mr. Kahal acknowledged that the Company's new proposal would be an improvement over the status quo, he testified that it was still inferior to options that would result in a linkage to the PJM market, and particularly the Sussex option. Jan. 16 Tr. at 28-29.

f. Conclusion.

As the record demonstrates, Pike is exposed to a convergence of impediments that no other Pennsylvania EDC faces, without a viable solution as long as it remains a part of O&R and Con Ed. The OCA, Formal Complainants, the Commission, and even the Company have all recognized the problems inherent in Pike's situation. Unless a change is made, Pike customers cannot receive rates that are just and reasonable. The resulting rate situation is truly untenable and must be corrected.

C. Pike's Service Is Inadequate.

1. Introduction.

The County's Amended Complaint avers that Pike is not providing safe and adequate service as required by Section 1501 of the Public Utility Code. The County also alleges – and indeed there is no dispute – that Pike no longer has any employees in Pike's service territory. As the record in this proceeding demonstrates, Pike has not provided reliable service, with its customers experiencing frequent and lengthy outages. OCA St. 2 at 8-14. Furthermore, Pike has not maintained a community presence or staffing in the County, and customer service has suffered considerably.

To a great extent, the Company has admitted that service in Pike's territory is simply going to suffer due to its rural nature. PCL&P St. 2 at 25. The Company testified that:

The type of outages that PCL&P customers experience and the resultant hours of interruption, are directly related to the geography, customer density, vegetation density, system design, and other system and operating specific parameters. The nature of

the PCL&P service territory, where many customers are fed from radial lines in heavily treed areas at the very end of the Company's service territory, explains why, as discussed above, customers are particularly susceptible to tree related interruptions and longer duration outages. Given the more rural characteristics of PCL&P's service territory, it is simply unrealistic for many of the Company's customers to expect that they will experience the same levels of high service reliability as customers who reside in predominately urban or suburban environments, where the electric delivery infrastructure is considerably more developed with higher levels of redundancy available.

PCL&P St. 2 at 25. The OCA submits that the Company's argument reduces to a statement that many Pike customers are simply going to have to accept below-average service. However, the Company's arguments fail to recognize that issues such as tree trimming and system design are largely within their control. To the extent that Pike is "at the very end of the Company's service territory," the OCA submits that this is part of the problem. Id. Pike is a Pennsylvania utility. Pike's customers are entitled to the full protections afforded under the Public Utility Code and the Commission's regulations. Pike's customers should not receive lesser service because they are at "the very end" of Con Ed's New York network.

OCA witness Brockway concluded that Pike customers have lost patience with the Company's poor service when coupled with high rates:

In addition to deterioration in reliability since the take-over of Pike's parent company by Con Edison, it appears that customers have become more concerned about reliability since the rate increase. From the statements of witnesses at the various hearings, it would appear that customers are no longer willing to tolerate service that has been poor, but reasonably priced, now that prices have increased sharply.

OCA St. 3 at 18.

The OCA submits that Pike's customers are entitled to safe, adequate service that is reasonably continuous and without unreasonable interruption or delay under Pennsylvania law, 66 Pa.C.S. § 1501. There is no indication that Pike is currently positioned to provide this service.

2. Pike's Service Reliability Has Deteriorated And Is Unreasonable.

It is axiomatic that customers of a utility have a right to safe, adequate, efficient and reasonable service that is reasonably continuous and without unreasonable interruptions or delay. 66 Pa.C.S. § 1501. Under Pennsylvania Law:

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.

66 Pa.C.S. § 1501.

Throughout these proceedings, numerous Complainants and customers at the Public Input Hearings expressed serious concerns regarding the quality of service they receive from Pike. Customers testified that they have experienced numerous outages over the past few years which have caused considerable hardship. Customers have had to live through major inconvenience, even including serious impairment to medical procedures. LCG St. 1 at 9; Oct. 4 Tr. at 88. For example, in his Testimony, Large Customer Group (LCG) witness Richard Snyder provided the following testimony:

[O]n June 1-2, 2006 there was an electric outage of about 16 hours which resulted in the closure of my tenants' businesses at the Milford Professional Park. One of these tenants was a dialysis center. As the outage occurred early in the day, the dialysis center was required to transport its patients to another dialysis center

located in Honesdale, 60 minutes away. It took PCLP personnel two days to address the outage event. Initially, PCLP personnel, upon inspecting the facilities, stated that the reason for the outage was the customer's responsibility. Upon further examination, it was determined that the outage was, in fact, the fault of the utility.

LCG St. 1 at 9.

Lisa Coaldo, a dentist, provided the following example of how outages have impacted her practice:

I've been in the business for 13 years in this area. There have been numerous times, and I mean numerous times in any given week, where I'm in the middle of cases. As I'm sure you can all not really appreciate, when you're in the middle of the dental chair and having dental work done, and my power goes out...I've been in the middle of drilling and doing the things --- I need electricity.

Oct. 4 Tr. at 88.

The Pike outages have had a substantial impact on the operations of small businesses, as well as causing damage to residential appliances.⁴ In the case of one Formal Complainant, Mr. Peter Kenny, the Company itself has acknowledged 16 outages from January 2005 through November 2006. PCL&P St. 2 at 27.

OCA witness Brockway summarized the public testimony regarding reliability of service, as follows:

Most Pike customers who discussed service quality at the hearings described the poor service quality as an injury to which the rate hike has added an insult. Witnesses complained about frequent blackouts and brownouts, lack of advance notice of planned outages, and difficulty getting accurate information about outages. Numerous witnesses described Pike as unresponsive to these concerns. A number of witnesses described electronic equipment they said was ruined by low voltage or by power surges while Pike was working on the system. Some witnesses asserted that Pike did not use safe procedures in performing maintenance. Many

⁴ Attached to this brief as Appendix B is a summary of Public Input testimony in this proceeding that includes considerable discussion of reliability issues.

witnesses said they felt that they got worse service than customers of Orange and Rockland, Pike's parent company across the river.

OCA St. 3 at 17. The public input testimony provided by Pike customers supports these concerns. For example, Mr. Thomas Hoff, a resident of Milford and chair of the Municipal Authority of Milford, testified that:

[F]rom 5/18/05 until 6/10/06, which I believe is 13 months, there were 15 outages. That means things stopped. That's a little better than one a month. There were 21 interruptions, for a total of 36 events. So added up, that's about three a month that we've had to react to.

Oct. 4 Tr. at 45.

Mr. Edward Nikles, Sr., President of the Pike County Chamber of Commerce, the owner of Nikles Business Plaza in Milford, and a Pike customer testified as follows:

[W]e have constant power outages which are costly to every business in this network. Many times I'd have to shut down and send employees home, had no phones, have lost data in our computers. And just recently during a brown-out, it fried one of our computers. Who pays for the lost equipment, wages and business? Not Pike County Light and Power, we do.

Oct. 4 Tr. at 19.

Mr. Bill Kiger, Councilman on the Milford Borough Council, testified:

Over the last several years, a number of businesses have been suffering blackouts, brownouts. And what this does is --- not only do you have a rate increase, but you're losing equipment, you're losing sales on that day.

Oct. 4 Tr. at 42.

Pike customer Davis Chant testified that:

[Y]ou're in a situation where power goes out, and we have to have public citizens who are volunteers sometimes spend hours and hours directing traffic or taking care of situations that come to pass, because we don't have any electric power...We were in a situation on one occasion where we had a blackout, and nobody

showed up at the site where the problem was...there was an area with power out for five or six hours.

Oct. 4 Tr. at 63-64.

Pike customer Marsha Van Lenten testified that frequent outages have hurt her business, and that there is inadequate maintenance of power lines in Pike:

We have a lot of outages. The outages have gone for as much as seven hours. One of them in particular took a whole class of mine, that I had to reimburse customers because I was without power when the class started.

The maintenance that Orange and Rockland or Pike County --- there's absolutely no preventative maintenance in the area. If it snows on the branches and the branches come down, the wires come down. And when you call, there isn't staff in this area that live in our county, they have to be brought over from Orange County.

Oct. 4 Tr. at 19.

Pike customer Lynne Astringer testified about her experiences with reliability and safety issues as follows:

I called [Pike], we had a tree out front, and there was a branch laying on the lines to the house. I called them a couple times. I said you have to come out here and do something about this. Nobody came. Next thing I know, a big wind came along, the branch came down, the wire was in the street, the police came, closed the street, I didn't have any electric. This went on for hours...they're not responsive, is what I'm saying.

Oct. 4 Tr. at 53.

The fact that the Company has no employees in Pennsylvania (OCA Cross Exam. Exh. 7) simply exacerbates this situation. Pike County Commissioner Forbes explained that even the proximity of Company facilities in Port Jervis, New York does not translate into rapid response times:

[Company witness O'Brien] testified to the effect of emergency dispatching after an emergency situation. It's all well and good in his testimony and he says that they dispatch out of a Port Jervis area. However, their crews do not live right in Port Jervis or in the Milford area. They come from several areas. And if you've ever dealt with some of their people, they do come from Middletown and further. And you are waiting over an hour sometimes or longer for a crew to respond to an emergency. That affects a lot of the County issues because of the amount of emergency service personnel that we have to on the road and disrupt their lives because they're all volunteers.

Jan. 19 Tr. at 28.

OCA witness Peter Lanzalotta examined the reliability data available for Pike and his analysis supports the Public Input testimony in this proceeding. Mr. Lanzalotta's analysis revealed that in 2005, the average Pike customer suffered through 1,102 minutes of electric outages, more than 18.5 hours. OCA St. 2 at 13. In 2004, the average Pike customer saw 965 minutes of electric outages, more than 16 hours. OCA St. 2 at 13.

The number of outages and the length of outages both increased considerably after the merger of Pike with Con Ed. OCA witness Lanzalotta analyzed the difference in reliability before and after the merger:

Based on the electric service reliability data ... it becomes clear the extent by which electric service reliability in the PCL&P electric service area has, from the electric customers' perspectives, declined since 1999, the year in which O&R, PCL&P's parent company, was merged with ConEd. Contrasting the six years before the merger with the six years since the merger, (1) the frequency of electric service outages (SAIFI) has increased from 1.69 outages per customer per year to 3.98 outages per year, an increase of 2.35 times, (2) the average duration of each outage (CAIDI) increased from 118 minutes to 162 minutes, an increase of 1.38 times, and (3) the annual average minutes of outage per customer (SAIDI) has increased from 189 minutes to a whopping 617 minutes (more than 10 hours) per year, an increase of 3.26 times.

OCA St. 3 at 12.

OCA witness Lanzalotta acknowledged that the Company's reliability data has shown improvement in 2006. Jan. 16 Tr. at 61. Pike County Commissioner Forbes also indicated that, in 2006, reliability has improved. Nov. 6 Tr. at 44. However, as the testimony of Complainant Peter Kenny demonstrated, the service in at least the Cummins Hill Road section of Pike's service territory, which serves Complainant Peter Kenny, continued to have excessive outages. Nov. 6 Tr. at 123-127; PCL&P St. 2 at 27.

More importantly, Commissioner Forbes noted that the Company's reliability improvement is largely too little, too late. In response to the Company's Rebuttal testimony, Mr. Forbes stated:

[W]here have they been and why hasn't this been looked ... I just sit back and say, why now versus looking at your customers over the period of time that you've been here.

Jan 19 Tr. at 38. Mr. Forbes noted that the Company has only now shown any plan for the improvement of reliability:

[T]rough these proceedings it has been brought to their attention and they have improved their tree trimming and vegetation.

But it all goes back to reliability. It deals with why this wasn't being done, why the attention to detail and reliability to the customers during these periods, which would've stopped a lot of the outages for a rural county, rural in nature. This is a utility that has been around and know this. And it all goes back to when Con Edison purchased this and pulled back their staffing and changed the way that the old Pike County Light and Power did business and was a reliable utility has gone down hill until this period of time for profit margins.

Jan. 19 Tr. at 40.

3. The Company's Poor Reliability Record Is Not Reasonable Simply Because Pike Is Rural In Nature.

In its testimony, the Company has argued that Pike is a rural territory and as such, is subject to increased reliability problems. PCL&P St. 2 at 25. The Company argues that Pike customers are more susceptible to tree related outages. *Id.* at 25. The Company now notes that it has recognized that tree related outages are a major problem in Pike County, and has recently increased its vegetation management, *i.e.*, tree trimming, cycle from providing maintenance every four years to every three years. PCL&P St. 2 at 17.

It is critical to note that the Company did not switch to a 3-year tree trimming cycle from its stated 4-year cycle until July 2006. In actuality, for one of the two distribution feeders that provide service to Pike County, the Company actually had gone five years between its last two trimming cycles. OCA Cross Exh. 4; Jan. 16 Tr. at 113-114. As Pike Commissioner Forbes testified, the Company knew this was a rural territory, but has only now made efforts to address the problem. Jan. 19 Tr. at 40. Specifically, Mr. Forbes testified that the Company now, "talks about tree trimming and vegetation and acknowledges the interruption of customers affected within the area...through these proceedings it has been brought to their attention and they have improved their tree trimming and vegetation." Jan. 19 Tr. at 40.

The testimony of Formal Complainant Peter Kenny reveals the Company's failure to properly address the concerns of their customers. Mr. Kenny presented unrebutted testimony that he has experienced numerous lengthy outages at his residence. Mr. Kenny stated:

Over the course of several years, I began to experience many outages of electrical power...These outages were at least on a monthly basis..[T]he outages from Pike County Light & Power were on occasion so extensive that my entire household was disrupted is an understatement. We had no electric power frequently and sometimes for an entire day.

Nov. 6 Tr. at 123-124. Mr. Kenny testified that he complained to the Company but was unable to resolve his problem. In making his complaints Mr. Kenny testified that he, "got the distinct impression that I was a very, very small cog in the fiefdom of, I guess it was Con Ed, which is, as I understand it the owner of Orange and Rockland, which is, I understand, also the owner of Pike County Light & Power." Id. at 124.

The OCA submits that the Company's late efforts to rehabilitate its service, while much needed, do not satisfy the deeply rooted problems that customers have with the Company. If the Company feels that customers will receive less reliable service in Pike County because it is rural and not similar to its O&R and Con Ed operations, the Company has a duty to rectify the situation.

4. Customer Service Is Wholly Inadequate Due To The Lack Of Community Presence.

In addition to the obvious reliability problems that Pike customers have had to endure, particularly since the Con Ed merger with O&R, the Company has failed to provide adequate customer service. The Company has frequently failed to inform customers of planned outages. In addition, its customers continue to have difficulty contacting responsive company employees to address reliability and rate concerns. The Company also has failed to provide adequate notice of rate increases.

The testimony of Complainant Peter Kenny highlights the lack of contact that Pike has with the community:

There is no representative of Pike County Light & Power in my area. The person doesn't exist. Whether there was in the past, I really don't know, but for some time now, if I have a problem and I call or my wife calls, we get brushed off essentially.

Nov. 6 Tr. at 127.

Mr. Kenny's testimony spoke to a general sense of abandonment that has been expressed by Pike's customers. In general, since Con Ed took over service, the Company's community presence has dissipated. Pike has not maintained an office in Milford since October 31, 2004, according to Company witness O'Brien. PCL&P St. 1 at 2.

The Company states that it has a notification procedure in place for outages that impact more than 25 customers. PCL&P St. 1 at 4. However, County Commissioner Forbes testified that the notification procedure simply does not work. Mr. Forbes stated:

[Company witness O'Brien] goes into quite detail about how, if there's an outage of over 25 customers ... they personally notify you. That has never happened. Both as a person that uses their service nor as a county and community leader, I've never had that happen.

Jan. 19 Tr. at 32.

The testimony of Jan Hurwitz at the Public Input hearings supports Mr. Forbes' assessment of the community outreach efforts of Pike. Ms. Hurwitz owns a small computer business in Milford. Oct. Tr. at 93. Ms. Hurwitz explained the impact of the failure of Pike to notify customers of planned outages as follows:

In the past, with Orange and Rockland, scheduled outages --- and I have testified in the past to this --- weren't always informed to us. We would find out, quite often through the local deli, that the power's going to go out in 15 minutes. And by the way, they already knew about it. This is not an emergency shut down.

My 23 employees were always on the lookout for when Orange and Rockland was in town, because my business relies heavily on electricity. There is a transformer out on the corner of 400 Broad and Caffren. And when Orange and Rockland is seen near that transformer, everybody runs to shut down equipment. We still do that today...

Oct. 4 Tr. at 94-95.

Members of the Pike community have expressed serious concerns with the relationship that the Company has with its customers. When asked by Complainant John Dalton where a customer could find a copy of Pike's tariff in Pennsylvania, the Company's Vice President for Customer Relations, Mr. O'Brien, replied:

You know, I don't have the specific address. I know when we closed the office, one of the requirements were that we have the tariffs within the service territory. We have them in the presence of, I believe, an attorney, a law office in Milford. I don't have the specific address...

Jan. 17 Tr. at 145.

Additional examples of customer dissatisfaction were provided at the Public Input hearings. For example, John Seidenstricker testified:

I don't know that you have any emergency equipment stored in Pike County, and I don't know that you have any employees of Pike County that can respond to these outages in emergencies. And if that's the case, we're always the last one to be repaired and the first one to go out, perhaps.

Oct. 4 Tr. at 70. Marsha Van Lenten testified:

And when you call, there isn't staff in this area that live in our county, they have to be brought over from Orange County.

Oct. 4 Tr. at 19. Wayne A. McCutchen testified:

I just feel that there's a lack of concern about the Orange and Rockland, as far as their feeling towards people goes.

Oct. 4 Tr. at 118.

An additional illustration of the lack of community presence can be found in the manner in which Pike notified the county and customers of the massive 2006 rate increase. As County Commissioner Forbes testified, the Company provided last minute notice of the 73% rate increase. Mr. Forbes explained the Company's notification to the County as follows:

Back in December of 2005, the community representative for Pike County Light and Power came through to my office. He presented to me a sheet that stated that the company had just gone through PUC hearings and was getting a 73 percent rate increase.

Nov. 6 Tr. at 18. Mr. Forbes elaborated further, where he testified:

There was a lack of response, a lack of communication. And I highlight strictly even just recently with this rate increase when you look at it. To walk into a elected official's office, and that's what Barry Short was dispatched to do in December of 2005, and tell everybody they were getting a 73 percent rate increase, in my opinion was reprehensive. It was just something that should not have been done that way.

Jan. 19 Tr. at 26. As Commissioner Forbes testified, the Company only provided customers with notification of its rate treatments in the month prior to the rate increases.

Company witness O'Brien acknowledged that he was aware of the January 1, 2006 rates in October of 2005. Jan 17 Tr. at 109. When asked if better communications with the County and customers would have had a beneficial impact on customer concerns, Mr. O'Brien responded as follows:

I have to be perfectly honest and say, no, I do not. I mean, it's hard to justify from a political perspective, you know, that kind of increase other than, you know, informing them.

Jan. 17 Tr. at 111. The lack of communication regarding the rate increase further illustrates the disintegration of the existing customer relationship.

As can be seen, the record is full of examples where the Company has failed to provide reasonable customer service. Customers have difficulty in communicating their problems with Pike and feel that the Company is not responsive to their requests and concerns. The poor level of customer relations has contributed to a poor relationship with Pike.

5. The Relationship Between Pike And Its Customers Has Become Poisoned.

The convergence of rate, reliability, and customer relations has led to a particularly bitter relationship between the Company and its customers. Relations have become so strained that the County, through its elected officials, has filed this Complaint requesting that the Commission direct Pike to sell itself to another utility or rural cooperative. Amended County Complaint at ¶¶10, 14; Jan. 19 Tr. at 88. The evidence that the Company's customers want a new provider is convincing. OCA witness Brockway summarized the relationship as follows:

The relationship between Pike County Light and Power and its customers can be described as being similar to the description used by ALJ Klovekorn in his 1982 Recommended Decision in the Big Run Telephone Company case – that is: “poisoned.” Many customers have no confidence in the utility's ability or willingness to address their concerns in any meaningful way. They have given up on the hope of getting decent service at reasonable rates from Pike County Light & Power.

OCA St. 3 at 19. Ms. Brockway continued, explaining the magnitude of the response in opposition to Pike:

The number of witnesses is extraordinary, particularly for a small utility. A total of forty-two (42) customers spoke at the February 27, 2006 fact finding proceeding, and an additional seventeen (17) were on the list but had to leave before their names were called. Thirty-five (35) customers spoke at the hearings on October 4, 2006. Of these, thirty-two (32) had not spoken at the February 27, 2006 fact-finding. Additional testimony was given at the hearings in early November. All-in-all, then, over sixty-five (65) separate customers have taken the time to address the Commission at one or more of the public hearings. This is out of a customer base of only about 4500 customers. It is unusual in my experience, to see over sixty customers speak at utility commission hearings in the rate case of a major utility with hundreds of thousands of customers. It is all the more noteworthy in the case of such a small utility. To put this in context, if the same percentage (1.4%) of PPL customers came out to speak at a public hearing, that would be over 17,000 customers.

OCA St. 3 at 21.

Importantly, Ms. Brockway noted that over 500 of the Company's customers signed a petition asking the Commission to force Pike out of the community:

In addition, a Petition has been filed with the Commission signed by 427 residential and 116 business customers of Pike stating that rates in the Pike service territory are "way out of line"; that service and infrastructure provided by the Company is "inadequate"; that Pike has no employees or offices in Pennsylvania; and calling on the PUC to "revoke PCL&P's license" and asking that PCL&P "be sold to another utility that is not related to PCL&P or its present owners."

OCA St. 3 at 7.

The customers have clearly focused on the out-of-state management of O&R, and ultimately Con Ed, as a source of their problems. They see Pike as an affiliate of an unconcerned major holding company that has little interest in their particular circumstance. There is also a demonstrated lack of trust of Con Ed to act in the best interest of Pennsylvania customers. OCA witness Brockway summarized the feelings expressed by customers:

Many customers indicated in one way or another that relations are poor between the customers and the utility because Pike is controlled by its out-of-state owners, Orange and Rockland, and in turn Con Edison. Pike customers do not trust Orange and Rockland or its corporate parent to make decisions in the interests of Pike customers. As one witness at the February 27, 2006, fact finding put this distrust: "...the reason that Orange and Rockland got away with this [the rate hike] is because they could do it." Tr. p. 60, lines 20-25.

OCA St. 3 at 22. These conditions have led to a sense of despair among customers:

Those who discussed the topic did not express hope for an improvement in the situation. Some customers remember the rate hikes of the 1980s which led to the implementation of the famous Pike County Doctrine, barring a utility subsidiary from limiting its wholesale purchases to the higher-priced offerings of its corporate parent, even if the parent's wholesale price had been approved by the Federal Energy Regulatory Commission. The sense of being a captive of the out-of-state parent utility remains. They would like to be free from this state of captivity. Others who are new to the

area shared this feeling of helplessness. One witness who just moved to the Pike service area put it this way: "We would like to be let go by Orange and Rockland, because we are held hostage by them."

OCA St. 3 at 22. Ms. Brockway's comments were echoed by Commissioner Forbes under questioning by the ALJ:

ALJ Jandebour: Is it also the County's position that even at this point in time --- today as being the last day of hearing, is it the County's position that you are not willing to sit down with Pike County Light and Power and discuss possible resolution of the rate and service issues?

A. My answer, Your Honor, to that is that not just the County and the Board of Commissioners that I represent here today, but the constituents that have constantly, since this proceeding has started back several months ago, who have constantly talked with me, seniors, young people, people in the territory, just have no reliability, no trust. They feel they've been violated.

Jan. 19 Tr. at 80.

As the public response to Pike's rates and service makes clear, the Company's customers no longer believe that Pike can provide adequate service that meets their needs.

6. Conclusion.

The reliability and customer service problems in Pike's service territory have created tremendous hardships on the residential and business communities. The Company's lack of community presence and the poor level of customer service add to these problems. The OCA submits that the service provided by Pike does not meet the standards set for under Section 1501 of the Public Utility Code.

D. The Sussex Rural Electric Cooperative Stands Ready, Willing and Able To Provide Reasonable Service To Pike Customers.

1. Introduction.

OCA witnesses examined several alternatives to attempt to address the situation in Pike. OCA witness Kahal described his review of alternate power supply options as follows:

(1) "Business as Usual." Absent a change in attitude, it would appear that for post 2007 service the Company would seek one year or multiyear POLR supply in a manner similar to its 2005 procurement strategy. However, under this strategy all of the structural problems would remain (with one exception),⁵ and the outcome will be governed in part by the vagaries of market timing risk.

(2) Acquisition by Another Utility. Sussex Rural Electric Cooperative (Sussex) has sought to acquire the Company in a negotiated market transaction. This would resolve this problem, both in the near and long term, assuring reasonable and stable-priced electric service.

(3) Integration with the Rockland BGS. It may be feasible to integrate the PCL&P procurement with that of its New Jersey affiliate's Basic Generation Service (BGS) and in the process mitigate the severe structural problems that have led to or exacerbated the severe rate shock. However, reaching this result will take considerable time and may involve complications.

(4) PJM Integration. An interconnection with PJM would provide significant POLR cost savings under a "go it alone" strategy, and may be necessary to pursue (in an effective manner) the Rockland BGS option. The technical and economic feasibility of PJM integration is discussed by OCA witness Lanzalotta.

(5) Enhancing Retail Competition. There has been some discussion of enhanced retail competition (for example through the Company's Power Switch program) as a means of mitigating the POLR rate shock. As will be discussed, this simply is not an option that realistically can provide large benefits to PCL&P retail customers.

⁵ The one change is that PCL&P is no longer restricted to financial hedging instruments.

OCA St. 1 at 7-8. After reviewing Pike's options for interconnecting with PJM on its own, and when considering options that would address reliability and customer service concerns, Mr. Kahal concluded that the best solution by far was an acquisition by Sussex Co-op.

2. The Acquisition Of Pike By Sussex Provides The Best Available Relief From Continued High New York Market Pricing.

The County of Pike, through its Complaint, has asked the Commission to facilitate the sale of Pike to a new provider. In making this request, the County has reviewed all options it believes to be viable, and has concluded that the acquisition of Pike by the Sussex Rural Electric Cooperative would be in its best interest. The Chairman of the Pike County Commissioners, Harry Forbes, explained the County's view as follows:

I've had the opportunity to review not only Met-Ed, but PP&L and also Sussex Rural Electric. In doing some homework and research on Sussex Rural Electric, I concur with the Public Utility's report that this firm should be sold, should be looked at. I think Sussex, who has tried to talk with Pike County Light and Power about possibly coming here and buying them out, it would be in the best interest of the customers within that service territory. I think that we could stabilize both the electric rates within the area, and it would also add redundancy, which is something that Pike County Light and Power does not have.

Nov. 6 Tr. at 31. The OCA's analysis supports the County's position.

The record demonstrates that the best available option for real, sustainable rate relief for Pike's customers is the sale of PCL&P to Sussex. Critically, Pike did not present any rebuttal testimony to the testimony of OCA witness Kahal that under the Sussex option, power would be procured from the Allegheny Electric Cooperative, Inc. (Allegheny) at dramatically lower cost than the current Pike generation rates and that these lower costs could be expected to continue well into the future. Mr. Kahal provided a thorough economic analysis regarding the clear benefits that a sale to Sussex would bring to Pike customers. Namely, as part of Sussex,

Pike customers would receive power via PJM through Allegheny Cooperative's generation procurement process. Again, Pike presented no rebuttal to Mr. Kahal's economic analysis.

Currently, Pike is interconnected with the New York Independent System Operator (ISO) and takes power in that wholesale market. OCA St. 1 at 6. Unlike Pike, Sussex receives all of its power needs through the Allegheny Electric Cooperative, a member of PJM Interconnection.⁶ OCA St. 1 at 25.

If Pike were to be acquired by Sussex, Pike would receive power from Allegheny, at prices that are substantially lower than current PJM or New York ISO market prices. Currently, Sussex receives 100% of its power supply through an arrangement with Allegheny. Allegheny provides generation and transmission service in PJM to 13 Pennsylvania Cooperatives and the Sussex Cooperative. OCA St. 1 at 24. Allegheny serves a peak load of 655 MW, which provides power to roughly 222,000 retail customers. OCA St. 1 at 24. Allegheny's supply is derived largely from two electric generating units located in the PJM interconnection. In 2005, Allegheny met 62% of its power needs from its ten percent ownership stake in the Susquehanna Steam Electric Station, a 2,360 megawatt (mw), two unit nuclear plant operated by PPL Corporation. OCA St. 1 at 25. Allegheny also owns 42 MW of hydroelectric facilities in Raystown, Pennsylvania, and purchases low cost hydro power from the New York Power Authority. These combined hydro-power arrangements provide approximately 10% of Allegheny's power. OCA St. 1 at 25. For the roughly 70% of power that Allegheny receives through these generating units, that power is purchased at cost-based rates. OCA St. 1 at 25. For

⁶ As explained above, the price of power in the PJM Interconnection, which serves most of Pennsylvania and New Jersey, is consistently lower than the cost of power in the New York ISO. At the time of the October 2005 auction, there was over a \$20 per megawatt hour difference in price. OCA St. 1 at 16. Mr. Kahal updated his analysis to show the current price differentials between the two markets, and while the current differential between the markets has lessened to approximately \$15 per megawatt, the percentage difference remains consistently at 20 percent or greater. OCA St. 1 at 16.

the remaining 30% of its power needs, Allegheny purchases in the PJM market. OCA St. 1 at 25. The combination of low-priced at-cost power through self-owned assets, along with PJM power, provides Allegheny with generation rates that are substantially lower than the rates than can be expected to be paid by Pike customers now or well into the future as they are currently situated in the New York ISO. Indeed, the 5.8 cent per kwh generation rate currently charged by Allegheny is less than one half the current generation rate charged to Pike customers. OCA St. 1 at 25.

The generation rates that result from the Allegheny portfolio of generation resources are a tremendous benefit, particularly in today's market. OCA witness Kahal explained Sussex's retail generation rates that result from its membership in the Allegheny Electric Cooperative, as follows:

Sussex obtains its power supply from Allegheny Electric Cooperative, Inc. (Allegheny), a Generation and Transmission (G&T) cooperative headquartered in Harrisburg, PA, and a member of PJM. Allegheny provides G&T service to 13 distribution cooperatives in Pennsylvania plus Sussex. Sussex currently incurs a power supply cost of 5.8 cents per kWh based on Allegheny's blended cost of supply. Even after adjusting this wholesale cost for line losses, this is only about half what PCI&P customers are incurring for generation supply under the Direct Energy "opt-out" price.

OCA St. 1 at 25 (emphasis added). As explained by Mr. Kahal, the generation rates for Sussex customers are well below the generation rates currently paid by Pike customers, and more in line with the generation rates that Pike customers were paying prior to the current generation default service plan. On a total rate basis (including generation, transmission, and distribution), Pike default residential customers paid approximately 19.4 cents/kwh in 2006 and 18 cents/kwh in 2007. OCA Cross Exam. Exh. 10. In contrast, Sussex customers are paying a total service rate of 10.38 cents per kwh. OCA St. 1 at 24. A residential customer using 700 kwh in a given

month would pay approximately \$82 under Sussex's current total rates, compared to a Pike customer paying \$121 under the Direct Energy aggregation generation rates and Pike distribution rates. OCA St. 1 at 24.

Perhaps most importantly, the generation price benefits of becoming part of the Sussex Cooperative are not just short-term. The Sussex power supply should remain reasonably priced well into the future. OCA witness Kahal explained why the Sussex generation rate should remain stable going forward, where he testified:

While power supply costs could change somewhat over time, I believe that on a long-run basis they are likely to remain reasonably stable. The largest asset, Susquehanna (a two-unit plant), has about 20 years remaining on its Nuclear Regulatory Commission (NRC) operating license and there are reasonable prospects for a 20-year NRC license extension. It is also my understanding that the owner (PPL Corporation) intends a power uprate of the plant by about 10 percent, and as a co-owner, Allegheny will share in any uprate (as well as uprate costs). At the present time, Allegheny's large original investment in Susquehanna has been largely recovered, and as a result it seems unlikely that its "all-in" cost of power from this plant will increase significantly over time.

The cost of hydro should also remain stable over time. The owned Raystown hydro project is less than 20 years old, and Allegheny has entered in to a new 18-year agreement with NYPA for the low-cost purchased hydro generation.

OCA St. 1 at 26-27.

Mr. Kahal further explained that only 30% of the power supply that Allegheny procures is subject to market forces. Currently, Williams Energy Marketing & Trade provides the market based portion of the Allegheny portfolio through a fixed rate contract. OCA St. 1 at 26. Importantly, because Allegheny and Sussex operate in the PJM market, even this market-based portion of supply can be expected to be more reasonable than the market prices that Pike can obtain in the New York ISO.

Mr. Kahal summarized the long-term rate benefits that a Sussex acquisition would provide as follows:

[I]f Pike County is acquired by Sussex, this will result in a significant decline in the rates that Pike County customers pay even immediately. But over a period of time, over a period of several years, Pike County will then be phased into the Allegheny electric bulk power rate. That bulk power rate is 5.8 cents. But 5.8 cents is less than half of the generation rate that Pike County customers now pay.

I've also taken a careful look, and I explain this in my direct testimony, at the long-term prospects for the costs that Allegheny would charge its customers, which would include Pike if Pike were to be acquired by Sussex. And the information would indicate that that rate is - - - it may not stay at exactly 5.8 cents, but it should, over a long period of time, remain fairly stable and inexpensive. The reason is that something like 70-percent of Allegheny's generation supply comes from very low costs, nuclear and hydroelectric power, the other 30-percent from the market. So the very fact that 70-percent of its power supply is coming from these highly economical sources will help assure that the generation costs in the long run remain both attractive and stable.

Jan. 16 Tr. at 29.

Mr. Kahal concluded that the Allegheny supply portfolio of at-cost generation and PJM market power should provide stable prices over the upcoming years. Mr. Kahal stated as follows:

Since the vast majority of Allegheny's power supply comes from "locked in," stable-cost resources, I conclude Allegheny's blended costs should remain relatively stable over time. While the wholesale rate may not be fixed over the long term at 5.8 cents, I do not expect large changes. In addition to this relative stability, it is virtually certain that the Allegheny rate will be far below the POLR prices that PCL&P could offer its customers.

OCA St. 1 at 27.

The unrebutted evidence in this case demonstrates that Pike customers would greatly benefit from the rate reductions that an acquisition by Sussex could provide. The OCA

submits that the Commission should work to facilitate the sale of Pike to Sussex, the primary relief requested by the County, in order for these benefits to be realized.

3. The Sussex Acquisition Will Require Interconnecting Pike With PJM, A Project Shown To Be Feasible.

To make the acquisition of Pike by Sussex possible in the most cost-effective manner, Sussex would interconnect Pike with the PJM Interconnection through a line just across the New Jersey border. OCA witness Lanzalotta testified that the cost to interconnect Pike with PJM through this line would range from \$1 million to \$2 million. OCA St. 2 at 7. The impact of these costs would be relatively minor on Pike ratepayers and are far outweighed by the savings, customer service, and local control that would result from the acquisition. OCA witness Kahal testified that due to the low cost of capital that Sussex can access, "a one to two million dollar interconnection would show up as approximately one to two mills per kwh." Jan. 16 Tr. at 30. For the residential customer using 700 kwh, that is a range of 70 cents to \$1.40 per month. Even if the cost of the interconnection is greater than that estimated by OCA witness Lanzalotta, the generation savings that would result from Sussex rates overwhelm these costs.

OCA witness Lanzalotta evaluated several options to interconnect Pike with PJM. Mr. Lanzalotta conducted a field examination of the electrical facilities in and around Pike's service territory. OCA St. 2 at 2. As part of this review, Mr. Lanzalotta considered the possible interconnection of Pike with PPL Electric Utilities, Inc. (PPL), Metropolitan Edison Company (Met Ed), and Sussex. Id. at 4. Mr. Lanzalotta concluded that interconnecting Pike to PJM through PPL or Met Ed's facilities that are approximately 8 miles from the nearest Pike facilities was not optimal at this time. Id. at 4-6.

OCA witness Lanzalotta then explained how Pike would interconnect with PJM through the Sussex acquisition plan:

Sussex is located to the east of the Milford load center area... and is separated from the Company's service area by the Delaware River. JCP&L has a 34.5 kV circuit, which has the capacity to pick up the PCL&P electric load that is approximately one mile from the river. Based on conversations with Sussex, I estimate that the PCL&P electric system could be initially hooked up to the JCP&L 34.5 kV, with an aerial river crossing and anywhere from five to thirteen miles of 34.5 kV construction to connect and initially integrate the two systems, for as little as \$1 to \$2 million.

OCA St. 2 at 6 (Corrected, Jan. 16 Tr. at 52).

As Sussex CEO Kolling explained in his Surrebuttal testimony, the cost of capital for any interconnection expenditures will be based on the cost of low interest debt that Sussex receives through the National Rural Utilities Cooperative Finance Corporation (CFC). Jan. 17 Tr. at 70. The CFC is a national cooperative that provides low interest loans to rural cooperatives for utility operations. Sussex has access to the CFC's low interest borrowings as a cooperative. Sussex will finance 100% of the interconnection through the CFC. As a result the cost of capital is extremely low for the Sussex Cooperative. Mr. Kahal testified that:

Sussex has the advantage over Pike of a very, very low cost of capital, of financing. This means that although the PJM interconnection must be paid for, as Mr. Lanzalotta discusses in his testimony, he estimates that that cost be about a million to two million dollars, something in that range. Even if this is directly assigned to the Pike customers, because of the very low cost of capital of Sussex, this is going to be a very inexpensive charge to the Pike County customers. In a data response that I provided to the company, excuse me, to Pike County, I believe it set forth, question three. I estimated that that cost would be in the range, on a long-term basis, of about one to two mils per kilowatt hour, which is only about one percent of the current rates that the customers now have.

Jan. 16 Tr. at 30.

The Company has challenged the OCA's estimated cost of interconnection, arguing that there are numerous costs that have not been considered by the OCA witnesses. PCL&P St. 2 at 9-13. Pike further argues that Sussex has not evaluated all the requirements of an interconnection at this time. Jan. 17 Tr. at 30-32. As Mr. Kahal made clear in cross-examination, however, even if a major increase in the cost of the interconnection were to occur, the generation savings would overwhelm the impact of the interconnection on customers' bills. Mr. Kahal explained that an increase in the cost of interconnection by \$1 million, representing an increase of from 50% to 100% of OCA witness Lanzalotta's cost estimate, would result in an increase of approximately 1 mill, or 1/10 of a cent in Pike customers rates. Jan. 16 Tr. at 44-45. The total cost would be 3 mills per kwh, compared to a decrease in generation rates of approximately 7 cents per kwh using the current Allegheny supply cost as a comparison. OCA St. 4 at 3; see, Jan. 17 Tr. at 100. To the extent that there is a difference between the OCA's and Pike's projected interconnection costs with PJM, the savings that would be seen through reduced generation rates exceed even the Company's cost estimates.⁷ See, PCL&P St. 2 at 13. There is no justification for denying the customers of Pike access to Sussex generation supply.

4. Sussex Will Bring Additional Benefits.

In addition to reasonably priced power, Sussex brings additional benefits to the table. Those benefits include the possibility of better service, an advanced load response program designed to bring economic and reliability benefits to customers, and local service crews.

⁷ Under the Company's analysis, connecting Pike to Sussex would cost approximately \$5.2 to \$6 million (assuming a connection with Sussex's facilities 17 miles from Pike facilities). PCL&P St. 2 at 9, 13. Even under the Company's cost analysis, the cost of the interconnection would be 5 to 6 mills with Sussex's access to low cost capital. However, because the Sussex plans on interconnecting with PJM only two miles from current Pike facilities, the cost of the interconnection would be substantially less. Jan. 17 Tr. at 67.

Sussex has instituted an advanced automated meter reading system that will be incorporated in Pike's service territory. Currently, Sussex provides automated meter reading service to all of its customers. In addition, Sussex runs a load management program designed to bring reliability and cost benefits to its customers. OCA witness Kahal explained this program:

Coordinated Load Management System (CLMS). Allegheny sponsors a load management program for its members, which in 2005 provided a peak demand reduction of about 50 MW (about 8 percent of its peak load). Allegheny estimates that in 2005 this program provided \$4.4 million of cost savings. Sussex itself offers its customers participation in an Electric Thermal Storage (ETS) program at a large rate discount.

OCA St. 1 at 26. Sussex CEO Kolling elaborated on the greater benefits of this meter reading and automated control system:

Sussex is 100% AMR (automatic meter reading) to its members and will integrate the same system in Pike County over the first three years. AMR gives our members a way to track their daily usage and helps us locate and determine outages. We also have a load management system in which we can send a signal to a device that turns the member's electric hot water tank off. This helps us control our peak electric demand. We also have an ETS (Electric Thermal Storage) rate to our members that choose to install this type of equipment for heating their homes. We have the member install a second meter on the house and all KWH usage for this service is sold to our members at a cost of \$0.58757 per KWH. This is off peak and our cost per KWH reflects them not contributing to our system peak.

OCA St. 4 at 3.

In addition to these programs, Sussex brings a proven track record for reliable service. OCA witness Lanzalotta examined the reliability data of Pike and compared it to the data available for Sussex. Mr. Lanzalotta concluded as follows:

Based on the data available, Sussex's electric service customers have been experiencing fewer annual average minutes of service outages than PCL&P customers over the past six years.

Although the reliability performance of both utilities varies significantly from year to year, the Sussex electric service customers have experienced fewer annual average minutes of outages in every year since 2000. The seven year average annual minutes of outage per customer is 226 minutes for Sussex, versus 631 minutes for PCL&P, more than 2.7 times the annual outage minutes for Sussex.

OCA St. 2 at 15, 17.

In addition, Sussex CEO Kolling testified that Sussex will maintain a service crew in Pike County. Jan. 17 Tr. at 80. A Sussex acquisition would bring with it a management that is focused on the needs of the Pike customers, with regional control and a focus on serving Pike County and Sussex County region. Based on these observations, the County's desired relief of a Sussex acquisition should bring reasonable, reliable service.

5. The Sussex Solution Provides Relief From The Problems Pike Will Face In Meeting The Requirements Of The Alternative Energy Portfolio Standards Act.

The Alternative Energy Portfolio Standards (AEPS) Act became effective on February 28, 2005. Under the Act:

(1) From the effective date of this act through and including the 15th year after enactment of this act and each year thereafter, the electric energy sold by an electric distribution company or electric generation supplier to retail electric customers in this Commonwealth shall be comprised of electricity generated from Alternative energy sources and in the percentage amounts as described under subsections (b) and (c).

73 P.S. § 1648.3. As a Pennsylvania EDC, Pike must comply with the AEPS Act. However, with respect to alternative energy sources, Section 1648.4 reads, in particular:

Energy derived only from alternative energy sources inside the geographical boundaries of this Commonwealth or within the service territory of any regional transmission organization that manages the transmission system in any part of this Commonwealth shall be eligible to meet the compliance requirements under this act.

73 P.S. § 1648.4. The Commission has interpreted this to mean that an EDC must obtain credits for alternative energy generated in either its own service territory, Pennsylvania, or the Regional Transmission Organization (RTO) that it participates in. Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan, Docket No. P-00052188 (Order entered April 28, 2006 at 138-142). The energy that Pike receives is not derived from sources in Pennsylvania, and the New York ISO, through which Pike is served, is not an RTO. In 2001, the Federal Energy Regulatory Commission (FERC) determined that "NYISO's compliance filing does not minimally satisfy several of the characteristics and functions set forth in Order No. 2000, which we deemed necessary to achieving RTO status." See, New York Independent System Operator, Inc., et al., 96 FERC ¶61,059, 2001 FERC LEXIS 1709 (2001). As a result, FERC rejected the New York ISO's request for RTO status. Consequently, Pike's only recourse is to purchase alternative energy credits separate from the energy from a resource located in Pennsylvania.⁸

Thus, unlike every other utility in Pennsylvania, Pike does not have any access to out of state resources that might qualify under the Act and it must buy its Alternative Energy Credits as a separate product. As noted by OCA witness Brockway, OCA St. 3 at 28, Pike is therefore at a severe disadvantage when it comes to meeting its Pennsylvania AEPS requirements in the most economic manner. In contrast, as a rural cooperative, Sussex would actually be exempt from AEPS purchase requirements in light of its current demand side management programs:

⁸ The AEPS Act defines a Regional Transmission Organization as "An entity approved by the Federal Energy Regulatory Commission (FERC) that is created to operate and manage the electrical transmission grids of the member electric transmission utilities as required under FERC Order 2000." 73 P.S. § 1648.2. The New York ISO does not meet this definition.

§ 1648.8. Rural electric cooperatives

Each rural electric cooperative operating within this Commonwealth shall offer to its retail customers a voluntary program of energy efficiency and demand-side management programs as a means to satisfy compliance with the requirements of this act.

73 P.S. § 1648.8.

6. Sussex Will Provide Reasonable Customer Service And Consumer Protections.

The County of Pike is requesting that the Company be sold to Sussex, a rural cooperative that would not fall under the Commission's jurisdiction. In this instance, the OCA supports the County's requested relief because of the significant benefits that such an acquisition will bring. First, as mentioned above, customers would receive substantial rate relief that is reasonably expected to last well into the future as a result of the Allegheny Cooperative's generation supply portfolio. Second, an acquisition by a nearby cooperative should place Pike in a position of higher priority than it stands as part of Con Ed. For example, Pike's customers would comprise roughly 25 percent of the Sussex customer base, rather than the less than 1 percent they represent in the Con Ed system.

OCA witness Brockway thoroughly examined the implications of moving the Pike customers to a rural cooperative from a regulated investor-owned utility under the Commission's jurisdiction. Ms. Brockway explained:

The key factor in this case is that the Sussex option is far and away the best way to solve consumers' problems of high rates and indifferent service. In addition, the Commission can be reassured by the fact that Sussex has a history of good service, as described by Mr. Lanzalotta. Also, Sussex has initiatives like its load management program that follow along with public policy priorities identified by Pennsylvania law and regulation.

OCA St. 3 at 28. Importantly, unlike the current situation, Pike customers will have a direct say in the policies of Sussex. As Ms. Brockway explained:

In addition, Pike's 4500 customers will have a voice in the control of Sussex, a voice they lack today. Cooperative utilities are run by professional managers, but they are hired, and policy is set, by the membership through democratic voting procedures.

Id.

As Sussex CEO Kolling testified, for his company:

[T]he regulatory mechanism is the membership. Let's face it, if the membership isn't happy with the current outage situation I guarantee you, they'll just vote a new board in to make sure that is corrected.

Jan. 17 Tr. at 79. For these additional reasons, the OCA supports the County's efforts to seek a sale to Sussex in this proceeding.

7. The Company's Objections To A Sussex Acquisition Are Not In Its Ratepayers' Interests.

Despite the potential benefit to Pike Customers, Con Ed refuses to talk to Mr. Kolling and Sussex regarding a sale of Pike. Sussex has expressed that it would be willing to pay a fair price for Pike's assets in such a sale. OCA Exh. NB-7. However, Con Ed has indicated that it has no interest in selling to Sussex at any price. Con Ed's response to Sussex CEO Kolling's letter indicating Sussex's interest in acquiring Pike stated as follows:

This is in response to your letter dated February 24, 2006, concerning Pike County Power and Light, the northeastern Pennsylvania electric and gas utility company owned by Orange and Rockland since the 1920s. We are not at this time considering the sale of Pike.

PCL&P Cross Exam. Exh. 19 at 3.

The OCA submits that the Company's refusal to give serious consideration to a sale to Sussex has only further contributed to the animosity between Pike and the community it serves and does not serve the best interests of its ratepayers. Pike County Commissioner Forbes expressed the County's frustration with the wall that the Company has put up around the service territory as follows:

I feel that [Pike's] been standoffish. I feel that they've been protective of their territory and probably with their own good reasons within their own company to stay structured. However, I don't think it has been served with the customer in mind nor the people in mind of the territory, constituents that I represent.

Jan. 19 Tr. at 77.

Not only does the Company refuse to discuss the possibility of a sale, they have stated that they may shut down their existing lines to Pike at the New York border if a sale is forced upon them. PCL&P St. 2 at 14. Under the Sussex proposal described by Mr. Lanzalotta and Mr. Kolling, the existing line between Pike and O&R would be retained for emergency use in the event of loss of power from the JCP&L line. OCA St. 2 at 7; Jan. 16 Tr. at 59; Jan. 17 Tr. at 27. This connection would be maintained, however, in an "open" position -- that is electricity would not flow over these lines, unless they were "closed" in the event of an emergency. Jan. 16 Tr. at 59; Jan. 17 Tr. at 27.

The County of Pike, rightfully, views the Company's statement that they may shut down their lines as a threat to its residents. As County Commissioner Forbes testified:

[I]f this company was forced to sell to another entity they're basically --- and I'm a layman and I'm just a country bumpkin, but it's sitting here saying, folks, we're going to take our electric and go home. And I think this is a veiled threat. Not only to the customers of the area, but to the whole area when you look and read this. It says, we don't know if we would want to stay connected. And I find that just not a way to do business, nor a way to deal with an area or territory that you're --- you want to be

provider of electric within that area. I find that just down right insulting.

Jan. 19 Tr. at 39.

The Company acknowledged that it has not evaluated the Federal Energy Regulatory Commission and PJM interconnection requirements of remaining interconnected to the Pike service territory. Jan. 16 Tr. at 108. The OCA submits that under FERC rules, "Notices of Cancellation or Termination" such as the Company's effort to sever ties, must receive FERC approval. 18 C.F.R. § 35.15. The OCA further submits that it is unlikely that FERC would allow such an interconnection to be severed if it remained necessary to provide reliability to customers on either side of the New York/Pennsylvania border. That is not to say that Con Ed should not be compensated for any use of its system as a backup reliability measure. See, Jan. 17 Tr. at 78. The OCA and the County agree that costs incurred by Con Ed to maintain the interconnection to Pike would have to be recovered. Jan. 16 Tr. at 84; Jan 19 Tr. at 57-58.

Pike also raises a number of technical objections to the interconnection of the Pike load with PJM as proposed by Sussex. However, these objections fail to acknowledge that Sussex currently uses a similar approach to serve its customers in a reliable manner. Sussex CEO Kolling, explained how the planned Pike/PJM interconnection would work in a similar manner to the existing Sussex Co-op interconnections with PJM. Mr. Kolling stated:

Q. Mr. Kolling, in the rebuttal testimony and at hearings yesterday, Pike County Light & Power has stated that it has serious concerns...regarding the ability of Sussex to provide reliable service to Pike County customers over a 34.5-kilovolt line that you have proposed to construct across the Delaware River from New Jersey. Do you have any response to those concerns?

A. ...I really don't see it as a reliability problem. And the reason for that is because the existing line that comes out of Branchville, New Jersey, that feeds the Holiday Lakes' substation at Jersey Central is the same line that leaves Branchville substation at Jersey

Central and feeds their Sussex substation, and then continues with our own line, our own 34.5, to feed our Wykertown substation, which is flowing about halfway back towards Branchville. We have never had a reliability problem, at least in recent years. Since I've been there, never had a reliability problem with that line to our members. And so I really don't see it as a reliability problem for that line that feeds Holiday Lakes' sub and continuing that line on to Milford. The exposure in miles is almost identical, so I don't see that as a problem. We don't have the outages or the customer complaints because of power supply issues.

Jan. 17 Tr. at 25-26.

The OCA submits that the Company should not be permitted to build a wall around Pike through which customers cannot escape. Rather than place roadblocks in the way of a solution, the Company should work with Sussex and other parties to seek a resolution of this matter in a manner that is reasonable for all concerned.

8. No Alternative Proposed In This Proceeding Is Superior To A Sale To Sussex.

An acquisition by Sussex would directly address the problems that the County has raised in its Complaint. OCA witness Kahal reviewed several other options from a power supply perspective and explained why they were not optimal. OCA St. 1 at 7-8. In addition to these options, the Company provided an additional alternative in Rebuttal Testimony. Company witness Holtman proposed in his Rebuttal testimony to integrate future Pike default supply procurements with the periodic hedges that O&R utilizes for its New York customers. PCL&P St. 3 at 4. As OCA witness Kahal testified, however, this new default plan is still "vastly inferior to the acquisition by Sussex" of Pike because the Sussex option promises lower, more stable rates than auctions in the New York wholesale market. Jan. 16 Tr. at 29-31.

In addition to its new proposal, the Company supports a retail shopping program called "PowerSwitch." PCL&P St. 1 at 7. The OCA submits, however, that the PowerSwitch program would bring minimal benefit to Pike and may in fact harm customers.

Company witness O'Brien described the PowerSwitch Program as a possible way to help Pike customers. PCL&P St. 1 at 7-8. He asserted that PowerSwitch "provides customers with an opportunity to test the waters of retail choice for an introductory period with minimum effort and little or no risk" and also benefits alternate suppliers. Id. As discussed earlier, however, retail competition has little chance of bringing needed rate relief to Pike's customers, at least in the foreseeable future. In analyzing the workings of the PowerSwitch program, OCA witness Brockway determined that PowerSwitch is really more of a gimmick and less of a solution. Jan. 17 Tr. at 11. Ms. Brockway explained:

Pike County Light & Power misses the point, really, here. We need to keep the focus on the fact that there's a crisis facing the customers of Pike County Light & Power. Their rates are intolerably high. PowerSwitch is a seven-percent discount off the commodity portion of the current default rate, but only for the first two months when a customer is on Power Switch. And after that, there's no limit on what the alternative supplier can charge. Customers may end up, through inertia, not getting off the rate in time when and if the alternative supplier raises the rates.

It might be argued that competition would keep these rates down, but they're only --- as I understand it, there are only two alternative suppliers that are interested in Power Switch, wanting to be affiliated with Pike. And you still have this underlying structural problem because these suppliers are going to have to take their --- they're going to have to get their supply out of the New York ISO, which, as we've heard, is pretty consistently running 10, 15 percent above the costs of PJM.

Jan. 17 Tr. at 11-12. Further, Mr. O'Brien even acknowledged that the PowerSwitch offerings cannot compete against Direct Energy's current price and PCL&P must, therefore, await the

conclusion of Direct Energy's aggregation program prior to implementing PowerSwitch in the PCL&P territory. Jan. 17 Tr. at 118. Consequently, as Ms. Brockway concluded:

Power Switch doesn't provide any benefit to customers, but certainly not a significant benefit when you compare it to the real alternative that we have here, which is the sale to Sussex.

Id. For these reasons the OCA submits that PowerSwitch is not a viable solution to Pike's rate problems.

E. Prayer for Relief and Legal Justification.

1. Introduction.

As explained throughout this Brief, the OCA supports the County of Pike's position that, in response to the rate and service problems currently facing Pike customers, Pike should be directed to enter into good faith negotiations with Sussex or another utility that is willing to purchase the Company and provide reliable service at reasonable rates. There is direct Pennsylvania Commission precedent for such PUC-facilitated action, as well as relevant precedent from other states. Specifically, as demonstrated in Pennsylvania Public Utility Commission v. Big Run Telephone Company and Citizens Utilities Company of Pennsylvania, Docket No. C-822983 (Order Entered October 15, 1982) (Big Run)⁹ and In the Matter of the Certified Territory of Monongahela Power Company, 2005 Ohio PUC LEXIS 306 (2005) (Monongahela Power), the Pennsylvania and Ohio Public Utility Commissions relied upon their authority to facilitate the sale of one utility to another utility. Importantly, in neither of these determinations did either Commission explicitly find that the Company subject to the sale was acting in violation of that state's Public Utility Code. Instead, both Commissions deemed the respective sales as in furtherance of the public interest.

⁹ A copy of the ALJ and the Commission decisions in Big Run is attached to this Brief as part of Appendix C.

A long series of Pennsylvania appellate cases regarding the revocation of a utility's Certificate of Public Convenience (CPC) demonstrates that the Pennsylvania Public Utility Commission has broad powers to bar a utility from continuing to provide service when required to protect the public interest. However, Big Run also stands for the premise that not only can the Commission revoke a certificate of public convenience, but it can fashion a less drastic remedy that would equitably address the situation by requiring a utility to make itself available for sale to another utility at a mutually agreeable price. The Commission possesses general powers which enable it to act in furtherance of the public good. The power of revocation is implicit in Section 1103(a) of the Pennsylvania Public Utility Code, while Sections 331 and 501(a) set forth the Commission's general powers, which the OCA submits, include the authority to direct a resolution of the matter that is in the public interest.

Section 1103(a) gives the Commission authority to grant a certificate of public convenience to provide service in Pennsylvania. This Section reads:

§ 1103. Procedure to obtain certificates of public convenience

(a) GENERAL RULE.-- Every application for a certificate of public convenience shall be made to the commission in writing, be verified by oath or affirmation, and be in such form, and contain such information, as the commission may require by its regulations. A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable. In every case, the commission shall make a finding or determination in writing, stating whether or not its approval is granted. Any holder of a certificate of public convenience, exercising the authority conferred by such certificate, shall be deemed to have waived any and all objections to the terms and conditions of such certificate.

66 Pa.C.S. § 1103. As can be seen, the PUC has broad authority in determining whether or not a Certificate of Public Convenience (CPC) will issue and under what conditions. A CPC is a privilege granted by the Commonwealth and the Commission. Western Pennsylvania Water Company v. Pennsylvania Public Utility Commission, 10 Pa. Commw. 533, 311 A.2d 370 (1973). Although Section 1103(a) does not specifically address the Commission's authority to *revoke* a certificate of public convenience, numerous cases have held that Section 1103, by necessary implication, confers upon the Commission the authority to revoke a certificate of public convenience as well.

As early as 1918, the Pennsylvania Superior Court's determination in Diehl v. Public Service Commission clearly established the authority of the Commission to revoke a certificate. See, Diehl v. Public Service Commission, 69 Pa. Super. 419 (1918). In upholding the Commission's revocation of a bus line operator's certificate of public convenience in Diehl, the Court held. "The commission had as full power to revoke the certificate granted to Diehl, as it had to grant it." Diehl, Id. at 421. The Pennsylvania Superior Court continued to follow its holding in Diehl in subsequent cases. See, e.g., Paradise v. Pa. Pub. Util. Comm'n, 184 Pa. Super. 8, 132 A.2d 754 (1957), Snyder v. Pa. Pub. Util. Comm'n, 187 Pa. Super. 147, 144 A.2d 468 (1958).

While the Commission has the power to revoke a CPC, the Commission also has the power and authority under §331 and §501 to take steps to address high rates, poor service, and customer dissatisfaction without immediately revoking a CPC. Indeed, the Commission stated in Big Run that, only if the sale of the company failed, would it take the more drastic action of entering an Order to show cause why the company's certificate of public convenience should not be rescinded. See, Pennsylvania Public Utility Commission v. Big Run Telephone

Company and Citizens Utilities Company of Pennsylvania, Docket No. C-822983 (Order entered October 15, 1982). (Copy attached as part of Appendix C to this Brief.)

As discussed more fully below, both Pennsylvania cases, as well as cases from other jurisdictions, support the Commission's authority to grant the relief requested in the case at bar. The OCA submits that the Commission has the authority to direct Pike to place its service territory up for sale and, based on the record evidence in this proceeding, should proceed to do so.

2. The Holding in Big Run Clearly Establishes the Commission's Authority to Grant the Relief Requested.

In Big Run, the Commission was presented with a situation very similar to the case at bar. Specifically, Big Run was a utility which, due to its high rates and poor quality of service, had thoroughly and irreparably damaged its relationship with its customers. The Commission was compelled to use its authority to facilitate the sale of the company to a more sound utility given the severity of the situation. The Commission action was grounded in its determination of the public interest.

The Commission's Order in Big Run was a culmination of several prior legal proceedings. Big Run Telephone Company filed for a base rate increase. Complaints were filed against the proposed increase and the Commission eventually allowed Big Run to recover a portion of its requested increase. The OCA and the Borough of Big Run subsequently filed Complaints against Big Run alleging deficiencies in quality of service. The OCA also filed a Complaint against the newly-approved rates. The Commission instituted an investigation into Big Run's rates, rules and regulations. Administrative Law Judge John K. Clements presided over hearings and ultimately ruled that Big Run's service record did not preclude a rate increase.

The PUC adopted this Recommended Decision. Shortly thereafter, State Senator Patrick Stapleton and State Representative Eugene Smith presented a Petition with 1313 customer signatures requesting the utility services of a company other than Big Run. Another investigation was ordered by the Commission--this one focusing on the operations of Big Run. The OCA filed a "Petition to Issue A Show Cause Order Directing Big Run Telephone Company to Show Cause Why Its Certificate of Public Convenience Should Not Be Rescinded." Administrative Law Judge Joseph J. Klovekorn presided over these proceedings. In his Recommended Decision, ALJ Klovekorn recommended:

That there should be published in the Pennsylvania Bulletin a notice of solicitation of bids from all interested telephone companies for the assets of Big Run Telephone Company and that the Bell Telephone Company of Pennsylvania should be specifically asked to make such a bid.

Pa. PUC v. Big Run Telephone Company and Citizens Utilities Company of Pennsylvania, Docket No. C-822983, *slip op.* at 13 (Recommended Decision of Joseph J. Klovekorn, Administrative Law Judge (September 9, 1982). Judge Klovekorn arrived at this recommendation based on "the serious problems of high rates and customer dissatisfaction" and in order "to restore to this Borough the tranquility that existed before these present difficulties." Big Run, *Id. slip op.* at 9, 10. In further explaining his recommendation, Judge Klovekorn reasoned:

On the basis of the record here, I am not prepared to conclude that BRTC [Big Run Telephone Company] is providing inadequate service. I can report to the Commission, however, that an alternative source of service for the Big Run service area would be preferable to continued service by BRTC. I make this recommendation on the basis that there is no other way to bring rates down to reasonable levels and on the basis that there is general dissatisfaction with the operations and management of the Big Run Telephone Company, so widespread that relations

between the Company and the ratepayers could well be termed "poisoned".

{O}n the basis of the petitions filed and testimony given ... one can only conclude that what the public wants here is a new phone company.

Id. at 10-11 (emphasis added). Judge Klovekorn concluded:

Even assuming the existence now of legally adequate service, the level of service and rates would definitely improve if the assets of BRTC were sold to another telephone company-one that can provide service more in line with the wishes of the Big Run residents. To this end, this Commission should use its good offices to solicit bids from other telephone companies and act as a broker for the sale of BRTC's assets.

Id. at 11 (Emphasis added). In its Order, the Commission adopted as its action the R.D. of Judge Klovekorn and ordered:

That a notice of solicitation of bids from all interested telephone companies for the assets of Big Run Telephone Company is to be published in the Pennsylvania Bulletin and that The Bell Telephone Company of Pennsylvania should be specifically asked to make such a bid.

Pa. PUC v. Big Run Telephone Company and Citizens Utilities Company of Pennsylvania,
Docket No. C 822983 at 1 (Order entered October 15, 1982).

The magnitude of consumer concern and level of rates in Big Run prompted the Commission to use its authority and powers in an effort to facilitate a change in utility provider to serve the public interest. Absent such a change, the Commission stated:

That in the event the sale of Big Run Telephone Company is not effectuated within sixty (60) days of receipt of bids, the Commission shall grant the "Petition to Issue a Show Cause Order Directing Big Run Telephone Company To Show Cause Why Its Certificate of Public Convenience Should Not Be Rescinded."

Id. at 2. Shortly after this Order, the sale of the Big Run Telephone Company occurred.

ALJ Klovekorn did not determine that Big Run was providing service that was in violation of the Public Utility Code. Instead, his awareness that the relationship between Big Run and its customers was irreparably damaged prompted him to determine that a severance of the relationship was the only satisfactory solution. While the OCA submits that the evidence of record here clearly establishes that the Company's service has not been adequate and that it is unlikely that the Company can provide service at just and reasonable rates in accordance with Pennsylvania law, the relief requested – directing that Pike be sold – could be directed even in the absence of such a finding. The OCA submits that, as in the case of Big Run, the record evidence in this proceeding establishes that the relationship is “poisoned” and the only satisfactory solution involves the sale of Pike to another entity. See, OCA St. 3 at 19; Jan. 19 Tr. at 68. The Commission should exercise its general powers to facilitate this result.

Although Big Run is the case that directly embodies the precise relief requested in the case at bar, *i.e.*, a requirement that PCL&P take steps to facilitate a sale to Sussex, Big Run is not the only case in which the Commission has found the sale of a troubled utility to be an appropriate remedy. In Redstone Water Company—PUC Mandated Water System Study, Docket No. C-00992270, *et al.* (Order entered on June 28, 2005) (Redstone Final Order)¹⁰, the Commission dealt with a small water utility with severe service problems and an unsatisfied customer base. Having found that Redstone was not providing water service that was suitable for all household purposes, the Commission, in 2001, required the Company to perform an engineering feasibility study in order to ascertain a cost effective method for bringing Redstone's water into compliance with state and federal drinking water standards. A feasibility study was submitted two years later, but the Commission determined that the study's “first choice”

¹⁰ A copy of the June 28, 2005 Redstone Final Order and the March 2, 2005 Redstone Tentative Order are attached to this Brief as part of Appendix C.

recommendation, that no action be taken, was "clearly flawed." Redstone Water Company—PUC Mandated Water System Study, Docket No. C-00992270, *et al.*, at 9 (Order entered on March 6, 2005) (Redstone Tentative Order). The Commission offered Redstone two alternatives – implement the recommended alternative of the feasibility study (regarding system improvements), or:

Sell the system at a reasonable price to a viable entity, which has the requisite technical, financial and managerial expertise to provide a permanent solution to the ratepayers' longstanding complaints.

Redstone Tentative Order at 10. In directing these two alternatives, the Commission stated that it accorded "substantial weight to the opinions of the 126 customers who signed a Petition to Join the seventeen Formal Complainants" in the proceeding. Redstone Tentative Order at 8. In its Final Order entered on June 28, 2005, the Commission made the tentative order final, and the company was ultimately sold to Pennsylvania American Water Company.

It is important to note that, while the Commission has explicit authority under Section 529 of the Public Utility Code, 66 Pa.C.S. § 529, to order a capable utility to acquire a non-viable small water utility, the Redstone case was not litigated under the provisions of Section 529 of the Public Utility Code and no other utility was explicitly ordered to acquire Redstone. Rather, the Redstone Final Order was the result of a complaint case litigated under Section 1501 of the Code which requires the provision of safe and adequate service. Based on its determination regarding service quality, the Commission offered the Company certain alternatives, including sale to another utility. The Commission did not, however, order another utility to acquire Redstone, which it has the authority to do under Section 529.

In his concurring statement in support of the Redstone Final Order decision, Vice-Chairman Cawley noted that:

I have no doubt that the Commission has the necessary primary jurisdiction under Sections 529 and 1501 of the Public Utility Code to appoint a receiver, if necessary, in order to obtain a capable operator for this system.

In the early 1980s, long before enactment of Section 529, I voted in a similar instance involving a poorly operated water system (in a residential development called Ridgeland in Hampden Township, Cumberland County) to appoint a receiver to operate the system and effectuate its acquisition by a capable water company.

Statement of Vice Chairman Cawley, Redstone Water Company—PUC Mandated Water System Study, Docket No. C-00992270, *et al.* (Order entered June 28, 2005). As recognized by Vice Chairman Cawley, the Commission's authority to protect customers in cases like Redstone both pre-dates and extends beyond the Commission power to order the acquisition of small water utilities under Section 529. The OCA submits that the present case requires the Commission to utilize its general authority to provide similar relief to Pike customers.

3. Cases From Other Jurisdictions Also Support The Conclusion That A Grant Of The Relief Requested Is Reasonable In This Case.

In addition to the Pennsylvania cases noted above, cases from other jurisdictions provide support for the Commission granting the relief requested in the instant proceeding. Most important is In the Matter of the Certified Territory of Monongahela Power Company, 2005 Ohio PUC LEXIS 306 (2005) (Monongahela Power), but there have been other holdings that are also supportive of the OCA's reasoning that a Commission requirement of a sale of Pike to Sussex is appropriate.

In Monongahela Power, the Public Utilities Commission of Ohio (Ohio PUC) ordered the Monongahela Power Company and Columbus Southern Power:

To immediately pursue potential terms and conditions for transferring Mon Power's Ohio territory to CSP.

In the Matter of the Certified Territory of Monongahela Power Company, 2005 Ohio PUC LEXIS 306 (2005). The Ohio PUC found it necessary to take such action because, unlike all other electric distribution companies in Ohio, Monongahela Power refused to file a rate stabilization plan with the Ohio PUC in an effort to minimize future rate shock and rate instability to its customers. The Ohio PUC determined that:

Since Mon Power is not willing to propose an RSP [rate stabilization plan], the Commission will consider whether another EDU [electric distribution utility] could acquire Mon Power's service territory and serve Mon Power's customers through an RSP.

Id. at Ordering Paragraph 4. Less than two months later, Monongahela Power and CSP filed a Joint Report seeking approval of CSP's purchase of Monongahela's transmission and distribution business in Ohio, including the rights to serve Monongahela's Ohio service territory. The Ohio Commission approved the sale by Opinion and Order entered on November 9, 2005. In the Matter of the Transfer of Monongahela Power Company's Certified Territory in Ohio to the Columbus Southern Power Company, 2005 Ohio PUC LEXIS 554, 245 PUR 4th 501 (November 9, 2005).

The Ohio PUC's approach in Monongahela Power mirrored that of the Pennsylvania Commission's in Big Run. It must be noted that the Ohio Commission has specific statutory authority to order the transfer of service from one electric service to another where the Commission finds that a utility is not providing "physically adequate service." See, 49 ORC Ann. § 4933.83. But in this case, there was no suggestion that the service provided by Monongahela was physically inadequate. Rather, the Commission directed the sale to be negotiated because it was in the public interest to do so. As noted by OCA witness Brockway in discussing the Monongahela Power case:

The Ohio Commission has the authority to authorize a new electric supplier to take over where an existing supplier is not rendering "physically adequate service." The Ohio Commission has held that "only the physical adequacy of the service is relevant, under the terms of Section 4933.83(B), Revised Code." Importantly, the Ohio Commission did not claim that Mon Power was unable to provide "physically adequate service," and ultimately approved the transfer of Mon Power because it was in the public interest. In any case, the main point remains the same: the Ohio Commission took an admittedly unusual step to facilitate the solution to a problem that affected a minority of Ohio consumers, who otherwise were faced with rate shock on account of the actions of their distribution utility.

OCA St. No. 3 at 33 (emphasis added). As previously set forth, this Commission has similar general powers and such were utilized in Big Run and Redstone Final Order. The Ohio PUC's recent action in Monongahela Power is in accord with the Commission actions in Big Run and Redstone Final Order. This Commission's legal authority mirrors that of the Ohio PUC, *i.e.*, it has broad general powers that are to be used to further the public interest.

Ms. Brockway noted the parallels between the Monongahela Power situation and the current situation. Specifically, Ms. Brockway stated that:

In both cases, the problem occurs because of price spikes anticipated, or experienced, at the end of the transition period to competition. In the Mon Power situation, the utility was unwilling to make rate adjustments to smooth the path to market rates. In the Pike situation, the utility has not offered to make similar adjustments. But even if the utility were willing to make such adjustments, there are superior alternatives, notably the sale of Pike to Sussex Electric Cooperative.

OCA St. No. 3 at 32. The situation facing this Commission in Pike's service territory is strikingly similar to that which the Ohio Commission faced in 2005. In the absence of voluntary action by Pike, this Commission should be proactive in facilitating a sale of the Company. The OCA submits that the magnitude of the rates and the overwhelming customer desire for another utility provider warrant a conclusion that PCL&P should be sold to Sussex.

In another case referenced by OCA witness Brockway, Application for Approval of Settlements and Related Transactions Related to the Implementation of Restructuring in the Area Served by Connecticut Valley Electric Company, Inc., 2003 N.H. PUC LEXIS 68; 226 P.U.R.4th 226 (2003) (Connecticut Valley), the New Hampshire Public Utilities Commission was presented with the question of whether or not it was consistent with the public interest for the state's largest electric utility, Public Service Company of New Hampshire, to acquire the franchise and assets of the state's smallest electric utility, Connecticut Valley Electric Company. OCA witness Brockway was a member of the New Hampshire PUC at the time and provided the following background history:

In New Hampshire, Connecticut Valley Electric Company (CVEC) was a small utility on the border between New Hampshire and Vermont, owned by an out-of-state holding company. It had for a long time charged very high rates to its customers. It resisted New Hampshire's policy initiatives vigorously. In the late 1990's, it took the New Hampshire Commission to federal court and prevented the implementation of the Commission's rulings on restructuring. It also sought and obtained a federal court order preventing us from implementing traditional prudence regulation, pending the outcome of the court proceedings on the restructuring case. The local utility had no autonomy from its out-of-state parent, and was among the more difficult utilities to deal with. State policy makers began to seek an alternative to continued ownership by the parent company. We informally raised the issue with Public Service Company of New Hampshire (PSNH), and learned that they would be willing to buy CVEC on appropriate terms. The Governor publicly promoted the idea that CVEC should be bought by a more suitable utility, and its rates brought down. Eventually, CVEC and Commission Staff and PSNH negotiated a comprehensive settlement of a variety of pending CVEC issues and merger terms, and CVEC was sold to PSNH.

OCA St. No. 3 at 32-33.

In approving the request to implement the proposed transaction, the New Hampshire PUC determined that approval was in the public good. Connecticut Valley, 226 PUR 4th at 240. Specifically, the New Hampshire PUC found, among other things, that:

- it would be inconsistent to leave the Connecticut Valley area with the “economic burden of being the only area in the state saddled with unreasonably high electric rates”; and
- taking on the obligation to provide transition and default service in the Connecticut Valley service territory will allow PSNH to provide such service on a more economical basis than could Connecticut Valley itself or even PSNH prior to the expansion of its territory.

Connecticut Valley, 226 PUR 4th at 240-241. As to the second point above, the New Hampshire reiterated its reasoning that:

PSNH will be able to procure wholesale energy for CVEC's customers more inexpensively than CVEC would if CVEC were to be restructured on a stand-alone basis. In a service territory of only 10,000 customers, wholesale suppliers would apply a significant “migration premium” to any bids in order to take account of the greater effect of any one customer's departure relative to the whole.

Connecticut Valley, 226 PUR 4th at 241.

As Ms. Brockway stated, there are many parallels between the Connecticut Valley case and the current case. In particular, Pike's small size also hinders the Company's ability to provide rates more in line with all others throughout the Commonwealth. Sussex or another PJM utility, however, would be in a better position to procure lower prices for Pike service territory consumers. Facilitating the sale of this company to another entity with resources and market advantages is the correct resolution in this case—just as it was in Connecticut Valley.

Finally, in another case discussed by Ms. Brockway, Joint Petition of Citizens Communications Company d/b/a Citizens Energy Services, 2004 VT PUC LEXIS 26, 233 PUR

4th 68 (March 1, 2004) (Citizens), the Public Service Board of Vermont approved a request by Vermont Electric Cooperative, Inc. and Citizens Energy Services for the sale of all of the Vermont assets of Citizens to the Cooperative. Citizens, 233 PUR 4th at 82. Citizens had previously been placed on notice by the Vermont Board that revocation of its certificate to operate in Vermont would be considered due to a variety of concerns. Specifically, the Board had placed Citizens on "probation" due to the Board's "long-standing concerns about Citizens' failure to follow prudent regulatory accounting practices." Citizens, 233 PUR 4th at 70. The Board harkened to Citizens' past in its determination, but in recognizing that the proposed transaction was "designed to stabilize rates and to improve service quality for the current customers of both Citizens and the Cooperative", the Board granted the approval. Citizens, 233 PUR 4th at 70.

These cases demonstrate the challenges that have been faced by utility commissions around the country and the proactive steps that have been taken to remedy those situations. The Pennsylvania Commission has jurisdiction to take remedial actions in this case and should exercise that jurisdiction to advance the public interest.

4. Conclusion.

The OCA submits that this Commission has the legal authority to require Pike to enter into good faith negotiations with Sussex (or another utility) and offer its electric utility for sale at a reasonable price. As the holding in Big Run and the evidence of record here demonstrates, Pike customers deserve no less.

F. Borderline Customers

In its Report, the Law Bureau noted a small number of Pike customers that are physically served by Met-Ed. Law Bureau Report at 19. The Law Bureau recommended that the

Commission consider, "the permanent transfer of these customer accounts to Metropolitan Edison Company, to the extent that it is both technically feasible and that Metropolitan Edison Company prices are expected to be below the Company's for the foreseeable future." Law Bureau Report at 20.

As explained by Ms. Brockway, these customers are now actually being served by Met-Ed facilities pursuant to "borderline" agreements between those two companies. OCA St. No. 3 at 36; OCA Cross Exam. Exh. 6. However, as Pike is currently their electric distribution company, Pike charges these customers the Pike rates, which are significantly higher than Met-Ed's rates, and then pays Met-Ed for the use of the facilities necessary to serve these customers. For these borderline customers, this situation is unfortunate since Met-Ed is their actual provider, yet they are paying Pike rates due to the fact that they are physically located within Pike's service territory. As stated by Ms. Brockway:

It would be a simple transaction for Met Ed to absorb these customers into its service area, and for Pike to relinquish the territory. It is merely an accident of history that they are nominally in the Pike service area - they have always been served off of Met Ed lines, and Met Ed provides reliability service for them. Pike has very little to do with these customers, and should not begrudge them the opportunity to join with Met Ed, where they can enjoy lower rates, as a number of them requested at the public forums in this docket.

OCA St. No. 3 at 36.

The OCA submits that the Commission should take immediate steps to facilitate the transfer of these borderline customers to Met-Ed. As set forth throughout this Brief, while a sale of the entire service area to Sussex is the best solution for all Pike customers, the Commission should at least take steps to help this small group of borderline customers to receive service from a lower-priced Pennsylvania/PJM utility immediately.

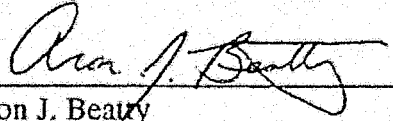
VI. CONCLUSION

The customers of Pike County have reached their limit with their electric utility provider. Pike customers have the highest rates of any electric customers in Pennsylvania, have poor or inadequate service, and have a feeling of second-class citizenship to Pike's New York affiliates. Through their elected representatives, the citizens of Pike are asking the Commission to provide them with a solution to the problems they face by requiring Pike County Light & Power to enter into good faith negotiations to sell its electric utility operations to Sussex Rural Electric Cooperative or another qualified purchaser. In order to reach this objective, the OCA submits that the following course of action must be taken:

1. That Pike County Light & Power Company (PCL&P) be directed to enter into good faith negotiations for the sale of the Company to Sussex Rural Electric Cooperative and/or other willing buyers who are capable of providing reliable service to PCL&P customers at reasonable prices.
2. That PCL&P report to the Commission and the parties to this proceeding regarding the status of such negotiations on a monthly basis.
3. That PCL&P cooperate with any purchaser, the PJM Interconnection, the New York ISO, and any other relevant parties in order to ensure that service can be provided to the former PCL&P customers on a reliable and economic basis.
4. That the Commission retain jurisdiction over this matter and consider further actions in the event that the above provisions do not produce relief for PCL&P customers in a timely and thorough manner.

Under the facts of this case and applicable law of Pennsylvania, the Office of Consumer Advocate submits that the relief requested by the County of Pike in its Complaint to this Commission should be granted.

Respectfully Submitted,



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Fax: (717) 783-7152

Dated: February 12, 2007
00092573.DOC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike

v.

Pike County Light & Power Company

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Docket No. C-20065942, *et al.*

APPENDIX A
Proposed Findings of Fact
Proposed Conclusions of Law
Proposed Ordering Paragraphs

PROPOSED FINDINGS OF FACT

1. Pike County Light & Power Company serves approximately 4500 customers in the eastern portion of Pike County. OCA St. No. 1 at 5.
2. Orange & Rockland (O&R) is the parent company of Pike. OCA St. No. 1 at 5.
3. Pike is directly interconnected to the New York ISO through its parent, O&R, but does not have a direct interconnection to the PJM RTO. OCA St. 2 at 3-4.
4. O&R divested its generation assets, thereby placing itself and Pike in complete reliance on the New York wholesale markets to procure supply to meet the electricity needs of its customers. OCA St. 3 at 8.
5. O&R was acquired by Consolidated Edison (ConEd) in 1999. OCA St. No. 2 at 3.
6. As part of the Con Ed corporate family, Pike represents 0.1% of the company's customer base, and 0.1% of the electric utility revenues. OCA St. 3, Exh. NB-2.
7. Pike's small peak load of 16 MW places the company at a disadvantage for the procurement of reasonably priced generation for its customers. OCA St. No. 1 at 5.
8. Subsequent to Con Ed's acquisition of Pike, the Company removed its last employees from Pike County in 2004. OCA Cross Exhibit 7.
9. Deterioration of Pike's reliability and customer service is evident after the acquisition by Con Ed. OCA St. No. 2 at 8.
10. Contrasting the six years before the merger with the six years since the merger, (1) the frequency of electric service outages has increased from 1.69 outages per customer per year to 3.98 outages per year, an increase of 2.35 times, (2) the average duration of each outage increased from 118 minutes to 162 minutes, an increase of 1.38 times, and (3) the annual average minutes of outage per customer has increased from 189 minutes to 617 minutes (more than 10 hours) per year, an increase of 3.26 times. OCA St. No. 2 at 12.
11. The quality of service deteriorated considerably in 2004 and 2005, to the point where in 2005 the average customer suffered through over 1100 minutes of outage that year. OCA St. 2 at 12.
12. Pike's outages have caused considerable hardship on the residents of Pike as they have had to live through major inconvenience, even including serious impairment to medical procedures. Public Input Testimony of October 4, 2006; LCG St. 1 at 9; Oct. 4 Tr at 88.
13. The outages have had a substantial impact on the operations of small businesses, as well as damaging residential appliances. Oct. 4 Tr. at 42, 46-47; Public Input Testimony of October 4, 2006.

14. In the case of Formal Complainant Peter Kenny, the Company has acknowledged 16 outages from January 2005 through November 2006. PCL&P St. 2 at 27.
15. In December of 2005, the Company notified the County that customers would be receiving an increase of 129% in generation rates on January 1, 2006. Jan. 17 Tr. at 109.
16. Pike's rates, which went into effect on January 1, 2006, are by far the highest among Pennsylvania Electric Distribution Companies. OCA St. 3 at 15
17. For a residential customer using 700 kWh per month, the 2005 auction translated to a total average bill (including both distribution and generation) of \$132 per month, roughly a 73% increase from 2005 bills. OCA St. 3 at 10.
18. Based on the public testimony, it is clear that Pike County customers were shocked and many were outraged by the generation price increase. OCA St. 3 at 10.
19. The rate increase has resulted in significant economic disruption and hardships for small businesses, such as lay-offs, reductions in operations and the closing of businesses. OCA St. 3 at 13.
20. The Commission approved an opt-out aggregation program to try to provide some rate relief. Under the Direct Energy Aggregation, the average monthly bill for a residential customer taking POLR service through Direct Energy through the Commission-approved opt-out aggregation program that was put in place in June 2006 (as a result of the opt-out initiative) and using 700 kWh per month came down slightly, from \$132 per month to \$121 per month. OCA St. No. 3 at 11.
21. The residents of Pike County Pennsylvania, through their elected representatives, the County Commissioners, have told the Commission of their extreme dissatisfaction with their regulated public utility and have asked this Commission for a new electric company to serve a portion of their County. OCA St. No. 3.
22. Sixty formal and informal complaints regarding rates or service were filed by residents and businesses in Pike County against the Company in 2006. PCLP St. No. 1 at 5.
23. A Formal Petition signed by over 500 residents and businesses in the Company's service territory asking for a new utility was filed with the Commission. OCA St. No. 3 at 21-22.
24. At the Public Input Hearings held October 4, 2006, Pike customers testified that they have suffered poor treatment for years. OCA St. No. 3 at 19 and 21.
25. Many customers have no confidence in the utility's ability or willingness to address their concerns in any meaningful way. OCA St. 3 at 19.

26. Structural problems result in Pike's customers being exposed to the vagaries of the New York ISO wholesale electricity market, which has consistently higher prices than the PJM Interconnection that serves nearly all of the rest of Pennsylvania's electric companies. OCA St 1 at 16.
27. Rate caps have expired in other parts of Pennsylvania without such catastrophic rate increases. OCA St 3 at 16.
28. The current situation has become intolerable for Pike customers. OCA St. No. 3 at 2.
29. The Commission opened an investigation into the market conditions of Pike's service territory. OCA St. No. 3 at 24.
30. The Law Bureau completed its Report in June 2006, and the Report was released by the Commission later that month. OCA St. No. 3 at 24
31. In its Report, the Law Bureau recommended that the Commission consider a review of the potential benefits of a sale of Pike to an adjacent EDC or a rural electric cooperative. OCA St. No. 3 at 27
32. The Sussex Rural Electric Cooperative has indicated its interest in purchasing Pike and has sought to open negotiations with Pike's parent, ConEd. OCA St. 3, Exh. NB-7; OCA St. 4 at 1.
33. The Sussex Rural Electric Cooperative is headquartered in Sussex, New Jersey and is in close proximity to Pike County. OCA St. No. 4 at 1.
34. Sussex serves approximately 12,000 customers in Sussex County, New Jersey. OCA St. No. 4 at 1.
35. Sussex is a member of the Pennsylvania Rural Electric Association (PREA), and is a member of the Allegheny Electric Co-operative, Inc. (Allegheny). OCA St. No. 4 at 2
36. Allegheny provides generation and transmission service in order to meet all of Sussex's needs, and is a member of the PJM Interconnection. OCA St. No. 4 at 2.
37. If purchased by Sussex, customers of Pike would be fully integrated into Sussex in approximately five years. Jan. 17 Tr. at 66.
38. Due to Allegheny's existing mix of long-term generation supplies, the Allegheny rates should remain stable well into the future. Jan 16 Tr. at 29; OCA St. 1 at 27.
39. Allegheny's current generation rates are approximately 5.8 cents per kwh, which is less than half the generation rate currently charged to Pike customers. OCA St. 1 at 25.

40. Sussex has demonstrated that it is ready, willing and able to serve Pike customers in a reliable, customer friendly manner. OCA St. No. 4; Jan. 17 Tr. at 93.
41. Sussex provides service to its customers using the PJM transmission system through its open access requirements and would continue to access the PJM grid in a similar manner in order to serve Pike's load. Jan. 17 Tr. at 25-26.
42. The cost of capital for interconnection expenditures to connect Pike to the Sussex source of supply will be based on the cost of low interest debt that Sussex receives through the National Rural Utilities Co-operative Finance Corporation. Jan. 17 Tr. at 69-70.
43. If Pike is sold to Sussex, Pike customers would see rate reductions of approximately 20% as compared to current rates. OCA St. 4 at 4.
44. The Pike system could be initially interconnected to PJM with an aerial river crossing to a 34.5 kV line. OCA St. No. 2 at 6.
45. A Pike interconnection with Sussex would cost between \$1 million and \$2 million. OCA St. No. 2 at 6.
46. The impact of a \$1 million to \$2 million interconnection on Pike's rates would be about one or two mills per kilowatt hour. Jan. 16 Tr. at 30.
47. Sussex customers have been experiencing fewer annual average minutes of service outages than Pike customers over the past 6 years. OCA St. 2 at 15-16.
48. Sussex has 2.5 to 3 consumer outage hours per year. Jan. 17 Tr. 79.
49. Two of the Sussex linemen currently reside in Pike County and Sussex would maintain a service crew in Pike County. Jan. 17 Tr. at 80.
50. Sussex has initiatives such as its load management program that follow along with public policy priorities identified by Pennsylvania law and regulation. OCA St. No. 3 at 28.
51. Pike's 4500 customers will have a voice in the control of Sussex. OCA St. No. 3 at 28.
52. Cooperative utilities, such as Sussex, are run by professional managers, but they are hired, and policy is set, by the membership through democratic voting procedures. OCA St. No. 3 at 28.
53. Sussex would be able to supply Pike customers at rates that would be considerably lower than rates Pike or any alternative POLR supplier will be able to offer and a sale to Sussex would provide positive benefits for all customers of Pike through lower rates, a more stable generation supply situation, and potentially improved quality of service. OCA St. 3 at 3-4.

54. Pike has recently proposed to integrate the procurement of supplies with its New York parent, O&R. PCL&P St. 3 at 4.
55. Pike cannot guarantee that the integration of its supply procurement with O & R will be successful. PCL&P St. 3 at 10.
56. The PowerSwitch offerings cannot compete against Direct's current price and PCL&P must, therefore, await the conclusion of Direct's aggregation program prior to implementing PowerSwitch in the PCL&P territory. Jan. 17 Tr. at 118.
57. Retail competition is unlikely to bring rate relief to Pike due to the unattractiveness of Pike's small customer base to competitive suppliers. OCA St. 1 at 31.
58. Pike's borderline customers receive service from Met-Ed, but they pay Pike rates due to the fact that they are physically located within Pike's current service territory. OCA St. No. 3 at 36.

PROPOSED CONCLUSIONS OF LAW

1. Sections 331 and 501 of the Pennsylvania Public Utility Code set forth the Commission's general powers and authority. 66 Pa. C.S. §§ 331, 501.
2. The Commission has the authority to require Pike to negotiate a sale with Sussex or another qualified purchaser. 66 Pa. C.S. §§ 331, 501.
3. Section 1103(a) gives the Commission authority to grant a certificate of public convenience to provide service in Pennsylvania. 66 Pa.C.S. 1103(a).
4. Section 1103(a), by necessary implication, confers upon the Commission the right to revoke a certificate of public convenience. 66 Pa.C.S. 1103(a).
5. Pike's current structure will not allow it to provide just and reasonable rates as required under Pennsylvania law. 66 Pa.C.S. 1301.
6. Pike does not provide offer safe and adequate service in compliance with Section 1501. 66 Pa.C.S. 1501.
7. The structural impediments surrounding Pike do not result in electric service under the Electric Generation Customer Choice and Competition Act that is "available to all customers on reasonable terms and conditions." 66 Pa. C.S. §2802(9).

PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That Pike County Light & Power Company (PCL&P) is directed to enter into good faith negotiations for the sale of the Company to Sussex Rural Electric Cooperative and/or other willing buyers who are capable of providing reliable service to PCL&P customers at reasonable prices.
2. That PCL&P report to the Commission and the parties to this proceeding regarding the status of such negotiations on a monthly basis.
3. That PCL&P cooperate with any purchaser, the PJM Interconnection, the New York ISO, and any other relevant parties in order to ensure that service can be provided to the former PCL&P customers on a reliable and economic basis.
4. That the Commission shall retain jurisdiction over this matter and shall consider further actions in the event that the above provisions do not produce relief for PCL&P customers in a timely and thorough manner.

00092622 DOC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike

v.

Pike County Light & Power Company

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Docket No. C-20065942, *et al.*

APPENDIX B
Summary of Public Input Testimony
October 4, 2006
Matamoras, Pennsylvania

October 4, 2006 at 10.00 a.m.

Edward Nikles

Mr. Nikles is the President of Chamber of Commerce in Pike County (Pike County). Mr. Nikles testified to problems with rates and reliability. He testified that the community serviced by Pike County Light and Power contains 450 businesses which have been affected by the rate increase. Many of the businesses are small and find it difficult to continue operating after the increase. He also testified that businesses are unable to pass on these costs to the customers because increasing the price of their products would make small businesses unable to compete with larger retailers. In his testimony, Mr. Nikles compared the rates of PPL and MetEd to current Pike County rates. He found that PPL rates are 65.4% cheaper and MetEd's rates are 68% cheaper than Pike County's rates. Mr. Nikles testified that the county has experienced a 129% rate increase, which affects everyone, including the school and county government. He predicted that this will, in turn, lead to an increase in taxes. Mr. Nikles also testified to reliability problems, namely frequent outages and poor quality of service. Mr. Nikles works in real estate and as a landlord. Mr. Nikles testified that outages have caused him to shut down operations, operate without a phone, send employees home, lose data, and replace destroyed equipment. He testified that real estate customers are avoiding Pike County because of the electricity rates. As a landlord, Mr. Nikles testified that he includes utility prices in the lease agreements for his rental properties. He testified that the increase in rates will cause him to negotiate large rental increases for his tenants and the end of their current leases. Mr. Nikles submits that allowing Pike County to have a choice in its electric company or to force Pike County to sell will remedy the problem experienced in the service area. Mr. Nikles filed an informal complaint against Pike County with the Bureau of Consumer Services.

Peter Regas

Mr. Regas testified that he co-owns a business, the Milford Diner. Mr. Regas testified to problems with rates and reliability. Mr. Regas testified that he has experienced an increase of 129% in his electric rates. He maintains that he is unable to pass the costs onto his customers if he wants to remain competitive. Mr. Regas testified that there were three outages within the last year and that the year before that there were more. One outage lasted for sixteen hours and another lasted for four. He submits that the outages hurt his business.

Patricia Dudkinski

Ms. Dudkinski owns the business Stencil Creations. She testified to problems with rates. Ms. Dudkinski testified that she may have to sell her home because with this increase in electric rates, it is too expensive to live there. She submits that her rates have more than doubled since last year.

Betty Comis

Ms. Comis is a senior citizen who resides in the Pike County service area. She testified to problems with rates, namely that they have increased by 70-90%. She submits that because she is on a fixed income, it is more difficult for her to afford the rate increase. She testified that some senior citizens have been forced to cut back on air conditioning or hot water heaters as a result of the electric rate increase.

Thomas Hoff

Mr. Hoff testified that he resides in Milford, PA and owns a large commercial building in the Pike County service area. Mr. Hoff testified to problems with rates and reliability. He testified that the stores in his building have been impacted by the rate increase. An example he offered is that shops are no longer able to afford to keep lights in their windows at night due to the rate increase. He testified that there are frequent outages and power interruptions, which affect the water supply by causing employees to work overtime. The cost of the overtime is passed on to the customers. Mr. Hoff testified that there were 15 outages and 21 interruptions from May 18, 2005 to June 10, 2006, which he established based on computer data that is electronically generated by the water system.

Raymond Paquette

Mr. Paquette is retired. He testified that two to three years ago other electric suppliers offered to serve the area.

Barbara Stagg

Mrs. Stagg is retired. Ms. Stagg testified to problems with rates. She recently moved to the Pike County service area and testified that she was shocked by the cost of her first electric bill. Ms. Stagg testified that she is a senior citizen and that it is hard to make the rate increase fit into her budget.

George Stagg

Mr. Stagg is retired. Mr. Stagg testified that he was concerned with rates.

John Seidenstricker

Mr. Seidenstricker is retired. He testified to problems with rates and reliability. He offered the example that his charge per kilowatt hour has increased by more than 100%, while prices for natural gas and oil have decreased by 25%. Mr. Seidenstricker testified that there are frequent inconvenient outages, which he believes are do to lack of concern and investment within Pike County.

Wednesday, October 4, 2006 at 6:00 p.m.

Marsha Van Lenten

Ms. Van Lenten is the owner of two small businesses, The Perfect Pan and Silken Wool, located in the Pike County service area. She testified to problems with rates and reliability. Ms. Van Lenten submits that it is difficult for new businesses to succeed with the rates increase and frequent outages. She recalled that one outage lasted for seven hours and resulted in her businesses having to reimburse customers. The witness states that trees near the power lines are not taken care of, and when it snows branches fall and cause electric lines to fall as well. This results in outages. She also submits that if the rates remain high she will have to go out of business.

James Cox

Mr. Cox testified that he owns a business, Olde Scissors Factory Antiques, located in the Pike County service area. Mr. Cox testified to problems with rates and reliability. He explained that he has experienced frequent outages and his rates have more than doubled since 2004. He submits that the high prices have forced him to remove air conditioning from his business, and this has resulted in the loss of customers.

Elsbeth Goodin

Ms. Goodin resides in the Pike County service area. She testified to problems with rate increases and customer service. She explained that when her bill increased by 45-50% she contacted the PUC. She testified that later she was contacted by a Pike County representative who said her increase could have been worse. Ms. Goodin submits that since that contact her bill has continued to increase and has doubled her original bill.

Peter Rushton

Mr. Rushton testified that he is outraged at the 128.9% increase in utility rates. Mr. Rushton suggested that to remedy the problem in Pike County, the rates should be returned to previous levels, another company should be selected to serve the area, the PUC should be held accountable for the rate increase, and this should be accomplished in a timely fashion.

Henry Cotterill

Mr. Cotterill testified that he is concerned with rates. Mr. Cotterill submits that the Pike County service area should be connected to the PJM grid and that the area should be sold to a Pennsylvania based utility.

Pamela Coakworthy

Ms. Coakworthy is a residential customer. She testified that she is concerned with rates, reliability, and customer service. She submits that rate increases have caused her bill to nearly double. Ms. Coakworthy testified that the increase in electricity rates has caused her to cut back on goods and services she would have otherwise purchased. She testified that she has suffered frequent power outages. Additionally, Ms. Coakworthy expressed concern because there has been no increase in the quality of service to justify the increase in rates.

Bill Kiger

Mr. Kiger is a customer of Pike County, and he also represents the Milford Borough Council. Mr. Kiger testified to problems with rates and reliability. He explained that the Milford Borough Council has a restrictive budget and will have to pass the rate increases to taxpayers. He estimated that increases for the year are about one million dollars. Mr. Kiger testified that area businesses find it difficult to pay their bills and to continue to operate with the increased rates. He testified that service is unreliable and frequent blackouts and brownouts are experienced in the service area.

Paul Hild

Mr. Hild testified to problems with rates, reliability, and customer service. He submits that rates are high in comparison to other states. Mr. Hild testified to experiencing frequent outages and fluctuations in his electricity. When he confronted the company with this, he testified that he was not satisfied with the service he received.

Lynne Astrimger

Ms. Astrimger owns a small business in the service area. She testified to problems with rates, reliability, and customer service. Ms. Astrimger testified to experiencing lengthy blackouts lasting for hours. She also explained that the company does not respond to her calls. She offered the example that when a tree fell onto her electric lines, she called the company, but she received no response until the line fell into the street. She also testified that the rate increase has caused her to cut back on light and air conditioner usage.

Alan Boumenson

Mr. Boumenson owns multiple residences within the service area. He testified to problems with rates and customer service. Mr. Boumenson testified that he may be unable to afford his properties due to the rate increase. Mr. Boumenson expressed concern over customer service when he contacted the electric company concerning a tree on his property that was leaning toward the transformer. He testified that the Pike County was not responsive to these concerns.

Davis Chant

Mr. Chant testified to problems with rates and reliability. He explained that he has been aware of Pike County's inadequate service for a significant time. Mr. Chant testified that he owns a business in Milford, and that blackouts have affected his business. He expressed concern over customer service because when the Company was contacted over the lost sales due to outages, the company was unresponsive. Mr. Chant testified that he has witnessed citizen volunteers dealing with traffic situations caused by outages because the company does not respond in a timely manner. Mr. Chant testified that in his real estate business customers ask to not purchase houses where the rates are high, indicating the Pike County service area.

Kris Pranski

Ms. Pranski testified to problems with rates. She submits that she was forced to move her businesses, Station House Products and Pike County Communications, into her home garage because she was unable to afford the electric bills.

Robert Schroeder

Mr. Schroeder testified to problems with rates. Mr. Schroeder submits that he is totally disabled and on a fixed income. He testified that his bills have more than doubled, despite conservation efforts that he has undertaken. He also testified that his increase in Social Security is not sufficient to cover the increases in rates.

Jim Wood

Mr. Wood testified to problems with customer service. Mr. Wood explained that when his service was discontinued, he called the company over 100 times and received no response.

Nancie Simonet

Ms. Simonet she has owned a business in the Pike County service area for 17 years. Ms. Simonet testified to problems with rates. She explained that in the last year her electric bills have doubled. She submits that if rates remain at the current level, she may be forced to close her business within the year.

Charles Lieberman

Mr. Lieberman owns a home and is employed in the Pike County service area. Mr. Lieberman testified to problems with rates. Mr. Lieberman explained that he has office space for rent and that high utility rates have caused a disinterest in his customers. Mr. Lieberman also expressed concern that rate increase will also result in an increase in taxes.

Lisa Coaldo

Ms. Coaldo has been a dentist in the Pike County service area for 13 years. She testified to problems with rates and reliability. She explained that she sometimes loses power in the middle of dental appointments. Additionally, brownouts have negatively affected her dental equipment and computer system, and could eventually ruin the equipment. She also testified that her rates have doubled, and that customers are no longer able to afford routine dental work because of high electric rates.

Jan Hurwitz

Ms. Hurwitz owns Megabyte systems, a small business, located in Pike service area. She testified to problems with rates and reliability. Ms. Hurwitz testified that the rate increase caused her to outsource nine of twelve servers in her business to Kentucky. She explained she took actions to conserve energy by changing to fluorescent lighting and cutting back on the number of employees. Mr. Hurwitz submits that she may have to close her business despite her conservation and cost-cutting efforts. She also testified that there have been problems with frequent outages, and she has needed to invest in generators and surge protectors for her equipment. Additionally, she testified that the electric company does not properly inform customers of planned outages. Ms. Hurwitz submits that she may be unable to afford her house due to the rate increase.

Ruth Portsmouth

Ms. Portsmouth is a residential customer. She testified to problems with rates. She explained that in the last two years her electric bill has increased from \$150 to \$300 per month. She submits that due to the rate and tax increase, she may be unable to afford to buy her home.

Phil Hurwitz

Mr. Hurwitz owns Megabyte Systems in conjunction with his wife. The business is located in the Pike County service area. He testified to problems with reliability and customer service. Mr. Hurwitz testified that his business purchased back-up generators that supply electricity for five hours, but that the outages exceed this time frame. He also expressed concern over surges in power, which have caused the destruction of his back-up system. Mr. Hurwitz testified that when he contacted the company concerning outages, he was also given misinformation.

Ronald Heller

Mr. Heller is a customer of Pike County and owns a business, the Water Wheel Café, in the Pike County service area. Mr. Heller testified to problems with rates and reliability. Mr. Heller testified that he has been in business two years, but that he is unsure if he can afford to operate through the winter due to the rate increase. Mr. Heller testified that he has undertaken conservation measures including changing his lighting to fluorescent bulbs with lower wattage. Mr. Heller submits that he has shut down parts of his businesses and reduced staff as a result of the rate increase.

Tony Grigal

Mr. Grigal is disabled and retired, and testified to problems with rates. Mr. Grigal explained that he is trying to open a new business for which he has purchase property. In an effort to reduce his electric rates, he invested in conservation bulbs, but Mr. Grigal expressed concern over whether he can afford to open his business. He testified that his bill has increased 129%.

Elizabeth Cotterill

Ms. Cotterill is employed as a director in an art gallery in the Pike County service area. She testified to problems with rates and reliability. Ms. Cotterill testified that her gallery is a co-op and that the co-op increased its commission to compensate for increase in electric rates for the year. She testified that the electric bills increased by \$1700 per month from last year. Ms. Cotterill states that she also works in healthcare and the outages are very disruptive to medical equipment.

Derryl Nemeč

Ms. Nemeč testified to problems with rates, reliability, and customer service similar to those expressed by other witnesses. She testified that she has attempted to contact the company concerning power outages and each time has received a recording, but been unable to speak with a representative.

Wayne McCutchen

Mr. McCutchen owns McCutchen Service, a business in the Pike County service territory. Mr. McCutchen testified that he is dissatisfied with rates and customer service. Mr. McCutchen explained that the company was unwilling to cooperate with him concerning late payments and cut off notices. He testified that his rates have at least doubled, and that his business is forced to pass on the increases to customers in order to survive.

Carol Ann Sklar

Ms. Sklar owns a business, Carol Ann's Linen Closet. Ms. Sklar testified to problems with rates. She explained that she could not afford to have a lighted holiday display for her business because of the electric rate increase. Ms. Sklar submits that she is unable to pass the cost increase to her customers because then her prices would not be competitive with larger retailers.

Miles Hudgens

Mr. Hudgens owns Travelers Insurance in the service area. Mr. Hudgens testified to problems with rates. He explained that when two people resided in his home last year his bill was approximately \$90 less than it is presently when only one person resides within it.

00092404.DOC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike :
 :
 v. : Docket No. C-20065942, *et al.*
 :
 Pike County Light & Power Company :

APPENDIX C
Unreported Cases

Pa. PUC v. Big Run Telephone Company and Citizens Utilities Company of Pennsylvania,
Docket No. C-822983 (Recommended Decision of Joseph J. Klovekorn, Administrative Law
Judge September 9, 1982)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Sept 9, '61

Pennsylvania Public Utility :
Commission :
 :
 : C-822983
v. :
Big Run Telephone Company and :
Citizens Utilities Company :
of Pennsylvania :

Recommended Decision

of

Joseph J. Klovekorn
Administrative Law Judge

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PA PUC
SECRETARY'S BUREAU

Appearances:

Marlane R. Chestnut, Esquire
Stephen A. McClaren, Esquire
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120
for: Commission Prosecutory Staff

W. Russel Hoerner, Esquire
John H. Isom, Esquire
Morgan, Lewis & Bockius
800 North Third Street
Harrisburg, PA 17102
for: Big Run Telephone Company and
Citizens Utilities Company of
Pennsylvania

(Appearances: Con't)

Martha W. Bush, Esquire
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
for: Office of Consumer Advocate

Procedural History

This is the latest in the series of proceedings involving the long-running dispute between the residents of the Borough of Big Run (Jefferson County) and their local telephone utility.

This dispute first came to the Commission's attention in October, 1979 when the Big Run Telephone Company (BRTC) filed for a rate increase of some 41 percent.

Complaints against this rate increase were filed by the Office of Consumer Advocate (OCA) (R-79100968C001) and the Borough of Big Run (R-79100968C002). By order entered March 12, 1980, the Commission permitted BRTC to file a tariff supplement to produce additional annual revenues in the amount of \$43,933 inclusive of state tax adjustment surcharge revenues. This option was accepted by BRTC, with the resulting tariffs becoming effective April 26, 1980. The base residential, one-party, Zone 1 monthly rate became \$21.25, the Zone 2 rate, approximately \$25.00.

On June 5, 1980 the OCA filed a formal complaint against BRTC with the Commission, docketed at C-80062021, alleging that the quality of service provided by BRTC to its customers was unlawful and inadequate. The Borough of Big Run similarly filed a complaint against the utility's service (C-80072048).

On June 27, 1980, BRTC filed with the Commission revised tariffs designed to increase annual revenues, including state tax adjustment surcharge revenues, by the amount of \$108,364.

On July 9, 1980 the OCA filed a motion to consolidate for hearing and consideration its prior rate complaint and service complaint against BRTC. On July 16, 1980 BRTC responded in opposition to that motion. By Order entered September 8, 1980 the Commission ruled that

the question of consolidation was improperly certified to it and remanded the matter to the Administrative Law Judge.

On August 8, 1980 the OCA filed a complaint against the new rate increase request and further requested consolidation of that proceeding with all other outstanding complaints against BRTC.

By Order entered August 29, 1980 the Commission instituted an investigation into the proposed rates, rules and regulations of BRTC at R-80061239.

Hearings were held on these various service and rate matters before Administrative Law Judge John K. Clements. On February 9, 1981 Administrative Law Judge Clements issued his recommended decision addressing the two separate rate proceedings and the service proceeding. In his decision, Judge Clements found that the customers of Big Run had met their burden of proof as to service inadequacy--that there were an "unconscionable number of service problems in the Big Run area." He rejected, however, the request that no rate relief be granted until the service problems were solved. By Order adopted April 3, 1981, the Commission adopted, in the main, Judge Clements' decision and authorized a rate increase of \$71,841 or 23 percent.

At the Public Meeting of June 5, 1981 State Senator Patrick Stapleton and State Representative Eugene Smith presented a petition containing 1,313 signatures, requesting that their telephone service be provided by a utility other than Big Run. The petition stated as follows:

We, the citizens that live in the Big Run Telephone Company territory, are extremely dissatisfied with the substandard service and exorbitant rates of this Company and are serving notice that we no longer desire its services.

We are requesting that the Pennsylvania Public Utility Commission revoke the Certificate of Public Convenience of the Big Run Telephone Company (Docket

(#90683) and grant this territory to another company which will provide us with better quality telephone service at more reasonable and competitive rates.

At Public Meeting of July 24, 1981 the Commission, ordered a formal investigation (I-810353) into the operations of Big Run Telephone Company. As stated in the motion:

This investigation will entail the formalization of a feasibility study. The feasibility study is intended to provide all parties concerned with options which may be followed to attain the ultimate goal, namely, adequate and reasonable service at a lower rate.

The Motion identified twelve issues and sub-issues which were to be considered in the investigation. The issues concentrated into three main groups of concern:

1. The ability of Big Run and affiliated companies to provide adequate service whether under present or modified corporate organization and structure;
2. The reasons for consumer dissatisfaction, including the numerous terminations, and the financial effect upon Big Run; and
3. The prospects for lowering rates charged for service by Big Run.

On August 13, 1981, the Consumer Advocate filed a "Petition to Issue A Show Cause Order Directing Big Run Telephone Company To Show Cause Why Its Certificate Of Public Convenience Should Not Be Rescinded." Under date of September 2, 1981, BRTC filed a response to said petition, alleging better than adequate service and that further proceedings were unwarranted.

On January 18, 1982 the Commission issued an order at I-810353 in which it stated that the investigation initiated the previous summer was

completed on December 31, 1981. However, the Commission in that order set forth three continuing aspects of the investigation. It directed within six months a report from BRTC on the possibility of merger with Citizens Utility Company of Pennsylvania (CUCPA);^{1/} it directed within sixty days, an implementation plan from Big Run as to improvements in management; and, it directed within sixty days, a rate structure re-allocation proposal from BRTC with opportunity for public comment.

In its Order of January 18, 1982, the Commission stated that a staff investigative report revealed that the primary source of consumer discontent in the Big Run service area results not from inadequate service, but from high rates. The Commission then went on to observe that "several deficiencies" in the managerial, operational and financial operations of BRTC were revealed, but that "only enlarging the customer base . . . effectively reduce rates to the extent that they will be competitive...."

On April 30, 1982, the Commission issued this complaint at C-822983 against BRTC and CUCPA. By this Complaint, the Commission sought to order BRTC and CUCPA to file common tariffs based on the average, consolidated costs to serve the ratepayers of both utilities.

Active parties to this proceeding were Trial Staff, OCA and the respondent utilities. Five days of hearings were held in Harrisburg before the undersigned Administrative Law Judge. During these hearings,

^{1/} Both BRTC and CUCPA are wholly-owned subsidiaries of Citizens Utilities Company, a national holding company headquartered in Stamford, Connecticut.

Trial Staff presented seven witnesses. Two witnesses appeared on behalf of BRTC and CUCPA. In addition, two hearings were held in Big Run where approximately forty-two persons, as well as local elected representatives, made statements.

Briefs and reply briefs were filed by the active parties.²⁷

Proposed Consolidation of Rate Schedules

Trial Staff claims that the proposed consolidation of rate schedules is required for two reasons. First, it argues that there are no significant accounting, operational, financial or managerial distinctions between Big Run and CUCPA. Second, it argues, Big Run standing alone is no longer a viable basis for the setting of just and reasonable rates and that the only way to reduce, in any significant manner, BRTC's rates is to expand its customer base.

Interestingly enough, BRTC and CURPA do not take any position on the merits of the Commission proposal. They simply note that if the Commission orders the filing of consolidated tariffs, they will file an application for a certificate of public convenience for approval of a corporate reorganization to merge both companies into one.

OCA argues that the consolidation of the rate schedules of these two utilities will result in neither improved service nor lower rates.

On the basis of the record in this proceeding, I would recommend that the Commission not order these utilities to consolidate their rate schedules. The reasons for this conclusion will be set forth below.

The fundamental question which must be asked here is whether such a consolidation would be in the public interest. Despite the

protestations of Trial Staff, this further simplifies itself into the question of whether such an action will result in lower rates or better service. There is nothing in this record which would lead to the conclusion that such would be the case.

First, as the companies point out, the day-to-day operations of BRTC and CUCPA have already been consolidated for maximum operating efficiency. According to them, if BRTC and CUCPA were merged, a savings of \$113 annually will result from payment of only a single statutory agent's fee. The preparation of one annual report to the Commission, one state income tax return and one set of corporate minutes would be eliminated. This would result in no tangible economy because no reduction in work force would result.

In the event of a merger, plant accounting, customer accounting, employee accounting and vendor accounting would be performed in the same manner as at present. A merger would probably require the combination of plant accounting records and general ledgers of Big Run with those of CUCPA. This additional work would not result in any tangible increase in expense, since no additional work force would be required.

For the past ten years, with one exception, rate filings of BRTC and CUCPA have been made simultaneously, using identical methodologies. They anticipate that, in the future, they would continue to file such proceedings simultaneously and on the same basis. Consequently, costs of such proceedings would not be affected by a merger. They conclude that the realizable economies of a merger would be in the order of a few hundred dollars per year.

These conclusions appear to be supported by Trial Staff's testimony. Only Trial Staff witness Wagner pointed out any area of

savings as a result of consolidation and those savings would accrue to the Commission itself. Mr. Wagner testified that if the rates of Respondents were consolidated to reflect the average cost of service and, if Respondents were required file one, rather than two rate cases for changes in rates, and were required to maintain uniform rates in the future, the Commission's Staff could achieve certain efficiencies. This conclusion is founded upon the premise that it requires less work by the Staff to review one rate case than it does to review two rate cases. Due to the size of the companies involved, such savings would appear to be minimal.

Trial Staff also called Donald H. Muth of the Bureau of Rates to testify with regard to the financing of the two telephone companies. Generally, Mr. Muth concluded that the two telephone companies are financed similarly and that consolidation would not alter the cost of capital or the fair rate of return.

Trial Staff also presented the testimony of Mr. Carroll Smith of its Rates Bureau. Mr. Smith recommended that the respondent utilities be combined for ratemaking purposes. After analyzing revenues, main stations and telephone plant in service for the two companies he concluded that they are equivalent in terms of revenue, telephone plant in service and growth characteristics and that there should not be any problem with establishing consolidated rates.

Mr. Smith also testified on the potential rate impact if these companies were combined for ratemaking purposes. It should be noted that Trial Staff has stated many times that the rates used by Mr. Smith are illustrative only. However, it seems clear that they were selected to illustrate that the proposal to merge the two companies would produce lower rates to BRTC customer. These rates are set forth below:

<u>Class of Service</u>	<u>Present Rates</u>		<u>Estimated Rates</u>
	<u>Big Run</u>	<u>CUCPA</u>	<u>Combined Co.</u>
<u>Business</u>			
One Party	\$33.17	\$23.72	\$24.75
Two Party	27.67	17.66	18.50
Four Party	24.00	13.65	14.50
PBX Trunk	38.54	28.07	29.00
<u>Residence</u>			
One Party	21.25	11.87	13.00
Two Party	17.57	10.18	11.00
Four Party	13.70	9.34	10.00
Multi-Party	13.70	—	10.00
<u>Extensions</u>			
Business	4.23	4.05	4.50
Residence	2.82	2.70	3.50

The above estimated rates are based on the following assumptions:

1. CUCPA stations as of December 1, 1981.
2. Big Run stations are based on information supplied by the company during the last rate case, prior to April 3, 1981, when the new rates went into effect. Thus it is assumed that with decreased rates all customers who disconnected or downgraded would reconnect or regrade to the grade of service they had before the last rate increase.
3. That the rates would be exactly the same throughout the combined company. It should be noted that the estimated rates have not been refined into rate bands.

It may be safe to assume, Trial Staff's protestations to the contrary, that these possible rates are the most favorable rates that can be reasonably expected to occur as a result of the merger. It is on the basis of these illustrative rates that we are asked to approve the consolidation. Quite simply, if the consolidation were not designed to reduce rates by broadening the customer base, there would be no reason to consider it in the context of this hearing, rather it should be relegated

to the status of a home-work assignment in some business administrative course.

The record, however, points out such flaws in the assumptions that underlie these rates as to make them an unreliable guide on the basic issue of whether this proposal will reduce the BRTC customer's rates.

First, as the companies point out, these rates: (1) do not recognize zone rates, (2) shift revenue requirements away from basic residential service, (3) contain an unrealistic increase in the rates for extension telephone and (4) are based on stale ratemaking data. Second, they are based on the assumption that all BRTC customers who disconnected or downgraded would reconnect or regrade to the grade of service they had before the last rate increase. On the basis of public testimony held July 19, 1982 in Big Run, this assumption appears highly unrealistic.^{2/}

In summary, while Trial Staff's proposal looks promising on paper, the record here demonstrates that it will not succeed in its main purpose - a reduction in rates to BRTC's customers. If the Commission wishes to tidy up the corporate structure of these two utilities, it should approve this proposal. However, such action would be merely cosmetic, temporarily covering up the ~~serious problems of high rates~~ and customer dissatisfaction which exist here.

^{2/} It should also be noted that the policy of BRTC of requiring substantial security deposits from customers who have attempted to reconnect, sometimes of up to \$100, in addition to regular reconnect charges, is hardly conducive to the return of these former subscribers (Tr. 258-59).

I recommend, therefore, that the merger proposal not be adopted and, instead, the Commission turn its attention to the fundamental problem here - the complete total dissatisfaction of the residents of Big Run with their telephone company.

Resolution of Conflict

Having recommended rejection of Trial Staff's merger plan, I feel required to consider alternatives in an effort to improve telephone service in the area and, more importantly, to restore to this Borough the tranquillity that existed before these present difficulties.

Although the quality of service offered these ratepayers has not been directly in issue here, it should be noted that Judge Clements' finding in his decision at C-80062021 (February 9, 1981) that there were an unconscionable number of service problems in the Big Run area, has been adopted by the Commission (Order adopted April 3, 1981) and remains in effect. The Commission's informal off the - record investigation at I-8110353 appears to indicate that ratepayers object to high rates rather than quality of service. This, however, does not negate the Commission's original finding of poor service - it simply indicates that the Big Run residents find the present rate levels more intolerable than the quality of service. This was emphasized at the Public Hearing of July 19, 1982 held in Big Run where ratepayers and former ratepayers recounted under oath their difficulties with this company.

As noted above, however, this hearing is not directly concerned with the quality of service offered by the utility. Therefore, on the basis of the record here, I am not prepared to conclude that BRTC is providing inadequate service. I can report to the Commission, however,

that an alternative source of service for the Big Run service area would be preferable to continued service by BRTC. I make this recommendation on the basis that there is no other way to bring rates down to reasonable levels and on the basis that there is general dissatisfaction with the operations and management of the Big Run Telephone Company, so widespread that relations between the company and the ratepayers could well be termed "poisoned."

What the public wants is impelling evidence of the public's convenience and need. Re Newcastle Transit Co., 1926B PUR 85 (Indiana P.S.C. 1925). ~~And on the basis of the petitions filed and testimony~~ given in all the above cited proceedings as well as this instant one, one can only conclude that what the public wants here is a new phone company.^{3/}

I therefore conclude that, even assuming the existence now of legally adequate service, the level of service and rates would definitely improve if the assets of BRTC were sold to another telephone company - one that can provide service more in line with the wishes of the Big Run residents. To this end, this Commission should use its good offices to solicit bids from other telephone companies and act as a broker for the sale of BRTC's assets.

Specifically, BRTC and its parent should permit representatives of interested buyers access to Big Run's books and records and physical

^{3/} I would specifically note that the residents had expressed a distinct preference for Bell of Pennsylvania to offer service in their area (OCA Exhibit 8; Tr. 169, 173, 176, 187, 251, 268, 277, 281).

plant for the purpose of inspecting and valuing Big Run's assets. Thereafter bids should be submitted and, after the bidding process is complete, the Commission should select a successor utility to BRTC after considering such factors as the bidder's ability to serve the desires the Big Run residents, the proposed purchased price, and the net book value of the portion of the plant to be purchased.

In view of the expressed public opinion detailed above, the Commission should specifically invite the Bell Telephone Company to submit a bid.

The use of the Commission's offices to facilitate a sale of BRTC's assets may or may not be successful depending on the good will of all concerned. Alternatives must be considered in the event that this plan proves unsuccessful. I therefore recommend that in the event no progress is made toward the possible transfer of service to another utility, the Commission grant the "Petition To Issue a Show Cause Order Directing Big Run Telephone Company To Show Cause Why Its Certificate Of Public Convenience Should Not Be Rescinded" filed by the OCA on August 31, 1981 and which is still pending before it. In this way, the ultimate issue of whether BRTC should continue to serve this territory can finally be resolved.

THEREFORE:

IS IS ORDERED:

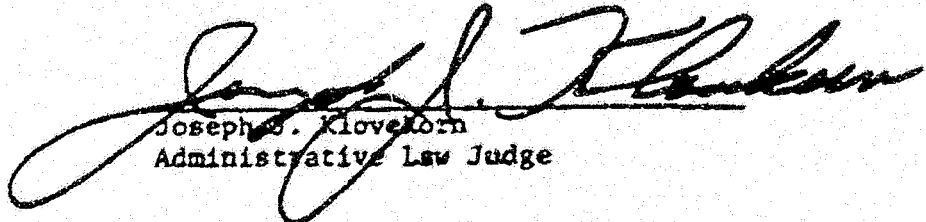
1. That the complaint adopted by the Commission on April 30, 1982 in this proceeding is sustained with respect to Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17 and dismissed with respect to Paragraphs 12, 13, 14, 18, 19, 20, 21, and 22.

2. That there should be published in the Pennsylvania Bulletin a notice of solicitation of bids from all interested telephone companies for the assets of Big Run Telephone Company and that the Bell Telephone Company of Pennsylvania should be specifically asked to make such a bid.

3. That Citizens Utilities Company and Big Run Telephone Company are directed to permit representatives of interested buyers access to the books and records and physical plant of Big Run Telephone Company for the purpose of inspecting and valuing Big Run's assets.

4. That bids should be due sixty days after date of publication in the Pennsylvania Bulletin.

Date: September 9, 1982


Joseph S. Kiovelorn
Administrative Law Judge

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held October 15, 1982

Commissioners Present:

Susan M. Shanaman, Chairman
Michael Johnson
James H. Cawley, concurring in part and dissenting in part 1/
Linda C. Taliaferro (Opinion Attached)
Clifford L. Jones

Pennsylvania Public Utility Commission

C-822983

v.

Big Run Telephone Company and Citizens
Utilities Company of Pennsylvania

O R D E R

BY THE COMMISSION:

We adopt as our action the Recommended Decision of Administrative Law Judge Klovekorn dated September 3, 1982, as amended; THEREFORE,

IT IS ORDERED:

1. That the complaint adopted by the Commission on April 30, 1982 in this proceeding is sustained with respect to Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17 and dismissed with respect to Paragraphs 12, 13, 14, 18, 19, 20, 21, and 22.
2. That a notice of solicitation of bids from all interested telephone companies for the assets of Big Run Telephone Company is to be published in the Pennsylvania Bulletin and that The Bell Telephone Company of Pennsylvania should be specifically asked to make such a bid.
3. That Citizens Utilities Company and Big Run Telephone Company are directed to permit representatives of interested buyers access to the books and records and physical plant of Big Run Telephone Company for the purpose of inspecting and valuing Big Run's assets.
4. That bids are due sixty (60) days after date of publication in the Pennsylvania Bulletin.

5. That in the event the sale of Big Run Telephone Company is not effectuated within sixty (60) days of receipt of bids, the Commission shall grant the "Petition To Issue a Show Cause Order Directing Big Run Telephone Company To Show Cause Why Its Certificate of Public Convenience Should Not Be Rescinded" filed by the Office of Consumer Advocate on August 31, 1981.

BY THE COMMISSION,

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: October 15, 1982

ORDER ENTERED: October 15, 1982

1/ Concurring as to granting of the ALJ Decision
Dissenting as to Paragraph 5 at this time.

Release Date: October 15, 1982

Public Meeting Date: October 15, 1982

OPINION OF COMMISSIONER LINDA C. TALIAFERRO

Re: ALJ-319 - Pa. PUC v. Big Run Telephone Co. and Citizens
Utilities Company of Pa. (C-822983)

Issue Involved

Whether the Commission should adopt the Administrative Law Judge's recommended decision which recommends that the Complaint initiated by the Commission be sustained in part and orders that notice be published of solicitation of bids from all interested telephone companies for assets of Big Run, and directs Big Run to permit representatives of interested buyers access to its books and records and physical plant.

In my opinion, no. While I do agree with Judge Klovekorn's conclusion that the consolidation of rates of the two Citizen subsidiaries may only be a cosmetic remedy to customer dissatisfaction and high rates, I believe the Commission is without power to order the utility to open its books and records to interested purchasers, nor are we in the position to order Big Run to divest itself of its operating territory.

Facts/Analysis

The instant decision is the result of a Commission instituted complaint to order Big Run and Citizens Utilities Company of Pa. to file consolidated rates. This is the latest in a number of actions taken by the Commission to improve the rates and services of Big Run. However, the question of service was not specifically an issue in this case. To this extent, I agree with the exceptions of Trial Staff and Respondent that the Administrative Law Judge erred to the extent that his ruling went beyond the issues before him to encompass quality of service related questions.

The question before the Commission was whether the consolidation of rates for Big Run and Citizens Utilities Co. of Pa. will materially benefit the customers of these two utilities.

The Staff takes the position that, based upon the testimony of their witness and their analysis of potential impact of the combining of rates, a consolidation is in the public interest and may possibly result in lower rates to Big Run customers.

Both the Consumer Advocate and the Judge recommend that such a consolidation is only cosmetic and temporary. The Judge goes further to conclude that the root of the problem is the customer's dissatisfaction with their present utility and their high rates; a dissatisfaction which is so widespread that a divestiture of customers and utility is the only way to bring rates to a reasonable level. The Judge does not specify how a change in attitude on the part of Big Run customers toward a new utility will lower rates, nor does he discuss whether any new company could serve Big Run residents at a lower cost without having existing ratepayers of that company subsidize Big Run ratepayers.

The utilities, both Citizens Utilities Co. of Pa. and Big Run, take no opposition to the consolidation of rates but point out that the Commission has neither the authority to require them to present their books and records to interested buyers nor the authority to order them to sell their franchise.

Discussion

I remind my colleagues at the Commission that we know all too well the revenue problems associated with Big Run. We are also aware, when we attempted to tackle the problems raised by the citizens of Big Run, that minor operational and management corrections were not going to lower the rates of a company with high operating costs and a relatively small customer class. But, we led those citizens down the primrose path with promises that we would investigate, that we would make things better and that we would even get them a new company if we had to, when all along what we were hoping for was that someone would bail us out. Well, in my opinion, we've just about reached our last card and no one has come forward to take the heat off the Commission and, I, for one, will not participate in a further charade.

The plain facts of the matter are that this is a bad situation for the utility and the customer alike and we should tell them both that in no uncertain terms. Secondly, we should recognize that there has been no evidence presented in any of the Big Run proceedings to indicate that any other utility could do a better job and certainly no indication that anyone else wants to take over the Big Run operating territory. This we should also make clear to the residents of Big Run, no matter how distasteful it is.

We should apologize to the citizens of Big Run and their able Representatives for not being able to go further than granting the Office of Consumer Advocate's Petition for an Order to Show Cause and move on it as expeditiously as possible. To do otherwise would be because of our desire to wear the white hats and slay the dragon utility company. We have taken leave of our collective senses and usurped the legislative process of making law. If the able Representatives of Big Run were to utilize the legislative process and, in conjunction with their peers in the House and Senate, pass legislation granting the Public Utility Commission the power and authority to force an unwilling privately-owned company to divest itself of title and ownership, then clearly we could act as the Administrative Law Judge proposes. Let me say here so that I am not misunderstood -- Yes, I agree that Administrative Law Judge Klovekorn's recommendation concerning the sale of Big Run is an alternative should it yield any potential buyers; however, I do not believe we have the authority to require the Company (force, if you will) to submit to the process recommended by the Judge. If the situation were one that was agreeable to the Company and if the prospect of the Commission using its good offices would materially enhance the prospects of accomplishing what Big Run could not itself accomplish without our services, then I would recommend approval of his decision. But, on the record before us, I cannot see Administrative Law Judge Klovekorn's decision as being either novel or practical; it certainly is not legal nor could it now be said to necessarily reflect good business practices for the purchasing company if existing ratepayers subsidize Big Run ratepayers.

The only legal alternative now present before the Commission is to grant the Consumer Advocate's Show Cause Order to settle this matter once and for all. It is, in my view, the last card we hold.

Recommendation

For these reasons, I would recommend that the Commission grant the Office of Consumer Advocate's petition for an Order to Show Cause, recommend to Big Run that they again solicit bids from potentially interested purchasers of Big Run, and that we take no action to consolidate the rates of Big Run and Citizens Utilities Co. of Pa., pending the outcome of the Order to Show Cause.

The Show Cause proceeding should carefully consider the principles enunciated in the Met Ed case as the legal and evidentiary bases considered by the Public Utility Commission for a revocation of a certificate of convenience to operate a utility, it should also carefully consider and review the information gathered from our

previous investigation as well as the possibilities of finding a new utility that could offer service at a level of rates lower than those offered by Big Run.

Linda P. Salofers

Commissioner

Redstone Water Company--PUC Mandated Water System Study, Docket No. C-00992270, et al., at 9 (Order entered on March 6, 2005)



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

March 2, 2005

C-00992270, et al

TO ALL PARTIES

Redstone Water Company – PUC Mandated Water System Study

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on December 16, 2004 has adopted a Tentative Opinion and Order in the above-entitled proceeding.

A Tentative Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

Enclosure
Certified Mail
LJM

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PUC
SECRETARY'S BUREAU

RECEIVED

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 16, 2004

Commissioners Present:

Wendell F. Holland, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli

Redstone Water Company-
PUC Mandated Water
System Study

C-00992270, *et al.*

TENTATIVE OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration are the disposition of the findings of the Commission-mandated Water System Study (Study) by Redstone Water Company (Redstone) and the relevant Comments submitted thereto as part of the resolution of the instant Complaint proceeding.

In its Final Order of February 9, 2001, the Commission determined that Redstone was not providing service suitable for all household purposes, in violation of Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. § 1501. Therefore, the Commission directed Redstone to perform an engineering feasibility study in order to ascertain a cost effective method for bringing its water into compliance with state and

federal drinking water standards.¹ By means of this Tentative Opinion and Order, we direct Redstone to significantly improve its system, or, alternatively, to divest its ownership thereof.

History of the Proceeding

We note initially that the procedural history of this case is lengthy and complex. Redstone provides water service to 256 customers in Crescent Heights and Daisytown, in Washington County. In 1999, Susan Balla filed a Formal Complaint against Redstone which alleged that water quality and pressure problems rendered the water unfit for basic domestic purposes. Sixteen additional customers filed Formal Complaints which alleged similar concerns. At the customers' request, the Office of Consumer Advocate (OCA) intervened in this proceeding. Later, 126 customers filed a Petition to Join the Formal Complaints, which stated that they had experienced some or all of the same service problems alleged in the seventeen initial Complaints.

On February 9, 2001, the Commission issued an Opinion and Order which concluded, among other things, that a significant number of customers were receiving water not suitable for household purposes, in violation of Section 1501 of the Code, *supra*.² The key directive to Redstone was to perform an engineering feasibility study "to determine the most cost effective method for bringing its water quality into compliance with federal and state drinking water standards and to assure that its system provides water at pressures that comply with applicable regulatory standards."³ Redstone was then

¹ *Susan Balla, et al. v. Redstone Water Company*, Docket No. C-00992270, *et al.* (Opinion and Order entered February 9, 2001) at 11.

² *Id.*

³ *Id.* at 15.

to submit the Study to the Commission for its review, and for approval of the plan for implementation of the recommendations contained therein.

Two years elapsed from the February 9, 2001 Opinion and Order before the feasibility Study was submitted to the Commission, on February 5, 2003. A later version, marked "Updated April 2003 – Final," was date stamped by the Commission as being received on October 7, 2003.

We will outline a brief history of the complex web of litigation which occurred over that two year period. Redstone filed a Petition for Review with the Commonwealth Court on March 7, 2001, seeking review of the Commission's February 9, 2001 Order. Initially, the Court vacated the Commission's Order, on the basis of lack of jurisdiction. *Redstone Water Company v. Pa. PUC*, No. 531 C.D. 2001, slip op., 2001 Pa. Commw. LEXIS 789 (October 30, 2001). The Commission thereupon requested reargument of the Court's October 21 Order and the Department of Environmental Protection (DEP) and the National Association of Water Companies filed *Amicus Curiae* Briefs on the question. Reargument was granted and, simultaneously, the Court withdrew the panel decision.⁴

Prior to reargument, Redstone filed a Status Report with the Court on May 31, 2002, in which it averred that it had received a \$23,000 grant to fund the Study, via a DEP's Safe Water Grant Agreement. The Grant Agreement contained a deadline of November 30, 2002 for completion of the Study. By Order dated June 14, 2002, the Court granted Redstone's request for a limited remand to determine whether it was appropriate to modify the schedule and deadline for the Study, as contained in the Commission's February 9, 2001 Order. The Commission entered an Opinion and Order

⁴ *Redstone Water Company v. Pa. P.U.C.*, 2002 Pa. Commw. LEXIS 868 (January 8, 2002).

on July 11, 2002, giving Redstone until November 30, 2002 to complete the Study and submit its implementation plan, consistent with the deadline contained in the Grant Agreement. In the July 11 Order, the Commission also required Redstone to submit a report to the Commission and to the OCA outlining its efforts and progress on the Study.

On August 28, 2002, Redstone notified the Court that it wished to discontinue its appeal, and the Court, by Letter dated August 29, 2002, accordingly, notified the Parties that Redstone's Appeal was discontinued.

On November 22, 2002, Dakota Engineering Associates (Dakota) filed a "Letter Petition for Time Extension" on behalf of Redstone, seeking an additional sixty day extension to complete the Study. Dakota averred that drought conditions had caused lower than normal water levels in the system's water storage tanks, which prevented dynamic system pressure testing. The Commission granted that Petition by Order entered December 9, 2001, extending the deadline for the completion of the Study until February 5, 2003. On February 5, 2003, Dakota submitted the Study, on behalf of Redstone, to the Commission and the OCA.

Discussion

Engineering Study

Redstone retained Dakota to conduct the Commission-mandated Study. Dakota recommended five alternatives, as follows:

- 1) No Modifications--This alternative is Dakota's first choice. Under this alternative, the status quo would be continued and no system modifications would be made since, according to Dakota, none are necessary. Dakota avers that since the 1999 water loss incident,

there have been no complaints about water pressure or availability. Dakota cites a Secondary Maximum Contaminant Level (SMCL) "excursion" of late November 2001, but also notes that DEP has not directed Redstone to monitor any SMCLs;

- 2) Emergency Tie-in to Tri-County Water Authority (Tri-County)--Dakota describes a specific location which would address low pressure should the system's water storage tank be emptied. Dakota cautions, however, that this would not assist with a blending operation;
- 3) Blending Tie-in to Tri-County--The blending system, via a permanent connection to Tri-County, would add water to the system in the case of a major system break and would also reduce Redstone's Total Dissolved Solids (TDS) by dilution.⁵ Dakota states: "[i]f funding can be obtained, the Blending Tie-in to [Tri-County] would be instituted by Redstone."⁶ Dakota avers that this alternative could be implemented within thirty months following the receipt of funding. If Redstone were to obtain a PENNVEST loan, Dakota estimates that there would be an additional monthly charge of \$3.85 to the ratepayer, notwithstanding the cost of water purchased from Tri-County;⁷
- 4) Treatment for Secondary Contaminants--Dakota discounts this alternative since the additional sodium

⁵ While not discussed in the Study, TDSs are known to cause hardness problems such as calcium deposits in hot water tanks, dishwashers, washing machines and other plumbing fixtures. This problem can cause premature appliance failure, lack of lather formation when washing clothes or bathing, and skin rashes. Additionally, high sulfate levels may result in an unpleasant taste and may also act as a laxative.

⁶ Dakota Engineering Associates, Inc., *Redstone Water Company, Inc. Crescent Heights System PUC Mandated Water System Study*, April 2003, Alternatives for System Modifications, at 8-1

⁷ Study, Table 7-3.

needed to treat the water "is considered undesirable for the aging population"⁸ served; and

- 5) Convert to Consecutive System--This alternative "would require that Redstone Water Company, Inc. divest itself of ownership and operation of the existing water storage and distribution system."⁹ Dakota determines this option to be non-feasible due to the high costs involved to upgrade the system to current standards.¹⁰

As outlined above, Dakota recommended that the Commission adopt the first alternative. The third alternative is Dakota's fallback recommendation should PENNVEST funding become available.

Comments to Engineering Study

Both DEP¹¹ and the OCA¹² filed extensive Comments to the Study, noting its inadequacies. In fact, the OCA proffered a "fall back" position, asserting that "if Redstone does not bring its water system into compliance with Section 1501

⁸ Study, No. 6.4, at 6-2.

⁹ Study, No. 6.4 at 6-3.

¹⁰ Study, No. 6.4 at 6-1-6-3.

¹¹ In its Letter of March 24, 2003, DEP raised concerns that the Study did not adequately address a number of essential items: *i.e.*, low water pressure and the cost considerations of sale of the water system; supporting data on the investigation or analysis work to support the conclusions reached; and a basis for reimbursement for the Study, due to items being either inadvertently omitted or otherwise missing.

¹² The OCA essentially found that the engineering study "is inadequate in several respects." The gist of OCA's referenced inadequacies include the Study's handling of issues related to water quality, water pressure, current maps and annual pressure surveys, and funding to bring Redstone's water into compliance with Section 1501 of the Code. *Comments of the Office of Consumer Advocate on Engineering Feasibility Study (OCA Comments)* filed March 5, 2003 and *Supplemental Comments of the OCA (OCA Supplemental Comments)* filed July 15, 2003.

of Code, then it must divest. These customers have a legal right to receive water service that is suitable for household purposes."¹³

In contrast, the Study itself concluded that divestiture is not a viable alternative, due to the fact that a new purchaser would require that the system be upgraded to today's standards. The Study averred that this would not be feasible due to financing considerations and expected return on the current owner's investment.

Petition Relating to Service Complaints since the Original Order

On June 16, 2003 and June 20, 2003, the OCA submitted Petitions signed by a total of nine customers seeking PUC or DEP enforcement action against Redstone. Those Petitions stated, in part:

Our bills are high and our service has not improved. The water is still undrinkable and unusable for most household purposes due to continued violations of the Safe Drinking Water Act. Our water pressure is not adequate much of the time. The expenses related to having water of such poor quality are also high. We must also buy water for many purposes and replace appliances and plumbing fixtures very frequently. We should not have to continue to pay high rates for inadequate service.

We have continued to complain to the Redstone Water Company to no avail. We are asking the Public Utility Commission to initiate a proceeding to find a competent company to take over the water company and to carry out the terms of the PUC Order.¹⁴

¹³ OCA Comments at 13.

¹⁴ By Letter dated June 20, 2003, the OCA forwarded copies of three Petitions at Docket No. C-00992270.

The Petition quoted above included the following handwritten comments: (1) "No water pressure and it stinks and cannot drink it;" (2) "There is white stuff at the bottom of your water and ice cubes and tastes horrible. We have to buy drinking water . . . had to replace heating elements and the tank wasn't even two years old;" (3) "The water smells like Clorox and raw sewage, I have no water pressure . . .;" (4) "the water . . . is causing me to have rashes and other skin problems;" and (5) "This water is not fit to drink or do laundry in. I have to replace all spigots and water faucet every two years, also the element in my hot water tank." Additionally, one customer commented above her name: "overwhelmed and outraged." Another customer added: "White deposit on bottom of water cups and ice cubes. We have to buy drinking water for my babies."

Additionally, the record contains a customer complaint dated June 6, 2003, of "poor quality of water, rusty-colored water ruins clothing; low water pressure or no water; calcium deposits."¹⁵ The complaint further stated that there has been an "outrageous increase in water bill which was supposed to be for improved service [*sic*]."¹⁶

Resolution of the Customers' Complaints

We accord substantial weight to the opinions of the 126 customers who signed a Petition to Join the seventeen Formal Complainants at the instant docket. As noted by the OCA, "All told, over 50% of Redstone's customers have expressed their grave dissatisfaction with Redstone's water and service quality in this complaint case and many in the prior rate case as well."¹⁷ This Commission's long-held standard is that water

¹⁵ Complaint I.D. No. 177123, filed on June 6, 2003, with DEP's Southwest Regional Office (forwarded to the Commission on June 12, 2003).

¹⁶ *Id.*

¹⁷ *OCA Comments* at 15.

provided at the tap must be of a quality to serve all usual household purposes.¹⁸ The landmark decision cited at the footnote below relied heavily on customer testimony as to the inadequacy of service. We see no reason to treat the instant case any differently.

The Study's recommendation to take no action herein is clearly flawed. The OCA's Comments discussed at length the Study's numerous inadequacies and omissions and its limited analysis. Even more disturbing, as the OCA noted, is the Study's apparent disregard of the full public record (the transcript, written testimony, exhibits, etc.), which supported the Commission's prior Orders herein. The Study stated as follows:

[A]ll comments and information contained in the study "are provided on the basis of site visit [sic], operating data, and analytical data obtained by other agencies (e.g., [DEP]), as made available by the Redstone Water Company, Inc'" Study at 9-1.¹⁹

Thus, it appears that Dakota did not take the full record into consideration in its Study, but rather considered only the data which was selectively provided by Redstone.

Historically, the Commission also has placed great importance on water companies maintaining water pressure suitable for all household purposes.

The 25 p.s.i.g. minimum expressed in subsection (a) is not intended to restrict the authority of the PUC to order improvements where service is inadequate; therefore, the PUC has the power to order needed improvements notwithstanding that the pressure in a utility's main meets the standard of the regulation. *Barone v. Pennsylvania Public*

¹⁸ *Pennsylvania Public Utility Commission v. Pennsylvania Gas and Water Co.*, 61 Pa. PUC 409, 416 (1986).

¹⁹ *OCA Comments* at 13 (emphasis in original).

Utility Commission, 485 A.2d 519, 522 (Pa. Cmwlth. Ct. 1984).²⁰

Conclusion

After careful consideration of the evidentiary record, it is clear that steps must be taken to remediate this situation within sixty days. We therefore offer Redstone two options, as follows:

- 1) Adopt Alternative 3, the permanent Tie-in to Tri-County, described *supra*, in order to ensure that the water supplied to Redstone's ratepayers meets applicable quality and pressure standards. Alternative 3 should reflect the modifications set forth by the OCA.²¹

Or

- 2) Sell the system at a reasonable price to a viable entity, which has the requisite technical, financial and managerial expertise to provide a permanent solution to the ratepayers' longstanding complaints.

With regard to Option One, first, new pipe should be six to eight inches in diameter rather than four, in order to comply with PUC regulations for fire flow and normal demand. (52 Pa. Code §§ 65.6, 65.17(b), (e) and 65.18; *cf.* Study at Table 7.3). Second, in its written testimony, the OCA suggested that a permanent tie-in could be made along West Malden Road, which connects to Daisytown Road as illustrated at the right edge of Exhibit A and is more than 1500 feet to 2,000 feet shorter than the 7,500 foot route proposed by Dakota Engineering. (OCA St. 1 at 9; Tr. at 252). At the

²⁰ 52 Pa. Code § 65.6, Notes of Decisions.

²¹ *OCA Comments* at 12.

estimated \$40.00 per foot, this would save \$60,000. If Dakota Engineering did consider this shorter route, Redstone should give it full consideration.

Third, if the tie-in route recommended by Dakota Engineering is used, *i.e.* along Malden Road, there is another alternative which is not addressed in the Study: all Tri-County water could be used without blending. In other words, the main would extend from Tri-County's system along Malden Road to a tie-in near West Pike Road. Water from Tri-County would enter Redstone's distribution system at this point. No Redstone water would be used, so it would not be necessary to install approximately 3,000 feet of additional main from the tie-in at West Pike Road to the pump house. Allowing \$25,000 to \$50,000 for additional valving to make this a permanent installation, a construction cost savings of \$150,000 to \$175,000 could be realized, based on the estimates provided in the Study. (Study at Tables 7.2 and 7.3). This alternative should also be considered.

If either of the two above-outlined options is not followed, that is, to adopt and implement the Study's Alternative 3 as modified by the OCA, or to divest, the matter will be referred to the appropriate Commission Bureau for consideration of further action. Should Redstone choose to make the improvements under the Study's Alternative 3, as modified by the OCA, we recommend the projected thirty-month implementation schedule be completed within six months, weather-permitting. Additionally, a PENNVEST loan, or other similar low-interest funding option, should be sought. However, lack of funding will not be accepted as a satisfactory excuse for failure to make the necessary improvements. As outlined above, if Redstone cannot facilitate funding at a reasonable cost, it should sell the system to a viable entity.

The ALJ, the OCA and the Parties have recommended that penalties be imposed, that rates be reduced, and/or that a mandatory take-over procedure be instituted. Accordingly, we will direct that a copy of this Tentative Opinion and Order shall be

served upon the Office of Trial Staff (OTS), for any ratemaking ramifications, and on the Law Bureau. Those Bureaus are to monitor this proceeding, to review Redstone's progress, and to take any appropriate action as they deem necessary.

We agree with the OCA's description of Redstone's progress to date as "anemic."²² We encourage Redstone to make immediate, good faith efforts to improve its system. If such efforts are deemed not feasible under current ownership, it must then take immediate good faith actions in order to effectuate a sale, at a reasonable price, to a viable entity. That entity must have the requisite technical, financial and managerial capacity to improve service to the level required under the Public Utility Code and the Safe Drinking Water Act. The long-suffering ratepayers of Redstone deserve no less. Otherwise, as outlined above, the OTS and the Law Bureau shall take the appropriate action.

Due to the time that has ensued in this complex proceeding, we will provide the Parties with an opportunity to submit comments within twenty days from the date of entry of this Tentative Opinion and Order. If no Comments are received, this Tentative Opinion and Order will become Final; **THEREFORE,**

IT IS ORDERED:

1. That Redstone Water Company is directed to take steps to implement the conditions outlined herein within sixty (60) days of the final Opinion and Order. Redstone may apply to PENNVEST, or other source of low-interest funding, for a low interest loan in order to implement the improvements described in this Tentative Opinion

²² *OCA Supplemental Comments* at 8.

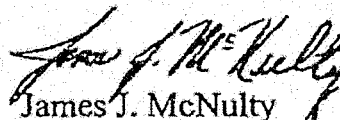
and Order. See the Study's Alternative 3, the Blending Tie-in to Tri-County Water; see also the OCA's modification described on page 12 of its March 5, 2003 Comments.

2. In the alternative, Redstone Water Company is directed to divest itself of its water system by means of a sale of that system to a more viable entity.

3. That Redstone Water Company shall submit a status report with the Secretary of the Commission, the Commission's Office of Trial Staff, the Commission's Law Bureau, the Commission's Bureau of Fixed Utility Services, the Commission's Bureau of Consumer Services, the Office of Consumer Advocate, the Department of Environmental Protection, and to all other Parties, including each of the 126 customers who associated themselves with the initial Formal Complaint herein, every sixty (60) days. Thereafter, Redstone Water Company is directed to continue to submit a status report to the aforesaid group every sixty day period thereafter, until such time as the water provided to its customers at the tap is suitable for all household purposes and/or until Redstone Water Company divests itself of its water system pursuant to Ordering Paragraph No. 2, *supra*.

4. That this Opinion and Order shall be issued as a Tentative Opinion and Order, in order to provide the Parties with twenty (20) days in which to file Comments. If no timely Comments are filed, then this Tentative Opinion and Order shall become final without further action by the Commission.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 16, 2004

ORDER ENTERED: MAR 02 2005

Redstone Water Company—PUC Mandated Water System Study, Docket No. C-00992270, et al (Order entered on June 28, 2005)



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

June 28, 2005

COMMISSION
C-00992270

TO ALL PARTIES

Redstone Water Company – PUC Mandated Water System Study

	:	Docket Number:
Susan Balla	:	C-00992270
Julie Ostetrico	:	C-00992130
Yvonne Dickinson	:	C-00992139
John T. Stone, Jr	:	C-00992285
Terri McIntyre	:	C-00992512
Edna Clements	:	C-00992513
Valinda Tyler	:	C-00992514
Maryann Molish	:	C-00992515
Lois and David Lytle	:	C-00992516
Shelly Terry	:	C-00992517
Robert Hill, Sr.	:	C-00992518
Patricia Caeti	:	C-00992519
James Rohaley	:	C-00992520
John and Gloria Wadsworth	:	C-00992521
Rabara Blackburn	:	C-00992522
Elizabeth Wise	:	C-00992523
Mr. and Mrs. Theodore M. Kotula	:	C-00992937

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PA P.U.C.
SECRETARY'S BUREAU

v.

Redstone Water Company

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on June 23, 2005 has adopted a Final Opinion and Order in the above-entitled proceeding.

A Final Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

Enclosure
Certified Mail
LJM

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 23, 2005

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman, Statement attached
Bill Shane, Statement attached
Kim Pizzingrilli
Terrance J. Fitzpatrick, Dissenting Statement attached

Redstone Water Company-
PUC Mandated Water
System Study

C-00992270, *et al.*

FINAL OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition are several Comments relating to the Tentative Opinion and Order which was issued by the Commission herein on March 2, 2005, in the above-captioned proceeding. These documents include the following: (1) the Office of Consumer Advocate (OCA) filed Comments to the Tentative Opinion and Order on March 22, 2005; (2) the Redstone Water Company (Redstone) filed Comments on March 22, 2005; (3) the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) filed Comments on April 4, 2005; and (4) thirty-three customers of Redstone filed Comments on March 23, 2005.

History of the Proceeding

We note initially that the procedural history of this case is lengthy and complex. Redstone provides water service to 256 customers in Crescent Heights and Daisytown, in Washington County. In 1999, Susan Balla filed a Formal Complaint against Redstone which alleged that water quality and pressure problems rendered the water unfit for basic domestic purposes. Sixteen additional customers filed Formal Complaints which alleged similar concerns. At the customers' request, the OCA intervened in this proceeding. Later, 126 customers filed a Petition to Join the Formal Complaints, which stated that they had experienced some or all of the same service problems alleged in the seventeen initial Complaints.

On February 9, 2001, the Commission issued an Opinion and Order which concluded, among other things, that a significant number of customers were receiving water not suitable for household purposes, in violation of Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. § 1501.¹ The key directive to Redstone was to perform an engineering feasibility study "to determine the most cost effective method for bringing its water quality into compliance with federal and state drinking water standards and to assure that its system provides water at pressures that comply with applicable regulatory standards."² Redstone was to submit the Study to the Commission for its review, and for approval of the plan for implementation of the recommendations contained therein.

Two years elapsed from the February 9, 2001 Opinion and Order before the feasibility Study was submitted to the Commission, on February 5, 2003. A later version,

¹ *Susan Balla, et al. v. Redstone Water Company*, Docket No. C-00992270, *et al.* (Opinion and Order entered February 9, 2001) at 11.

² *Id.* at 15.

marked "Updated April 2003 – Final," was date stamped by the Commission as being received on October 7, 2003.

We will outline a brief history of the complex web of litigation which occurred over that two year period. Redstone filed a Petition for Review with the Commonwealth Court on March 7, 2001, seeking review of the Commission's February 9, 2001 Order. Initially, the Court vacated the Commission's Order, on the basis of lack of jurisdiction. *Redstone Water Company v. Pa. PUC*, No. 531 C.D. 2001, slip op., 2001 Pa. Commw. LEXIS 789 (October 30, 2001). The Commission thereupon requested reargument of the Court's October 21 Order and the Department of Environmental Protection (DEP) and the National Association of Water Companies filed *Amicus Curiae* Briefs on the question. Reargument was granted and, simultaneously, the Court withdrew the panel decision.¹

Prior to reargument, Redstone filed a Status Report with the Court on May 31, 2002, in which it averred that it had received a \$23,000 grant to fund the Study, via a DEP's Safe Water Grant Agreement. The Grant Agreement contained a deadline of November 30, 2002 for completion of the Study. By Order dated June 14, 2002, the Court granted Redstone's request for a limited remand to determine whether it was appropriate to modify the schedule and deadline for the Study, as contained in the Commission's February 9, 2001 Order. The Commission entered an Opinion and Order on July 11, 2002, giving Redstone until November 30, 2002 to complete the Study and submit its implementation plan, consistent with the deadline contained in the Grant Agreement. In the July 11 Order, the Commission also required Redstone to submit a report to the Commission and to the OCA outlining its efforts and progress on the Study.

¹ *Redstone Water Company v. Pa. P.U.C.*, 2002 Pa. Commw. LEXIS 868 (January 8, 2002).

On August 28, 2002, Redstone notified the Court that it wished to discontinue its appeal, and the Court, by Letter dated August 29, 2002, accordingly, notified the Parties that Redstone's Appeal was discontinued.

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After review of the Study and the relevant Comments submitted thereto, the Commission determined, in its Tentative Opinion and Order of March 2, 2005, that Redstone was still not providing service suitable for all household purposes, in violation of Section 1501 of the Code, *supra*. Therefore, the Commission in that Opinion and Order directed Redstone to significantly improve its system, or, alternatively, to divest its ownership thereof. The Tentative Opinion and Order was to become final without further Commission action if no responses were filed thereto within twenty days of its entry date. Comments to the Tentative Opinion and Order were filed as above noted.

Discussion

Tentative Opinion and Order

As noted above, we issued a Tentative Opinion and Order herein on March 2, 2005, in which we directed Redstone to significantly improve its system, or, alternatively, to divest its ownership thereof. (Tentative Opinion and Order at 12-13).

Specifically, we directed Redstone to remediate its service within sixty days, either by permanently tying into neighboring Tri-County Joint Water Authority (Tri-County) system in order to provide water service which meets the requirements of the Public Utility Code and the Safe Drinking Water Act, or by selling the system to a viable entity which has the requisite fitness and expertise to provide such service. We also concluded that, while PennVest or similar low-cost funding for the necessary improvements should be sought, the failure of Redstone to obtain such funding will not excuse compliance with the terms of the Tentative Order. If Redstone cannot facilitate funding at a reasonable cost, it should sell to a viable entity. (Tentative Opinion and Order at 11).

Finally, Redstone was directed to submit a status report to the OCA, DEP and all other Parties every sixty days until the water provided to customers at the tap is suitable for all household purposes, or until Redstone divests itself of its water system. (Tentative Opinion and Order at 13).

OCA's Comments

The OCA advances three major points in its Comments to the Tentative Opinion and Order, namely: (1) the need for relief is critical; (2) the Commission's

recommendation that Redstone act to improve service or divest within sixty days is both reasonable and appropriate; and (3) the Commission's directive that Redstone submit periodic status report is appropriate.

On the first issue, the OCA notes that it has long been the standard that water provided at the tap must be of adequate quality to serve all usual household purposes. (Tentative Opinion and Order at 9, citing *Pa. PUC v. Pennsylvania Gas and Water Company*, 61 Pa. PUC 409 (1986). The Commission, in its Final Order entered on February 9, 2001, properly determined that Redstone has not been providing water service suitable for all household purposes, in violation of Section 1501 of the Code. "Household purposes" has been defined to include drinking, cooking, bathing and washing. The water supplied by Redstone is not adequate for any daily needs.

The record herein exhaustively documents the poor quality of the water supplied by Redstone, and we need not revisit all the pertinent testimony on that subject here. Suffice it to note that customers have stated that they cannot drink or cook with the water from their taps because that water appears, tastes and smells bad.⁴ Most of the customers testified that they do use the water for bathing, but as complainant Susan Balla stated "[w]hat other water is there?"⁵ Regularly, entire loads of laundry are ruined by gray or orange stains left by the water.⁶

Not only does the typical Redstone customer continue to pay \$439.20 per year for water which cannot be used for basic household purposes, but the extreme hardness and mineral content of the water also creates additional financial burdens for

⁴ Tr. at 13 (Stephanie Kotula); Tr. at 55 (Susan Balla); Tr. at 78 (Rarbara Blackburn); Tr. at 128-29 (Patricia Caeti); and Tr. at 167 (Yvonne Dickinson).

⁵ Tr. at 64

⁶ Tr. at 46-47, 57 (Susan Balla); Tr. at 88 (Rarbara Blackburn); Tr. at 129, 140 (Patricia Caeti); Tr. at 169 (Yvonne Dickinson).

Redstone's customers, such as the need to frequently replace appliances such as dishwashers, hot water heaters, coffee pots, irons, and any other appliance which requires water to operate.⁷ The choice of many customers to buy bottled water for everyday drinking and cooking creates yet another expense.⁸ At the same time, customers must deal with outages, low pressure or pressure fluctuations.⁹

The OCA notes that four years have elapsed since the Commission's above referenced Final Order finding that Redstone was providing inadequate service, and nearly six years have elapsed since this case began. Redstone has, however, taken no steps in that time to improve the water quality and service problems which underlie its customers' complaints. (OCA Comments at 6).

On the second issue, the OCA strongly endorses the Commission's recommendation that Redstone either improve its service or divest within sixty days. The OCA points out that Redstone's customers have already waited years and, in some cases, a lifetime for relief. (OCA Comments at 7).

The proposal to build an interconnection with Tri-County's system in order to obtain better water quality was raised in testimony filed on March 13, 2000, and subject to cross-examination by Redstone on April 5, 2000.¹⁰ Redstone's engineers should have considered the proposal at least as early as September 2002, after Redstone's appeal of the February 2001 Order was withdrawn. Redstone's feasibility study discussing the interconnection was submitted in February, 2003. Thus, Redstone has had several years' notice that it would need to take steps in order to remedy its inadequate

⁷ Tr. at 14 (Stephanie Kotula).

⁸ Tr. at 55 (Susan Balla); Tr. at 78 (Rabara Blackburn); Tr. at 128 (Patricia Caeti); Tr. at 168 (Yvonne Dickinson); Tr. at 187 (David McGrath).

⁹ Tr. at 39, 41-45 (Susan Balla).

¹⁰ OCA St. 1 at 8-9; Tr. at 232-34, 252-55).

service, and would also need to plan to fund that project, after the submission of the feasibility study. (OCA Comments at 7).

In our Tentative Opinion and Order, we directed Redstone to submit a status report to each of the 126 customers who associated themselves with the initial Formal Complaint, every sixty days until such time as the water provided to Redstone's customers at the tap is suitable for all household purposes and/or until Redstone divests itself of its water system. (Tentative Opinion and Order at 13). On its third and final issue, the OCA avers that that provision is a proactive and positive way to include customers in the flow of information and to provide a meaningful response to their problems. (OCA Comments at 8).

The OCA concludes by urging the Commission to enter its Tentative Opinion and Order as a final order, without any modification. (OCA Comments at 8).

Redstone's Comments

Redstone submitted two comments to the Tentative Opinion and Order. In its first comment, Redstone avers that it has scheduled a meeting with Pennsylvania-American Water Company (PAWC) during the first week of April, 2005, to discuss a possible sale of the system to PAWC. Redstone furthermore avers that it intends to contact Tri-County to determine Tri-County's interest, if any, in acquiring the system. It intends to move expeditiously to try to sell the system. The Tentative Opinion and Order requires the submission of periodic status reports to the Parties to this proceeding, but does not require the finalization of a sale by a date certain. Redstone is of the opinion that the Commission should adopt that approach in its final order herein, in order to afford Redstone sufficient time to accomplish a sale of the system. (Redstone Comments at 2-3).

In its second comment, Redstone asserts that while it is hopeful that it will be able to sell the system, it continues to dispute the Commission's conclusions and its ultimate jurisdiction. (Redstone Comments at 3). Redstone concludes that further action by the Commission is not warranted at this time.

DEP's Comments¹¹

DEP avers that it supports the Commission's enforcement action against Redstone in the Tentative Opinion and Order. (Comments at 1). However, DEP opines that the performance obligations imposed on Redstone by the Tentative Order are not sufficiently severe, in that Redstone is merely required to "take steps" to connect its system with Tri-County, or to divest, and to report what steps it has taken every sixty days. DEP furthermore points out that history has shown the Redstone will delay and perpetuate the inadequate status quo as long as it is permitted to do so. (Comments at 2).

As a result of its concerns, DEP proposes that the ordering paragraphs imposing performance obligations on Redstone be redrafted. DEP's proposed ordering paragraphs would include requirements that Redstone either buy water from Tri-County in a sufficient amount to serve all of its customers and construct a permanent interconnection with Tri-County, or that Redstone divest itself of ownership and operation of its system. DEP would furthermore require that if Redstone does not timely comply with DEP's proposed requirements, the Commission will then appoint a receiver.

¹¹ Although it is not a party to the instant proceeding, DEP, like the Commission, regulates Redstone's activities as an operator of a community water system. Additionally, DEP submitted extensive comments to the feasibility study which Redstone undertook pursuant to our February 9, 2001 Order. (Order of February 9, 2001 at 6).

That receiver shall then convene a public sale and convey Redstone's assets to the highest bidder at the sale. (Comments at 2).

Redstone Customers' Comments

We note initially that the customer complaints which initiated this proceeding have been pending before the Commission for more than five years. (Tentative Opinion and Order at 2). Additional customer complaints have been filed during that five year period. (Tentative Opinion and Order at 8). Finally, in response to the Tentative Opinion and Order's twenty day response period, thirty-three Redstone customers filed brief comments. All thirty-three customers submitted signatures in support of the OCA's March 22, 2005 Comments. Twenty-one customers wrote brief notes, all of which amplify their dissatisfaction with the water they receive at the tap. We will outline a brief sampling of those comments below.

Dorothy Tyler comments "[w]ater is so bad it causes faucets to rust and rot. Also causes skin rashes." Elsie Hoggans comments "[t]he water has a lot of calcium. Water tastes bad and I do not drink it." Yvonne Clements comments "[n]o water pressure, damage to kitchen and bath fixtures and pipes." Barbara Huey comments "[t]oo much lime, poor quality, water smells." Finally, Barbara A. Hill notes "I have had laundry ruined, whites [stained] yellow or brown, blacks [stained] gray, coffee pots replaced at least twice a year, hot water tanks every 3 or 4 years. I have a main water line go through my yard. In a 2 or 3 year time, it has leaked [3 or 4 times . . .]"

Conclusion

In summary, the OCA provided the most extensive Comments, and it concluded that the need for relief is critical and that the Commission's proposals to achieve that result are appropriate.

Redstone notes that PAWC and Tri-County are possible buyers of its system, and that it intends to move expeditiously to try to sell the system. Redstone notes with approval that the Tentative Order does not require that it finalize a sale of its system by a date certain. We agree with Redstone that we did not establish a date for the sale's finalization in our Tentative Order. By this Final Opinion and Order, however, based on comments submitted by DEP, we will now provide a date certain, along with incorporating several other DEP modifications.

At the outset, we note that DEP supports the Commission's enforcement action against Redstone as outlined in the Tentative Order. DEP's Comments provide information regarding the need for an amended Public Water Supply Permit, should Redstone choose to interconnect with Tri-County Water Authority. We have adopted this language. In addition, DEP's Comments provide a 180-day period for this option to be permitted, constructed and in use. We concur that this is an appropriate timeframe.

Furthermore, since Redstone's customers have already waited a long time for improved water service from Redstone, we will direct this same time period be applied to the completion of the divestiture option, consistent with DEP's Comments. Accordingly, we will direct that Redstone have a signed Agreement of Sale in place within 180 days. We trust that, should Redstone pursue this option, it will negotiate in good faith to establish a purchase price that is reasonable. This proceeding must reach closure and the end-date proposed by DEP will help accomplish this goal.

In further Comments submitted by DEP, it is recommended that the Commission take a more severe stance with Redstone, including a provision that if Redstone does not timely comply with DEP's proposed requirements (a 180-day deadline to provide Tri-County water via a new interconnection or divestiture), the Commission should then appoint a receiver, who will convene a public sale and convey Redstone's assets to the highest bidder. We note that while this could conceivably be the ultimate outcome of this proceeding, we will at this point refer the matter to our Law Bureau for monitoring. Upon the 181st day after the date of entry of the Final Opinion and Order, should Redstone not have complied therewith, the Law Bureau will then be directed to take such further steps as deemed appropriate.

We have carefully reviewed the above-outlined Comments to our Tentative Opinion and Order. Based on our review, we conclude that the provisions of the Tentative Order are the correct provisions, and should be made final. We further conclude that our modifications based on DEP's Comments amplify our Tentative Order. This approach provides for a program of relief for Redstone's customers, while also providing the opportunity for Redstone to either interconnect with Tri-County Water Authority or divest itself of its system within 180 days; **THEREFORE,**

IT IS ORDERED:

1. That the Tentative Opinion and Order entered at Docket No. C-00992270, *et al.*, on March 2, 2005 is hereby made final, thereby approving the Office of Consumer Advocate's Comments, along with adopting the following amplifications consistent, in part, with the Comments filed by the Department of Environmental Protection.

2. That Redstone Water Company is directed to take steps to implement the conditions outlined in the Tentative Opinion and Order within sixty (60) days of the entry date of this Final Opinion and Order. Redstone may apply to PENNVEST, or other source of low-interest funding, for a low interest loan in order to implement the improvements described in the Tentative Opinion and Order. *See* the Study's Alternative 3, the Blending Tie-in to Tri-County Water; *see also* the OCA's modification described on page 12 of its March 5, 2003 Comments.

3. That should the alternative outlined in Ordering Paragraph No. 2, above, be implemented, Redstone must apply to the Department of Environmental Protection for, and obtain therefrom, an amended Public Water Supply Permit, changing Redstone's status to that of a consecutive water supply system and authorizing the necessary construction. Construction of a permanent interconnection with Tri-County Authority Water Authority must be completed on or before 180 days of the entry date of this Final Opinion and Order, along with any and all improvements to the Redstone distribution system which are necessary to accept and deliver water derived from Tri-County Water Authority to Redstone's customers.

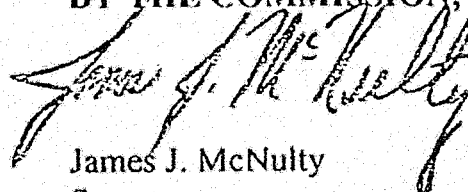
4. That, in the alternative, Redstone Water Company is directed to divest itself of its water system by means of a sale of that system to a viable entity; that the Agreement of Sale for this transaction must be signed within 180 days of the date of entry of this Final Opinion and Order.

5. That Redstone Water Company shall submit a status report with the Secretary of the Commission, the Commission's Office of Trial Staff, the Commission's Law Bureau, the Commission's Bureau of Fixed Utility Services, the Commission's Bureau of Consumer Services, the Office of Consumer Advocate, the Department of Environmental Protection, and to all other Parties, including each of the 126 customers

who associated themselves with the initial Formal Complaint herein and the additional thirty-three customers who submitted Comments to the Tentative Opinion and Order (if they are different individuals from the original 126 customers), every sixty (60) days. Redstone Water Company is further directed to continue to submit a status report to the aforesaid group every sixty day period thereafter, until such time as the water provided to its customers at the tap is suitable for all household purposes and/or until Redstone Water Company divests itself of its water system pursuant to Ordering Paragraph No. 4, *supra*.

6. That if Redstone Water Company does not comply with either of the two alternatives set forth above, on the 181st day after the date of entry of this Final Opinion and Order, this matter shall be referred to the Commission's Law Bureau for its review and consideration of any further action it may deem necessary.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: June 23, 2005

ORDER ENTERED: JUN 28 2005

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105

Redstone Water Company-
PUC Mandated Water
System Study

PUBLIC MEETING
June 23, 2005
JUNE-2005-OSA-0142*
C-00992270

STATEMENT OF VICE CHAIRMAN JAMES H. CAWLEY

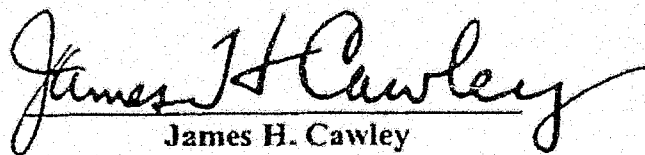
I join in Commissioner Shane's statement. I have no doubt that the Commission has the necessary primary jurisdiction and authority under Sections 529 and 1501 of the Public Utility Code to appoint a receiver, if necessary, in order to obtain a capable operator for this system. In the early 1980's, long before enactment of Section 529, I voted in a similar instance involving a poorly operated water system (in a residential development called Ridgeland in Hampden Township, Cumberland County) to appoint a receiver to operate the system and effectuate its acquisition by a capable water company.*

My view is simply this: if a water system operator has been providing inadequate service over an extended period of time and, after being given reasonable opportunities to cure its service deficiencies, fails to provide adequate service, that operator's entitlement to a certificate of public convenience is forfeited.

On a personal note, I have some idea of what Redstone's customers have endured. I grew up listening to my mother's anguished cries when her white sheets came from the washer stained with orange streaks caused by our water utility's rusting mains and lines. I also remember attending junior and senior high school seven miles from my home, in a different small water company's service territory, and from the water fountains drinking white-colored water that reeked of petroleum.

This Commission has had laudable success in encouraging the acquisition of inadequately financed or just plain poorly operated water systems by more capable ones. This case presents another too long delayed opportunity to insist that customers of a deficient water system enjoy better days at the washer, the water fountain, and, indeed, the spigot.

Date: June 23, 2005



James H. Cawley
Vice Chairman

*Before a receiver was appointed, the Commission fined the company. *Jean M. O'Leary et al. v. Hampden Water Company, et al.*, 56 Pa. P.U.C. 311, 1982 Pa. PUC LEXIS 69 (1982).

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Redstone Water Company-
PUC Mandated Water
System Study

Public Meeting June 23, 2005
Jun-2005-OSA-0142*
Docket No. C-00992270, et. al.

STATEMENT OF COMMISSIONER BILL SHANE

Before us for consideration is the recommendation of the Office of Special Assistants (OSA) that we should adopt the March 2, 2005 Tentative Opinion and Order in this proceeding, as modified in part by the comments of the Department of Environmental Protection (DEP).¹ Most notably in the comments of DEP is their recommendation that the Commission should take a more severe stance with Redstone Water Company (Redstone). Specifically, DEP suggests a provision in the Commission's Final Order that if Redstone does not comply with the Commission's directive of either an interconnection with the Tri-County Joint Water Authority or divestiture of the system within 180 days of the entry date of the Commission's Final Order, the Commission should then appoint a receiver.

While I wholeheartedly agree with the recommendation of OSA, I am particularly mindful of the fact that for a number of years, numerous Redstone customers have been receiving and complaining about Redstone's provision of inadequate water service. Indeed, the complaint in this proceeding, albeit replete with a "complex web of litigation," was filed in 1999. Therefore, in light of the protracted history of this matter, I strongly encourage the Law Bureau, in conjunction with the Bureau of Fixed Utility Services, to closely monitor Redstone's compliance with the Commission's Final Order so that the appropriate steps can be initiated on the 181st day.

6/23/05
Date

Bill Shane
Bill Shane, Commissioner

¹ The Office of Consumer Advocate also filed comments in support of the March 2, 2005 Tentative Order.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105

REDSTONE WATER COMPANY
- PUC MANDATED WATER
SYSTEM STUDY

PUBLIC MEETING June 23, 2005
JUN-2005-OSA-0142*
C-00992270 *et al*

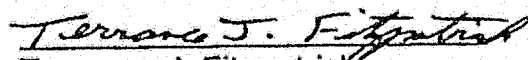
DISSENTING STATEMENT OF
COMMISSIONER TERRANCE J. FITZPATRICK

The Order adopted by the Commission requires Redstone Water Company to comply with certain conditions based primarily upon a finding that the quality of water supplied by Redstone is deficient.

For reasons I explained in a previous statement in Clinical Trial Services v. Audubon Water Company, Dkt. No. C-20016403 (Public Meeting of December 19, 2002), and consistent with the Commonwealth Court's holding in Rovin v. Pa. Public Utility Commission, 502 A.2d 785 (Pa. Cmwlth. 1986), I believe that regulation of the quality of drinking water is the exclusive domain of the Department of Environmental Protection ("DEP") under the Safe Drinking Water Act, 35 P.S. §721.1 et seq.¹ In the absence of an appellate court decision reaching a different conclusion, I will continue to adhere to that view.

Accordingly, I respectfully dissent.

DATED: June 23, 2005


Terrance J. Fitzpatrick
Commissioner

¹ Under this program, DEP is empowered to enforce "secondary maximum contaminant levels," the purpose of which is to protect the aesthetic quality of water. See, 25 Pa. Code §109.202, 40 CFR §143.1. The Commission is also attempting to regulate the aesthetic quality of water, but without the benefit of measurable, objective standards such as SMCLs.

CERTIFICATE OF SERVICE

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County of Pike

v.

Pike County Light & Power Company

Docket No. C-20065942, et al.

I hereby certify that I have this day served a true copy of the foregoing document, the Main Brief of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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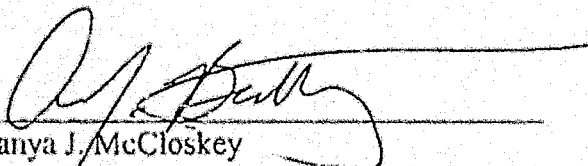
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE

v.

PIKE COUNTY LIGHT &
POWER COMPANY

Docket No. C-20065942

MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

ORIGINAL

DOCUMENT
FOLDER

DOCKETED
FEB 15 2007

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Dated: February 12, 2007

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I. INTRODUCTION

On May 31, 2005, Pike submitted a Provider of Last Resort Plan ("POLR Plan") to the Pennsylvania Public Utility Commission ("Commission") at Docket No. P-00052168. The POLR Plan proposed that POLR generation rates for 2006, 2007 and 2008 be set based on a one-time auction, using a financial swap instead of a physical purchase of power.¹ The Office of Small Business Advocate ("OSBA") was a party to the proceeding at Docket No. P-00052168.

By Order entered August 25, 2005, the Commission approved Pike's POLR Plan with modifications, which included shortening the plan to cover just the years 2006 and 2007.² The auction was conducted on October 25, 2005, amid the energy price spike caused by Hurricane Katrina, resulting in bids that were very high.³ The auction results were approved by the Commission by Secretarial Letter dated October 28, 2005, and the resulting new tariffs were approved by Commission Order entered December 21, 2005.

On January 1, 2006, the customers of Pike experienced a significant increase in generation rates based upon those auction results. In response to numerous complaints about these rates, the Commission, by Order dated February 4, 2006, initiated a 60-day investigation into the market conditions in Pike's service territory at Docket No. P-00052168. The Commission, at its Public Meeting on June 22, 2006, issued a report resulting from the 60-day investigation, titled "Report on Competitive Market Conditions Regarding the Pike County Light & Power Company" ("June 22, 2006, Report").

¹ OSBA Statement No. 1, Direct Testimony of Robert D. Knecht ("OSBA Statement No. 1") at 2.

² *Id.*

³ *Id.* at 3.

While the Commission was conducting the investigation which led to the June 22, 2006, Report, Direct Energy, LLC ("Direct"), a licensed electric generation supplier ("EGS"), filed a Petition with the Commission on March 10, 2006, at Docket No. P-00062205. The Petition proposed a retail aggregation of Pike's customers and a subsequent auction in the hope of providing rate relief to Pike's customers. Direct's Petition was approved by the Commission, with modifications, on April 20, 2006. Through a competitive procurement, Direct was then selected as the aggregator. Thereafter, Direct began providing generation for most Pike customers at rates somewhat below the POLR rates.

Independent of the Commission's investigation and Direct's Petition, the County of Pike ("County") filed a Complaint on or about March 21, 2006, opposing Pike's rate increase and alleging that the rate increase constituted an unfair burden upon budgets that were already in place prior to the increase's taking effect. The Complaint was docketed at C-20065942. The Office of Consumer Advocate ("OCA") filed a Notice of Intervention and Public Statement on April 5, 2006. The OSBA filed a Notice of Intervention and Public Statement on April 24, 2006. On May 5, 2006, the OCA filed a Motion for an Extension of Time for Prehearing Conference. The OCA's Motion was granted by an Interim Order entered May 9, 2006, by the presiding officer, Administrative Law Judge ("ALJ") Ember S. Jandebour. Subsequent to that Interim Order, an additional 21 Complaints were filed by individuals and businesses served by Pike. These Complaints were consolidated with this proceeding at Docket No. C-20065942, *et al.*

On July 12, 2006, the County filed an Amended Complaint. A prehearing conference was held on August 3, 2006, at which Pike indicated that several motions would be filed. Pike also moved to dismiss all formal complainants who failed to appear for the prehearing conference. Pike filed its Answer and New Matter to the Amended Complaint and Preliminary Objections on August 4, 2006. On August 16, 2006, the County and OCA filed a Joint Answer to Pike's Preliminary Objections. Another prehearing conference was held on August 22, 2006.

By Interim Orders I and II entered September 19, 2006, the ALJ denied four of Pike's five Preliminary Objections, and granted the one Preliminary Objection regarding the County's lack of standing to assert a claim for billing errors on behalf of Pike's business customers. Many of the formal complainants who failed to appear at the prehearing conferences were placed on inactive status by Interim Order I.

Public Input Hearings in this matter were held on October 4, 2006, in Milford, Pennsylvania. Evidentiary hearings were held in Scranton, Pennsylvania, on January 16, 17 and 19, 2007. In a January 31, 2007, telephone conference call between the attorneys of record and ALJ Jandebaur, it was agreed that the briefing schedule would be extended as follows: Main briefs are due February 12, 2007, while reply briefs are due February 26, 2007. Main briefs will be limited to 100 pages while reply briefs will be limited to 60 pages.

II. SUMMARY OF ARGUMENT

Pike's situation among electric distribution companies ("EDCs") in Pennsylvania is unique. Pike draws its power from NYISO, the New York electric distribution network, rather than from PJM, which supplies most Pennsylvania EDCs. Further, Pike is a small EDC, with a load too small to be attractive to wholesale bidders.

The County's first specific prayer for relief, a rollback in Pike's POLR rates, is not advisable at this time. The POLR rates currently being charged under Pike's tariff were approved by the Commission, and any modification of those rates by the Commission prior to the end of the POLR Plan on December 31, 2007, would send a signal to Pennsylvania's retail and wholesale suppliers that there is significant regulatory risk in providing POLR power in the Commonwealth. This would have a negative effect on competition and could result in higher rates under Pike's next POLR Plan than would otherwise be the case. Therefore, a better remedy would be to focus on obtaining more reasonable rates under Pike's next POLR Plan.

In order to facilitate balanced wholesale and retail competition in Pike's service territory, two recommendations contained in the June 22, 2006, Report should be implemented.

First, an independent study of an interconnection between Pike and PJM should be conducted. While it is true that Pike conducted a study in March 2004, which it updated in May 2006, there are significant issues which those studies did not address. Furthermore, the best way to assure ratepayers that the interconnection option has been

fairly considered is to have the matter evaluated by an entity which is independent of Pike and the other parties.

Second, the Commission should explore ways to integrate Pike's purchasing of energy with its existing Orange and Rockland ("O&R") affiliates. Pike appears to be taking some steps in this direction with its recently filed POLR Plan for the period beginning January 1, 2008. *See Petition of Pike County Light & Power for Expedited Approval of its Default Service Implementation Plan*, Docket No. P-00072245.

III. ARGUMENT

A. The Commission Should Focus on the Next POLR Plan.

The Commission approved both the results of the auction conducted by Pike on October 25, 2005, and the resulting tariff.⁴ That auction resulted in bids which were very high, due to the energy price spike following Hurricane Katrina. Furthermore, the successful bidder, ConEd Energy, submitted winning bids which were only slightly higher than the market futures prices, which implies that the risk premiums in those winning bids were considerably lower than the maximum risk premiums that Pike had deemed reasonable prior to the auction.⁵ Therefore, the reason for the exceptionally high bids was nothing more than market pricing at the time of the auction.

Assuming that the County's prayer for relief in the form of a rollback in rates would apply only to the POLR supply rates in Pike's tariff, to roll back the Commission-approved tariff rates at this time would send a strong negative signal to the retail and wholesale suppliers of electricity in the Commonwealth. To do so prior to the expiration of Pike's approved POLR Plan on December 31, 2007, would say to potential future wholesale suppliers that there is a significant regulatory risk associated with providing POLR supply.⁶ Further, such a rollback would signal retail suppliers that even successful competitive programs (such as Direct's aggregation) could be undermined by reducing

⁴ The auction results were approved by a Commission Secretarial Letter dated October 29, 2005. The new tariffs based upon those results were approved by Commission Order entered December 21, 2005.

⁵ OSBA Statement No. 1 at 3.

⁶ OSBA Statement No. 1 at 6.

POLR rates in ways that were not envisioned at the time those competitive programs were introduced.⁷

While a rate rollback would provide relief for Pike's ratepayers in the short term, it would have a serious negative effect on electric competition across the Commonwealth.⁸ This was not the stated intent of the June 22, 2006, Report or of the investigation that preceded it. The Commission has indicated that it wishes to encourage competition, not discourage it. To roll back rates before the end of Commission-approved POLR plans and tariffs is unwise because doing so would likely result in an additional premium on future wholesale bids.⁹

B. The Commission Should Order an Independent Study of the Possible Interconnection of Pike with PJM.

In order to facilitate balanced wholesale and retail competition in Pike's service territory, a significant recommendation contained in the June 22, 2006, Report should be implemented. Specifically, an independent study of the possibilities for interconnection between Pike and PJM should be conducted.¹⁰ While it is true that Pike conducted a study in March 2004, and updated that study in May 2006, there are significant issues which have not been adequately addressed.

⁷ *Id.* Because most of Pike's customers are now purchasing generation at Direct's aggregation rates rather than at Pike's POLR rates, it is unclear exactly what those customers would have to do in order take advantage of a rollback of POLR rates.

⁸ *Id.* at 7.

⁹ *Id.* at 6.

¹⁰ June 22, 2006 Report, Recommendation 2).

Pike's updated study estimates that the cost of interconnection would outweigh the net annual benefit by \$2.7 million to \$2.0 million, thus costing Pike an estimated additional \$700,000 per year. However, this study was conducted at the level of an overview, and is based upon estimates that do not appear to be consistent.¹¹ Further, it appears that Pike has not seriously explored possible public funding options for such an interconnection, which could serve to reduce the carrying charges for the project.¹² In fact, Pike does not appear to have seriously studied many of the possibilities for interconnection with PJM, but rather has approached the interconnection issue with what appears to be a lack of interest.¹³

Given Pike's lack of enthusiasm for studying the interconnection issue, and given the fact that no other party to this proceeding has produced a detailed study of the possibilities for interconnection, the OSBA believes that the Commission should order that the possible interconnection of Pike with PJM be studied by an independent third party which would be tasked with exploring all options. Only then will the ratepayers of Pike be assured that the interconnection issue has been thoroughly evaluated by an entity that has no vested interest in the outcome. Only then will the Commission be able to appraise the pros and cons of such an interconnection realistically—whether in the context of considering an order directing Pike to undertake an interconnection or in the context of considering the viability of a sale of Pike to another entity.

¹¹ OSBA Statement No. 1 at 7.

¹² *Id.*

¹³ See, eg, the cross-examination of Angelo Regan, Hearing Transcript, January 16, 2007, at 99-102, 108, 110-112. Pike did not even begin discussions with Jersey Central Power and Light or Met-Ed until December, 2006.

C. The Commission Should Order Pike To Explore Ways To Integrate the Purchasing of Its Energy Needs With Its O&R Affiliates.

As recommended by the June 22, 2006, Report, ways to integrate Pike's purchasing of energy with its existing Orange and Rockland ("O&R") affiliates should be explored. Pike appears to be taking some steps in this direction, as seen in its recently filed POLR Plan at Docket No. P-00072245. The size and composition of Pike's load is not attractive to wholesale and retail suppliers, making it virtually impossible for Pike to diversify the timing of its procurement.¹⁴ However, if Pike's load could be combined with the load of another EDC with a larger service territory, many of these problems could be mitigated.¹⁵

If Pike is unable to bundle its load with an affiliate for bidding purposes, there is some likelihood that wholesale bidders will require a more significant risk premium in the next bidding round, in light of the events subsequent to January 1, 2006, noted above.¹⁶ Therefore, the OSBA recommends that Pike upgrade the algorithm it uses for evaluating whether a risk premium is reasonable, and also develop a fall-back position in the event that risk premiums are deemed to be excessive.¹⁷

¹⁴ OSBA Statement No. 1 at 8

¹⁵ *Id.*

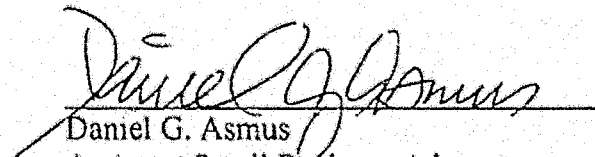
¹⁶ *Id.* at 9.

¹⁷ *Id.*

IV. CONCLUSION

For the reasons stated herein, the OSBA respectfully requests that the Commission deny the County's request for a rate rollback, order an independent third party investigation into the possible interconnection of Pike with PJM, and order Pike to explore integrating its purchasing plans with those of Pike's O&R affiliates.

Respectfully submitted,


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Dated: February 12, 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE :
v. : DOCKET NO. C-20065942
PIKE COUNTY LIGHT & POWER CO. :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Main Brief, on behalf of the Office of Small Business Advocate, by e-mail and first class mail (unless otherwise noted) upon the persons addressed below:

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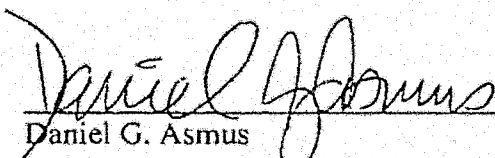
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PUBLIC UTILITY COMMISSION
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County of Pike, et. al. :
 :
v. : Docket No. C-20065942, et. al.
 :
Pike County Light and Power Company, et. al. :

REPLY BRIEF OF DIRECT ENERGY SERVICES, LLC

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Direct Energy, LLC ("Direct Energy") files this Reply Brief in response to the Main Brief of Pike County Power & Light ("PCL&P") that mischaracterizes the role played by Direct Energy's provision of electricity supply to consumers in Pike County.¹ PCL&P makes two arguments regarding this issue. First, PCL&P argues that the Complainants have failed to meet their burden of proof against PCL&P because the company currently supplying them with energy is not PCL&P.² Second, PCL&P advocates that the Commission's approval of the Retail Aggregation Bid Program which ultimately resulted in Direct Energy offering electricity supply to the consumers addressed the complaints of the consumers in this case.³

In response, Direct Energy wishes to make clear that the rates it provides customers in Pike County as an electric generation supplier ("EGS") are dependent on the Provider of Last Resort ("POLR") structure that is developed by PCL&P and approved by the Commission. Consequently, Direct Energy cannot address the rate complaints set forth in this proceeding.

¹ Main Brief of Pike County Light and Power Company, dated February 12, 2007 at pp. 30-31 and 41 ("PCL&P Main Brief").

² *Id.* at 30.

³ *Id.* at 31.

II. DIRECT ENERGY'S SUPPLY IS DETERMINED ON THE POLR RATE STRUCTURE

As PCL&P acknowledges, it is required to provide the POLR for consumers in its service territory and the Commission approves its proposed plan to provide this service.⁴ Once Direct Energy became the successful bidder for the opt-out generation supply aggregation program,⁵ Direct Energy calculated the rate it would provide consumers based on the POLR rate.⁶ Therefore, the structure of the POLR rate provides the basis upon which Direct Energy calculates the competitive rate it is able to offer. While Direct Energy and PCL&P may differ on how to structure the POLR rate in the future,⁷ Direct Energy is without the ability to change the POLR structure that is ultimately approved by the Commission because PCL&P has the statutory obligation in this case to provide it.

It is simply not factually accurate, nor fair, to imply that PCL&P customers complaints are directed at Direct Energy. The final common sense proof of this is that, if Direct Energy were to terminate its retail aggregation contracts tomorrow PCL&P customers would be left with the same complaints about the level of their generation rates -- only more pronounced (since the PCL&P default rate is, in most cases, higher than the rate offered by Direct Energy). Therefore,

⁴ *Id.* at 25.

⁵ *Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light and Power Company*, Docket No. P-00062205, Final Opinion and Order entered April 20, 2006 at 14-15.

⁶ Main Brief of Direct Energy Services, LLC., dated February 12, 2007 at 5.

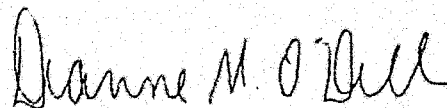
⁷ On January 8, 2007, PCL&P filed a petition to structure the 2008 POLR. Direct Energy filed an answer to that petition and the case is proceeding through the regulatory process. See *Petition of Pike County Light & Power Company for Expedited Approval of its Default Service Implementation Plan*, Docket No. P-00072245, filed January 8, 2007; *Direct Energy Services, LLC. Answer to Petition of Pike County Light and Power Company*, filed January 29, 2007.

Direct Energy's role in Pike County cannot be characterized as the company with the ability to structure the rates upon which the complaints are based. As outlined in Direct Energy's Main Brief, its interest in this case is limited to ensuring that this it held harmless in the event of a forced sale of PCL&P during the term of the Retail Aggregation Bid Program.⁸

III. CONCLUSION

Direct Energy's provision of alternative generation supply to customers in the service territory is based on the POLR structure that PCL&P is statutorily required to develop. Therefore, Direct Energy is without the ability to address the complainant's rate concerns set forth in this proceeding. Direct Energy's limited interest in the case of any sale of PCL&P is to ensure that the if the sale occurs during the term of the current Retail Aggregation Bid Program, then (1) Direct Energy is given the opportunity to make a new offer if a new POLR rate structure is implemented, and (2) the current contracts Direct Energy has with PCL&P as well as all the Commission approved waivers must be transferred to the new owner.

Respectfully submitted,



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Dated: February 26, 2007

Attorneys for Direct Energy Services, LLC

⁸ Main Brief of Direct Energy Services, LLC. dated February 12, 2007 at 5-7.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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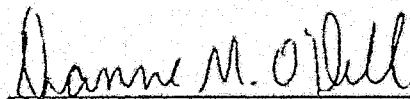
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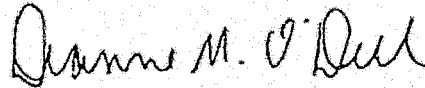
Re: County of Pike, et al. v. Pike County Light and Power
Company Docket Nos.: C-20065942, et. al. (consolidated)

Dear Secretary McNulty:

Enclosed for filing are the original and nine (9) copies of Direct Energy Services LLC's Reply Brief in the above-referenced matter. As indicated on the attached Certificate of Service, all parties of record have been served in the manner indicated.

If you have any questions regarding this filing, please contact me at your convenience.

Very truly yours,



Deanne M. O'Dell

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

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Enclosures

cc: Hon. Ember Jandebaur (w/enc)
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

County of Pike, et al.,

Complainants,

v.

Pike County Light & Power Company,

Respondent.

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Docket No.: C-20065942, et al.
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REPLY BRIEF

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I. INTRODUCTION

In their initial briefs, the Office of Consumer Advocate ("OCA") and the Large Customer Group ("LCG") identify a new subjective standard that they argue the Commission should adopt in its adjudication of customer complaints concerning a utility's adequacy of service and reasonable rates, i.e., has the relationship between a utility and its customers become so "poisoned as to require the Commission to act to restore tranquility." Simply put, they would have the fate of any utility in Pennsylvania determined by the collective feelings of its customers. Utility regulation would be reduced to a mere popularity contest. Should a utility such as PCL&P lose the goodwill of its customers, then, according to the OCA and LCG, that company should be forced to divest itself by Commission edict. This new age approach to utility regulation has no statutory or regulatory basis and should be summarily rejected by the Commission.

II. ARGUMENT

A. The Complainants Have Failed to Show that PCL&P Rates Are Unjust and Unreasonable

As demonstrated in PCL&P's Main Brief, the Complainants have failed to show that default service rates approved by the Commission at the end of 2005 are unjust and unreasonable. The briefs filed by the OCA and the LCG provide many examples of customers' dissatisfaction with the Company's rates and service. However, the Complainants have not disputed two crucial facts in this proceeding: (1) PCL&P's default service rates were established pursuant to Section 2807(e) of the Public Utility Code and are based on "prevailing market prices," and (2) the rates resulting from the default service process set in motion in 2005 were approved by the Commission, and therefore, they are deemed to be just and reasonable pursuant to the filed rate doctrine. The Complainants have conceded that the Commission approved the rates at issue (LCG Brief at 5); they failed to show that the Company has violated any law, regulation or Commission Order with regard to rates, and they have, therefore, failed to sustain their Complaints.

In their attempt to convince the Commission that the Company's rates are unjust and unreasonable, the Complainants and the OCA recount the numerous times that customers have stated that they feel their rates are "excessive." The Complainants seem to believe that if, in their opinion, their rates are high, by definition the rates must be unjust and unreasonable. The Complainants, however, have failed to identify any legal authority for the proposition that rates that the customers believe are too high are automatically unjust and unreasonable rates. This is hardly surprising since no such legal authority exists.

In order to prevail, the Complainants must demonstrate that either (1) the Company is charging rates not approved by the Commission, (2) the Company is in violation of a Commission rate order,¹ or (3) in the context of a post-rate-cap environment, the Company is charging rates that are not based on "prevailing market prices" in accordance with Section 2807 of the Competition Act. In this case, the Complainants have failed to establish any of these things. Instead, the Complainants merely offer page after page of emotional testimony regarding their high bills. Such recitations are particularly inapposite since they are made by customers who are taking generation service from Direct Energy, not PCL&P.

In order to bolster their allegations, OCA and the LCG argue the Commission should find that PCL&P's rates are unreasonable under Section 1301 of the Public Utility Code. 66 Pa. C.S. § 1301.² The OCA, echoed by the LCG, states: "The 'just and reasonable' rate standard of Section 1301 of the Public Utility Code was not repealed by the enactment of the Electric Choice Act." OCA Brief at 29; LCG Brief at 19. Even the OCA and the LCG, however, acknowledge that the old way of setting rates for generation service no longer applies. *Id.* While the Competition Act did not expressly repeal Section 1301, the manner in which generation rates are set under a post-rate-cap regime is fundamentally different than it was prior to enactment of the Competition Act. Under the Competition Act, generation rates are set by the "prevailing market prices" standard of Section 2807. Unless the Complainants demonstrate that PCL&P's rates are contrary to Section 2807 or any Commission regulation or Order, the Company's current default service rates must be deemed to be just and reasonable.

¹ See, e.g., 66 Pa. C.S. § 1312.

² Although Complainants argue that "the current rates paid by PCLP customers are unjust, unreasonable and in violation of Section 1301" (LCG Brief at 15), the LCG's Brief fails to identify which rates are allegedly unjust and unreasonable. The Commission is left to guess whether the Complainants are attacking PCL&P's default service rates, PCL&P's delivery rates or Direct Energy's aggregation rates, which are the rates being paid by 91% of the Company's customers.

The Complainants seek to establish an artificial conflict between two provisions of the Public Utility Code. The OCA and LCG argue that rates established under Section 2807 are unjust and unreasonable under Section 1301. The Complainants are asking the Commission to decide that the rates they approved in accordance with Section 2807 of the Competition Act are somehow illegal under Section 1301. The Commission should not countenance this argument. There is no conflict between these provisions of the Public Utility Code because rates established and approved under the Competition Act are just and reasonable and perfectly consistent with Section 1301.³ The General Assembly intended for generation rates to be set by the market once rate caps expired, and those rates are just and reasonable as long as the Competition Act is followed. Rates established by the Commission are perfectly valid where, in the course of setting the rates, the Commission was properly exercising its regulatory authority, and the orders were supported in law and by sufficient facts. *Pa. P.U.C. v. Pennsylvania Gas & Water Co. (Water Div.)*, 424 A.2d 1213 (Pa. 1980), *cert. denied*, 454 U.S. 824, 70 L. Ed. 2d 97, 102 S. Ct. 112 (1981).

Even if the Commission were to accept the Complainant's manufactured "conflict," Pennsylvania rules of statutory construction dictate that the Competition Act would prevail. Pursuant to Section 3 of the Pennsylvania Statutory Construction Act of 1972, "[w]henver the provisions of two or more statutes enacted finally by different General Assemblies are irreconcilable, the statute latest in date of final enactment shall prevail." 1 Pa. C.S. § 1936; *Trumbull Corp. v. Boss Constr., Inc.*, 768 A.2d 368, (Pa. Cmwlth. Ct. 2001). Thus, if the Complainants' fabricated "conflict" actually existed, the Commission would be obliged to resolve the conflict in favor of the Competition Act. The rates set in accordance with Section

³ It is noteworthy that neither the OCA, LCG, nor any other party advanced this argument when the Commission approved the Company's default service rates.

2807(e) would survive any challenge under Section 1301 because the Competition Act, including Section 2807, was enacted in 1997, many years following the enactment of Section 1301.

The Complainants argue that “[r]ates cannot be just and reasonable if, simultaneously they are unaffordable and were arrived at utilizing a defective market-based process.” LCG Brief at 59. This conclusory declaration lacks any basis in fact or law. In Pennsylvania, the justness and/or reasonableness of utility rates is not determined by “affordability,” particularly in the nebulous and subjective fashion that LCG would define “affordability.” Nothing in the Competition Act or any other provision of the Public Utility Code says that default service rates following expiration of rate caps must be “affordable” in order for the rates to be just and reasonable. Moreover, there is no factual support for the LCG’s position that the process approved by the Commission to establish the Company’s default service rates was “defective.” In fact, the Commission modified the original plan submitted by the Company to ensure that the process would be effective in arriving at rates based on “prevailing market prices.”

According to the OCA and the LCG, customers are receiving neither the protections of regulation nor the benefits of competition. OCA Brief at 29; LCG Brief at 19. The Company’s customers, however, are receiving what the General Assembly intended when it enacted the Competition Act: generation rates based on “prevailing market prices.” It is critical to distinguish between the consequences of the Competition Act and those acts and omissions that are necessary to justify a sanction. The Company’s current default rates were not “imposed” on customers by PCL&P; the rates were established by the Commission pursuant to the Competition Act. The Company has acted pursuant to Commission Orders and in accordance with the Public Utility Code at all times.

The Complainants claim that PCL&P's default service rates are "out of line" with the generation rates of other Pennsylvania utilities. LCG Brief at 47; OCA Brief at 24 and 25. Any comparison of rates between PCL&P's default service rates and the rates of other utilities in Pennsylvania is inappropriate. The rates of PPL and MetEd are still subject to rate caps, while the Company is operating in a post-rate-cap environment and its rates were set based on "prevailing market prices." Therefore, any comparison between capped rates and market rates is misguided and inappropriate, and any assertion regarding the justness or reasonableness of rates based on the comparison should be rejected by the Commission. In short, the fact that PCL&P's market-based rates are higher than another utility's capped rates is not a basis for a finding that the Company's rates are illegal.

The Complainants seek to ratchet up the emotional force of their initial briefs by periodic references to the term "rate shock." See, OCA Brief at 24. The Complainants conveniently omit any definition of this term. More important, there is nothing in the statutes, regulations or orders of the Commission that would guide PCL&P regarding the avoidance of "rate shock" while complying with Section 2807(e) of the Public Utility Code. Moreover, this rate shock contention is made with the benefit of 20/20 hindsight and is, therefore, totally unhelpful. The Company would note that neither OCA nor any other party to this proceeding offered any concerns regarding rate shock when the Commission approved the Company's default service rates. The Commission may address this issue as part of its POLR regulations and the proceeding on Mitigating Rate Increases [cite], but there were no guidelines at the time that PCL&P acquired power for its default service customers with regard to "rate shock." Accordingly, these rate shock allegations are irrelevant and should not play a part in the Commission's determinations in this case.

B. There Are No Insurmountable Structural Impediments for PCL&P to Provide Adequate Service at Reasonable Rates

In their briefs, the OCA and LCG argue that PCL&P is "incapable" of providing adequate service at reasonable rates because of "structural impediments." OCA Brief at 28; LCG Brief at 17. This contention ignores the facts of record in this case.

The Company is proceeding with plans to address concerns raised by the Complaints in this proceeding. PCL&P has proposed a new default service plan, which is being considered by the Commission at Docket No. P-00072245. In addition, the Company continues to study the possibility of an interconnection with PJM and has undertaken a number of steps to improve service and reliability. Far from succumbing to "impediments" to reliable service at reasonable rates, the Company is proactively moving toward better service at rates that satisfy the requirements of the Public Utility Code and the Competition Act in particular.

The OCA also argues that "as long as Pike remains a miniscule part of a giant New York utility focused on operations in the New York ISO generation market, Pike customers will not see rates that are just and reasonable in Pennsylvania." OCA Brief at 22. This contention that PCL&P's affiliation with Orange and Rockland Utilities, Inc. ("Orange and Rockland") and Consolidated Edison Company of New York, Inc. is some sort of liability is both misguided and incorrect. The fact that PCL&P is an affiliate of these companies is the very thing that will enable to Company to bring potentially significant savings to its customers.⁴ The new default service plan proposed by PCL&P contemplates the integration of PCL&P's load with that of Orange and Rockland for the purposes of the contemplated auction and procurement process. As the Company has explained in its Default Service Petition and in testimony in this proceeding,

⁴ The Law Bureau recognized the value of PCL&P's affiliation with Orange and Rockland when it recommended that the Commission explore the integration of the Company's energy procurement with that of Orange and Rockland. *Law Bureau Report* at 16 (Recommendation No. 1).

the proposed integration of the load is likely to result in a more successful auction and potentially lower generation rates. This is a benefit to PCL&P customers and not a detriment.⁵

The LCG takes issue with the Company's use of financial hedges, and the Complainants argue that this approach will result in higher rates. LCG Brief at 18. According to the LCG, "PCL&P's utilization of the hedging and auction process during times of extreme market volatility demonstrates, at best, imprudence and, at worst, irresponsibility toward the ratepayers where a fundamental commodity like electricity is left to the vagaries of the market." LCG at 39. These assertions are misplaced for many reasons, but two are fairly obvious. First, there is no evidence of record to support the LCG's speculation regarding the results that the auction process will yield. Even if the Complainants had presented such evidence, it would be of limited probative value because of its speculative nature (i.e., any statement that purports to predict the future should be disregarded). Second, the LCG may think that the auction process was imprudent or irresponsible, but the fact remains that the Competition Act requires the Company to offer default service rates at market prices, and the 2005 auction produced rates that were reflective of market prices at the time. If the mechanism used to arrive at these market rates had been imprudent or irresponsible, it would not have been approved by the Commission after modification.

The OCA and the Complainants continue to maintain that an acquisition by the Sussex Rural Cooperative ("Sussex") is "the best solution by far" to PCL&P's perceived "structural impediments" and high rates. *See*, OCA Brief at 56. These parties fail to address all the issues raised by the Company with regard both to the Sussex interconnection proposal and to Mr.

⁵ The OCA acknowledged as much when it stated, "[t]o the Company's credit, it has proposed to integrate future default supply auctions with its parent O&R's financial hedge transactions in order to bring greater wholesale competition to Pike." OCA Brief at 34.

Kolling's so-called rate reduction guarantee. The Company will not reiterate the myriad deficiencies with both the Potemkin Village like interconnection proposal and Sussex's rate reduction promise identified in PCL&P's Main Brief. As to the Sussex interconnection proposal, the Company would merely remind the Commission that in Pike County, Pennsylvania, unlike in Neverland, wishing does not make it so. As to Mr. Kolling's 20% rate reduction guarantee, suffice it to say that any guarantee burdened by the multiple conditions and caveats identified in the record constitutes no guarantee at all.

The OCA claims that the Company did not rebut Mr. Kahal's assertions that Sussex could obtain cheaper power from Allegheny. OCA Brief at 56. However, Mr. Kahal admitted in the course of cross-examination that he did not have any projections estimating the price of power from Allegheny. Tr. 1/16 at 37-38. Mr. Kahal's own testimony in this proceeding belies any contention that Sussex can lower customers' rates because he does not know what price Allegheny will charge for generation going forward. He does not have any projections or estimates and he does not know whether any projections or estimates for Allegheny's generation prices exist.⁶ *Id.* at 38. Since Mr. Kahal does not know what price Allegheny will charge Sussex for generation in the next ten years, his assertions regarding rate reductions should be disregarded.

Furthermore, the Company's evidence showed that the price Sussex will pay for generation is only one of many components of a customer's bundled rate. When the acquisition and interconnection costs are taken into consideration, the claim of 20% rate reductions is simply not credible. *See*, PCL&P Brief at 35-41.

⁶ Mr. Kahal did not review Sussex's supply contracts with Allegheny, Williams or the NYPA. Tr. 1/16 at 37-39.

C. The Complainants Have Failed to Show that PCL&P Service is Unsafe and Inadequate

In support of their extraordinary request that the Commission order the forced divestiture of PCL&P, the Complainants argue that the Company has not provided safe and adequate service to its customers. OCA Brief at 39; LCG Brief at 60. The LCG cites a number of Commission cases dealing with the issues of unsafe and inadequate service, but none of the case cites support the drastic conclusion proposed by the parties in this matter. LCG Brief at 22-25. For example, in the *Bernstein* case cited by the Complainants (LCG Brief at 23), the Commission finds that Duquesne failed to provide safe and adequate service and the Commission assessed a civil penalty of \$750. *Id.* In the *Peschka* and *Berger* cases cited by the LCG, the Commission makes a finding of unsafe and inadequate service and fines the companies involved \$1,000. None of the cases cited by the Complainants support the position of the Complainants and the OCA in this case that substandard service should be the basis for a forced sale of an electric utility. Even if the Company conceded, which it does not, that service was inadequate, the remedy sought by the Complainants is grossly disproportionate to the alleged service violations and would constitute a monumental departure from any prior Commission action to address service issues.⁷

To buttress their shaky "inadequate service" case, the Complainants are reduced to misconstruing the record. For instance, the LCG discusses the Company's plan to interconnect with PPL through a 69kV line and states in the LCG Brief that, "PCLP witness Regan... readily admitted on cross examination the [sic] PCLP has no real intention of constructing the line nor has it begun any preliminary planning for the project." LCG Brief at 44. Mr. Regan said no

⁷ The Complainants make it clear that they are not seeking monetary penalties, but prefer to have the Commission take the unprecedented and unauthorized step of ordering a forced sale of PCL&P. *See*, LCG Brief at 24.

such thing. In fact, Mr. Regan testified that, "[t]he eventual tying of the Orange and Rockland and PP&L 69kV systems is what PCL&P envisions as the ultimate and correct long-term solution to improving reliability for all of the customers in this area of Pennsylvania." PCLP St. 2 at 3, Ins. 5-8. Further, Mr. Regan testified that a preliminary cost estimate was prepared as part of an Interconnection Study that was submitted to the Commission. Tr. 1/16 at 102.

For its part, the OCA purports to summarize the Company's position on the service issue by saying that "the Company's argument reduces to a statement that many Pike customers are simply going to have to accept below-average service." OCA Brief at 40. Again, this is misstatement of the record. In his testimony (cited by the OCA), Mr. Regan explained that there are material differences in the character of service between urban and suburban settings and rural areas with heavy vegetation. PCLP St. 2 at 25. He then testified to the many steps the Company has taken to increase service reliability. PCLP St. 2 at 2, 15, 20, 29. At no point did Mr. Regan, or any other PCL&P witness, state or imply that customers should accept substandard service.

In another distortion of the record, the OCA refers to the proposed link between Sussex and PCL&P's territory as a connection to a line "just across the river." OCA Brief at 61. The record indicates that the Branchville substation that Sussex proposes as a starting point for the line that would theoretically connect Sussex to Pike County is approximately 16 miles from Milford and some 20 miles from Matamoras. Tr. 1/17 at 33-35. The OCA fails to mention that the line "just across the river" in New Jersey is not Sussex's line at all, but facilities belonging to Jersey Central Power & Light. Tr. 1/16 at 52. Plainly, the OCA is attempting to make the proposed Sussex interconnection appear more appealing than it is in reality, but it is doing so by manipulating the record in this case.

Further, the OCA claims that there is "no indication" that the Company is able to provide safe and adequate service to its customers. OCA Brief at 41. This is yet another contention that is belied by the record in this case. In addition to having provided safe and adequate service, the Company has improved its level of service in the last year and continues to pursue ways to improve its service to customers. PCLP Brief at 53-54. These are facts the OCA would have the Commission ignore in order to advance its radical position with regard to a forced sale of the Company. The OCA characterizes the Company's efforts to improve its service as "too little, too late" (OCA Brief at 46) as if to say that nothing the Company has done or will do to improve service will be deemed satisfactory.

The Complainants' assertions that the Company lacks a "community presence" to justify the extraordinary relief simply does not comport with the record in this proceeding. The Complainants would have the Commission believe that Port Jervis is adjacent to Pittsburgh. In reality, the Company's facilities at Port Jervis are less than two miles and five minutes away from the Company's service territory. Tr. 11/6 at 68 and 71. In addition, there is no requirement in the Public Utility Code, any regulations of the Commission, or any Order affecting PCL&P that requires that the Company's facilities be closer than two miles or five minutes from any portion of its territory. Certainly, this alleged lack of community presence cannot serve as a basis for a finding that the Company is not providing safe and adequate service.⁸

⁸ According to the OCA, customers have focused on out-of-state management as a source of their customer service problems. OCA Brief at 53. However, if the Complainants and the OCA are successful in having the Commission order the sale of PCL&P to Sussex, these customers will have out-of-state management.

D. The Extraordinary and Drastic Remedy Requested by the Complainants is Wholly Inappropriate Under the Facts and the Law in this Case

The Complainants in this matter correctly acknowledge that the remedy they seek – the forced sale of PCL&P – is an “extraordinary measure.” OCA Brief at 36; LCG Brief at 35. In support of their position that an extraordinary forced sale is the appropriate remedy in this case, the parties present various questionable authorities and inapplicable precedent. For example, the OCA and the LCG cite a number of sections of the Public Utility Code to convince the Commission that the General Assembly has granted the power to order the forced divestiture of an electric utility, but none of these sections provides the Commission with such authority. Also, the OCA and the LCG rely on *Big Run* and a number of irrelevant cases from other jurisdictions to support their call for a forced sale, but none of these cases is applicable to the instant matter. Finally, perhaps sensing that they have failed to meet their burden of proof, the parties suggest that the Commission should order the sale of the Company even in the absence of a finding that the Company has done something wrong. Such a request for a drastic remedy that has no support in statute, case law or the facts of the case should be summarily rejected by the Commission.

The LCG cites Section 501 of the Public Utility Code in support of the proposition that the Commission possesses “plenary” powers, including, presumably, the power to order the forced sale of an electric utility. LCG Brief at 2, 26. Such reliance on Section 501 is simply misguided. As PCL&P explained in its Main Brief, the Commission has only those powers that are expressly, or by necessary implication, granted to it by clear and unmistakable statutory language. PCL&P Brief at 59-60. The LCG’s novel theory of unlimited Commission power is simply not supported by Pennsylvania law and should, therefore be rejected by the Commission.

The OCA offers a more nuanced, if equally troublesome approach. The OCA argues that the Commission's power to order the forced divestiture of an electric utility is derived from Section 1103(a), the provision of the law that authorizes the Commission to grant certificates of public convenience. OCA Brief at 74. Under this theory, the Commission has the express power to grant certificates, which implies that the Commission has the power to revoke certificates. According to the OCA, this implied power to revoke certificates gives rise to a new Commission power to order the sale of PCL&P. Even setting aside the obvious distortion of logic and reason, the Complainants have not sought revocation of PCL&P's certificate, they are asking the Commission to name Sussex the new owner of the Company's customers and territory.⁹ Contrary to the claims of the OCA and the LCG, the Commission may have the power to grant and revoke certificates of public convenience, but it does not have the authority to order the compulsory divestiture of PCL&P, or any other electric utility.

In addition to lacking any statutory backing, the Complainants' position regarding the drastic remedy sought in this case finds no support in Commission precedent or any other applicable or relevant case law. The Company will not repeat its arguments regarding the *Big Run* case. The fact that the OCA and the LCG are forced to rely extensively on tangential decisions from foreign jurisdictions, however, underscores the inherent weakness of their reliance on the *Big Run* case.

The *Mon Power* case cited by the OCA and LCG is an apt example of a non-binding and extraneous case from another jurisdiction where the law and the facts fail to offer any useful guidance to the Commission in deciding this case. OCA Brief at 73; LCG Brief at 32. On the

⁹ The Complainants recognize the troubling practical implications of the Commission's exercise of its implied revocation power. According to the LCG, "[r]evocation of a certificate in this instance does not allow for a competing certificate holder... or an alternative provided to assume PCLP's service obligations." LCG Brief at 28.

law, the Public Utility Commission of Ohio decided the case on the basis of its express statutory authority to order the sale of one utility to another (OCA Brief at 73), a power that, as discussed above and in PCL&P's Main Brief, the Commission simply does not possess. On the facts, the Ohio Commission took the extraordinary step of ordering the transfer of Mon Power to another utility following Mon Power's refusal to comply with an Order of the Ohio Commission to file and implement a rate stabilization plan. LCG Brief at 32.¹⁰ In the instant case, the Complainants have not alleged, much less shown, that PCL&P has failed to comply with any Order of the Commission. In fact, the Company has not only complied with all Commission Orders, but has done so even when, under normal circumstances, it could have chosen to take a different path (e.g., PCL&P cooperated fully with the implementation of the Direct Energy opt-out aggregation program). The parties attempt to equate the factual and legal situation of *Mon Power* to this case is completely inappropriate.

The OCA cites the case of *Redstone Water Company* for the proposition that the Commission's authority to order the sale of a utility "predates and extends beyond" the Commission's powers under Section 529 of the Public Utility Code. OCA Brief at 81. This is an unsupported misstatement of current Pennsylvania law; it is more accurate to say that, to the extent that the Commission forces the sale of a utility outside the context of Section 529, the Commission is acting outside its statutory authority. The LCG compounds the error and the confusion by stating that, "[a]lthough Section 529 is not applicable to electric utilities, Section 501 plenary authority coupled with the Commission's authority to revoke or rescind certificates

¹⁰ The New Hampshire case cited by Mr. Brockway (OCA St. 3 at 33-35) suffers from the same fatal deficiency. There, the Commission "facilitated" the takeover of a small utility (CVEC) by a larger one (PSNH) after CVEC objected to the state's restructuring initiatives and took the New Hampshire Commission to Court to prevent the implementation of the Commission's restructuring orders. LCG Brief at 33. PCL&P has done nothing that remotely resembles CVEC's confrontational non-compliance, and the Complainants cannot support the drastic forced-sale remedy under the facts and the law in this case.

of public convenience, provides the necessary statutory basis for the relief sought.” LCG Brief at 31. Section 529 is the only provision of the Public Utility Code that authorizes the Commission to order the transfer of one utility to another, and although the LCG and the OCA acknowledge that Section 529 is not applicable to PCL&P, they continue to argue that the Commission should order the forced sale of the Company.

The *Redstone* case is more of an illustration of a company with a lengthy record of poor service that failed to remedy its performance despite being afforded ample time and opportunity by the Commission to do so. A brief review of the facts in the *Redstone* case reveals that, (1) the case was initially filed with the Commission in 1999 (Docket No. 00992270, *et al.*), (2) the Commission found that the Company was providing inadequate service, (3) in 2001, the Commission ordered Redstone to conduct a study to explore how the Company might comply with safe drinking water standards, and (4) in 2005 (i.e., six years after the filing of the first complaint) with the Company unable to improve service, the Commission ordered either the implementation of service improvements or the sale of the company to a viable provider. Plainly then, the *Redstone* case is markedly different from the present case. In this case, the Commission has made no finding that the Company is providing inadequate service. In fact, service has improved recently. Under *Redstone*, if the Commission finds that service is deficient, it should direct the Company to improve service in some specific way. Only if the Company then fails to improve service, may the Commission avail itself of any authorized measures to compel compliance with the Commission’s service standards.

Finally, the OCA and the LCG argue that the Commission should order a forced sale of PCL&P even if they do not find that the Company has violated the Public Utility Code. OCA Brief at 79; LCG Brief at 30. The parties quote passages from the *Big Run* decision to the effect

that the ALJ failed to make a finding of inadequate service, and yet, recommended that Big Run be sold "to restore tranquility" and because "what the public wants" is a new company. In essence, the Complainants ask that the Commission set aside Section 701's requirement that a claimant prove a violation of the law, Commission regulation or order and Section 332's requirements on the burden of proof and preponderance of the evidence. Instead, the Complainants would have the Commission ignore the Company's most basic legal rights and adopt a new "tranquility and public whim" standard to deciding the fate of a public utility in Pennsylvania. This approach should be summarily rejected because it is contrary to the Public Utility Code and violates the Company's due process rights.

E. The Sussex Acquisition Proposal Is Not a Viable Option for PCL&P Customers

1. The Rate Impact of a Sussex Acquisition on PCL&P Customers Has Not Been Quantified.

The Complainants have concluded that the best alternative to the continued service by PCL&P is for the Commission to direct PCL&P to sell its system to Sussex. The OCA and LCG rely on the testimony of Mr. Kahal, among others, to bolster their claim that, not only is the acquisition of PCL&P by Sussex the best solution to their perceived problems, but that the acquisition and the construction of the proposed interconnection is feasible. The OCA, relying on Mr. Kahal's testimony, argues that the costs associated with the interconnection are minor compared to the benefits resulting from the project. OCA Brief at 61. OCA states further that assuming their costs are higher than projected by its witness Mr. Lanzalotta, that the lower cost of generation supplied by Sussex would negate any costs involved. *Id.*

The OCA's reliance on witness Kahal's testimony is misplaced since Mr. Kahal did not perform an independent analysis of the feasibility or the costs of the Sussex interconnection. Tr. 1/16 at 41. Mr. Kahal's statements in that regard are based upon the testimony of OCA witness Mr. Lanzalotta, who in turn failed to perform any analysis of the interconnection but relied on the unsupported statements of Sussex CEO Mr. Kolling. Contrary to the OCA's assertion that Mr. Kahal provided a thorough economic analysis regarding the benefits to PCL&P's customers, the record reveals that Mr. Kahal based his estimates of the sale of PCL&P on OCA witness Lanzalotta's analysis of the interconnection costs. Tr. 1/16 at 35. Mr. Kahal also admitted that the impact on customers' rates of the proposed sale of PCL&P is unknown because of the uncertainty of a final sale price. In addition, Mr. Kahal agreed that the rate impact of the Sussex Proposal would be higher if the capital investment in the project was higher. Tr. 1/16 at 44. Mr. Kahal also affirmed that he had not performed an analysis to determine a fair market value for

PCL&P and had assumed that such a price would be negotiated between the parties. Tr. 1/16 at 37. He failed to consider that the price could be set through an eminent domain proceeding.

The OCA and LCG's assertions that the rates charged to PCL&P customers by Sussex will be dramatically lower than PCL&P's are not based upon record evidence. The Complainants' assertions lack any basis grounded in thorough analyses and studies of the future cost of power from Sussex sources, the cost passed along to Sussex for upgrades to those power sources, and the acquisition and interconnection costs. They also assume that the current price of PCL&P's generation will remain fixed and that Sussex's generation will remain fixed indefinitely. Such blind faith is hardly the basis for reasoned decision making, particularly when the remedy requested is so extraordinary.

2. The Sussex Interconnection Proposal Is Contingent Upon the Continued Service of O&R into PCL&P Service Territory.

The record in this proceeding reflects serious flaws in Sussex's interconnection proposal. In addition to the lack of definitive cost and feasibility analysis, the OCA witnesses Lanzalotta and Kolling present an amorphous outline of a plan to interconnect Sussex with the PCL&P system that will remain operationally dependent on the continued service from Orange and Rockland after the forced sale by PCL&P to Sussex. PCL&P witness Regan stated that the proposed interconnection would not meet the R/M load deliverability requirements and would triple the reliability exposure of PCL&P customers compared to PCL&P's existing service. Tr. 1/16 at 126-127. The OCA's witness Lanzalotta agreed that without the continued service after the sale by Orange and Rockland that Sussex's service reliability would be "severly impaired." Tr. 1/16 at 85. Additionally, if the Orange and Rockland connection is maintained after the sale, then PCL&P's significantly stronger source in Port Jervis would not only continue to serve all of PCL&P's current load but it also could end up serving some of the Sussex system load.

The OCA in response to these uncontraverted facts attempts to foist responsibility for the inferior reliability of the Sussex interconnection upon PCL&P and Orange and Rockland. They cite the testimony of County Commissioner Forbes as a basis for their position that any attempt by Orange and Rockland, after the forced sale, to terminate the interconnection is a "veiled threat." Mr. Forbes' statement as cited in the OCA's Brief is telling for its logical inconsistency. Mr. Forbes responded to the statement that PCL&P and Orange and Rockland would terminate the interconnection to the PCL&P system after the sale.

"and I think this is a veiled threat. Not only to the customers of the area, but to the whole area when you look and read this. It says, we don't know if we would want to stay connected. And I find that just not a way to run a business, nor a way to deal with an area or territory that you're --- you want to be provider of electric within that area. I find that just down right insulting." Emphasis added.

OCA Brief at 69.

The OCA, in adopting Mr. Forbes' statement, is contending that a company that is forced to sell its system must conduct its business after the divestiture as if it remained a provider of electric service to its former service territory. In other words, Orange and Rockland should maintain its operations in New York, maintain an interconnection to the PCL&P system, and provide backup service to Sussex, even though it will have no customers in Pennsylvania and have no obligation to serve those customers.

The OCA, in its final attempt to avoid the inescapable fact that the proposed Sussex interconnection is operationally flawed without Orange and Rockland's continued service, argues that FERC Rules at 18 CFR §35.15 would prevent Orange and Rockland from discontinuing service to Pike County. This FERC regulation, however, merely provides that a notice of cancellation or termination of a rate schedule be filed with the FERC at least 60 days prior to cancellation or termination. According to the OCA, it is unlikely that FERC would allow such

an interconnection to be severed if it remained necessary to provide reliability to customers on either side of the New York/Pennsylvania border. OCA Brief at 70.

These arguments by the OCA are simply beside the point. The sole relevant rate schedule in the event of a buyout of PCL&P by Sussex would be the current Power Service Agreement between Orange and Rockland and PCL&P. In the event of a buyout, Orange and Rockland would certainly comply with the FERC's requirements in cancelling the Power Supply Agreement. However, OCA has identified no regulation requiring that Orange and Rockland continue to provide service of any kind to Pike County following a buyout by Sussex.

F. Mr. Dalton Erred in His Analysis of PCL&P's Calculations

In his brief, Complainant Dalton argues that the Company erred in its determination of its January 2006 default service rates and calls for the Company to provide refunds to its customers. Dalton Brief at 6-9. However, it is Complainant Dalton who has erred in his analysis. In his brief Complainant Dalton references numbers on his Attachment H, Exhibit T-1. *Id.* at 6. He refers to an amount of \$7,689,445, characterizing it as the "total 2005 cost" and appears to interpret the \$9,988,810 similarly as the Company's total 2006 cost. He then goes on to subtract delivery service revenue and system benefits charge revenue from the \$9,988,810 amount to arrive at \$6,864,590, an amount he then interprets to be the Company's required 2006 default service revenue. This is incorrect. Exhibit B, Page 1 of 5, to the Company's November 1, 2005 filing, *which is included in Complainant Dalton's Attachment C*, clearly states that \$9,988,810 is "Required Default Service Revenue". Since this amount represents only default service revenue, it is inappropriate to subtract amounts for delivery service revenue and system benefits charge revenue as Complainant Dalton did. Complainant Dalton's rate design and refund proposal are based on this erroneous analysis and should therefore be summarily dismissed.

In his brief, Complainant Dalton accuses Company witness O'Brien of being incorrect in his response to Complainant Dalton's Interrogatory No. 15, stating "Mr. O'Brien misinterpreted the intent of the re-filing on November 16, 2006¹¹ as just a matter of correcting the gross receipts tax when it was a simple correction of the PCL&P numbers for the default service auction." Dalton Brief at 13. Once again, it is Complainant Dalton who is incorrect. Exhibit B, Page 1 of 5, to the Company's November 16, 2005 filing plainly shows the same required default service revenue (i.e., \$9,988,810) as the November 1, 2005 filing. The only change is that gross receipts tax is added on that same page. Accordingly, Mr. O'Brien was entirely correct in his response to Interrogatory No. 15 and in declining to change that response at the January 17, 2007 hearing.

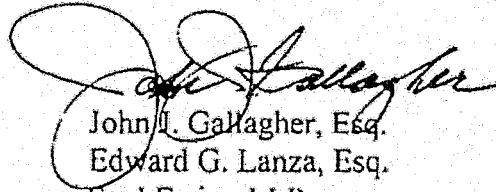
¹¹ This date is actually November 16, 2005.

III. CONCLUSION

The Complainants' position in this matter boils down to a request to force the sale of PCL&P to end a so-called "poisoned" relationship and to "restore tranquility" to the Pike County community. In support of this drastic and extraordinary remedy, the OCA and the LCG offer neither compelling statutory authority nor adequate factual support. Instead, these parties offer a litany of emotional outpourings and subjective notions of perceived wrongs. The OCA and LCG Briefs recite that customers are "angry, frustrated and fearful." The Complainants want the Commission to know that the customers feel "extreme dissatisfaction," a "sense of abandonment," feelings of "frustration," "hopelessness" and "helplessness." The Company certainly does not dismiss the impact of the increase of its default service rates on certain of its customers, even though it would note that these same customers did enjoy the benefit of capped rates for six years. The Commission, however, must decide this case in the same way that it must decide all matters that come before it -- by interpreting the record evidence in light of applicable and objective statutory and regulatory standards. Viewed in this light, the Commission must rule that the Company's rates are just and reasonable, its service is safe and reliable, and the drastic remedy sought by the Complainants is improper and unjustified.

Based on the foregoing, the Complaints herein should be dismissed with prejudice.

Respectfully submitted,



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Pike County Light & Power Company

Date: February 26, 2007

132958

BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

COUNTY OF PIKE, et al.

Complainants

v.

PIKE COUNTY LIGHT & POWER COMPANY,
Respondent

Docket No. C - 20065942, et al.
(Consolidated)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of Section 1.54 of the PUC's Regulations. 52 Pa. Code § 1.54 (relating to service by a participant).

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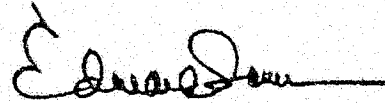
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike, et al - Complainants :
v. :=> Docket No. C-20069542, et al
Pike County Light & Power - Respondent :

REPLY BRIEF

OF COMPLAINANT
JOHN W DALTON, JR.
C-20066481

I. INTRODUCTION

Pike County Light & Power (PCL&P) is a subsidiary of Orange & Rockland (O&R) which in turn is a subsidiary of Consolidated Edison, Inc. (Con Ed) and has been since 1999. Since, or perhaps prior to then, electric rates were capped and eventually the PCL&P cap expired on December 31, 2005. In the meantime, PCL&P filed for rate increases during calendar year 2005. These PCL&P rate increases effective January 1, 2006 are among some of the current issues. Pike and PCL&P are synonymous in this Reply Brief.

II BACKGROUND

The background of Complainant Dalton's Brief remains the same and does not need to be repeated here. The other Initial/Main Briefs by PCL&P and OCA will be addressed and replied to here.

III. ARGUMENT

In regard to the Main Brief by the Office of the Consumer Advocate (OCA), wherein OCA states that "O&R divested its generation assets" (p.14) and it did so because all electric power companies within the jurisdiction of the New York State Public Utility Commission were required to do so. OCA is correct in its assertion where PCL&P then became exposed to the volatility of the New York wholesale markets with no other choices. (p.15)

Mr. O'Brien, Vice-President of Customer Relations (for PCL&P?), under cross examination where he was asked whether he was aware of possible rate increases for PCL&P customers during October 2005, and he admitted that he was. However, during oral cross examination, he was asked whether it would have been better to be in communication with PCL&P customers during Fall 2005 or not. Mr. O'Brien could not agree hence it would become a political issue. (p.18)

Administrative Law Judge Ember Jandebaur cross examined OCA Witness Ms. Brockway to clarify her use of "intolerably high" rates. Judge Jandebaur is correct to seek clarification wherein Ms. Brockway described two situations with respect to (business) affordability, and the second to customer base with no alternatives. (p.19) Complainant Dalton also addressed this issue when he testified on Monday, February 27, 2006 where he stated that: "the forecasted and announced 73% increase in electricity costs for Pike County Light & Power electric users is appallingly gross." Furthermore, in conclusion, Complainant Dalton stated that by expressing his concerns and demonstrating with his tables on the "enormousness of the impact of such increase in the cost of electricity while our own hands are tied and other non-PCL&P are not." (Complainant Dalton also included this as Attachment B in its entirety in his formal complaint.)

In regard to Pike's Main Brief, where PCL&P seeks to shift the burden of proof away, or off to other parties, a number of questions have arisen.

Despite the fact that OCA witnesses plus one other witness admits that the Pennsylvania Public Utility Commission (PUC) approved the rate effective for the period of January 1, 2006 through December 31, 2007, someone dropped the ball. Complainant Dalton addressed this point in his formal complaint acknowledging that the PUC, OCA and OSBA (Office of Small Business Administration) along with PCL&P were not careful in the rate case proceedings leading to final approval of such outrageous rates.

While the Default Service Rates were approved by the PUC in late 2005, it does not necessarily mean that these are the best and final rates. The PUC should give consideration to Complainant Dalton's Addendum 3, Attachment H, Table 1 through Table 3 using the Proposed Data provided there. In addition to taking this action, the PUC should also be mindful of a February 1, 2006 PUC memorandum addressed to William A. Atzl Jr. wherein it (the Pennsylvania PUC) stated and is quoted in part here:

“ . this notification shall not preclude this Commission from investigating the financial affairs of your company and, in appropriate cases, ordering refunds or other remedies which it deems proper.”

The PUC can and should accept Complainant Dalton's recalculations provided in the aforementioned three tables: Table 1 through Table 3, and carry out its above memorandum to resolve the overpricing of PCL&P electric rates.

While PCL&P Brief addressed complainants and their positions, PCL&P failed to query any complainant on whether they have remained with Direct Energy, or switched back to PCL&P as their energy supplier. In January 2007, Counsel for PCL&P had the opportunity to recall Complainant Dalton, Complainant Kenny, Complainant Fretta, or even Complainant Forbes and inquire whether if any one of them switched back to PCL&P as their energy supplier. While the record is closed, the question remains whether PCL&P incorrectly assumed (p.30 & p.41) whether any complainant would still be with Direct Energy as their energy supplier. Do we know? Will we know?

Lastly, when it comes to electric customers who have temporarily lost electricity, planned or unplanned, scheduled or unscheduled, it is human nature not to make mental or paper notes of the date(s) and outage length(s) unless possibly such outages occur with aggravating frequency. Most electric customers will tend to accept the outages without thought to being queried on the subject outages especially those like Complainant Peter Kenny. It was natural for him **not** to even think of it despite the fact that he already became a formal complainant and continued to experience outages after filing his formal complaint. Other formal complainants were in the same boat since it never crossed their individual and collective minds to make note of any type of outages: planned or unplanned, scheduled or unscheduled. Pike's Main Brief is misleading despite the record showing the complainants' lack of notes on specificities of electric outages. PCL&P is not noted for informing its electric customers of planned or scheduled outages.

IV. CONCERNS

There are many concerns and unanswered questions begging answers. Some of them are already part of the record in this proceeding. However, these questions need answers and they are:

1. How can PCL&P customers track PCL&P actions when PCL&P blindsided PCL&P customers in December 2005 with the new rates which became effective for calendar years 2006 and 2007?

2. If PCL&P is claiming that current actions to procure best rate-price structure, why didn't PCL&P do this long before its filing in May 2005?

3. Must complainants be required to demonstrate the unreasonableness of the PUC approved rates when it was not the PCL&P electric customers fault for such high rates?

4. How can PCL&P customers demonstrate that the PCL&P rates are illegal when the PUC approved the high rate increases on a small number of PCL&P customers?

5. How are PCL&P electric customers expected to show burden of proof when it is the PUC who approved the PCL&P rate increases and then reacts in January-February 2006 following public outcry on PCL&P rate increase beginning in 2006?

6. Are formal complainants expected to believe and accept the un-audited and unverifiable tables provided by PCL&P witness O'Brien and his employer as an accurate representation of the number of complaints lodged during calendar years 2001 through 2006?

7. Will the PUC issue an order to PCL&P to cease support and use of an unmanned telephone number (570-491-4212) addressed in Complainant Dalton's Formal Complaint?

8. Will the Pennsylvania Public Utility Commission seek quick Pennsylvania State legislation to remedy other potential situations by law which could be similar to PCL&P service and rate conditions but encouraging quick PUC intervention to prevent further harm to electric customers and not depend upon precedence or past cases?

9. Will the PUC issue an order to PCL&P, Orange & Rockland, or Con Edison to cease use of "Milford Pennsylvania" in the PCL&P tariff and rate applications immediately, including any current applications?

10. Will the PUC issue a set of rules mandating use of footnotes, comments and citations of sources in electric rate (and gas) applications, thus eliminating the practice of using "tradition" as the norm beginning immediately in applications for rate changes?

11. Will the PUC issue requirements for electric utilities including PCL&P to inform their respective customers of "breakpoint(s)" at which saving(s) will likely occur for comparison purposes when comparing rates prior to switching electric suppliers?

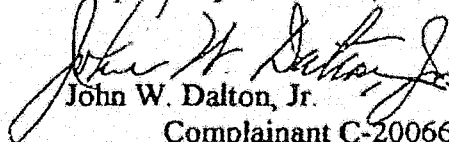
12. Will the PUC require/encourage PCL&P to maintain a minimum of two maintenance persons immediately available to PCL&P territorial response and discourage use of Middletown, N. Y. as the current response base?

13. Will the PUC require forecasted electricity usage which will likely differ from before rates based upon PCL&P customer reaction in its (PCL&P's) rate filing?

V. CONCLUSION

The Pennsylvania Public Utility Commission (PUC) should seriously revisit its actions and track record leading to its own decision to allow Pike County Light & Power (PCL&P) to implement the rates that became effective for January 1, 2006 through December 31, 2007. The PUC should also follow through on its memorandum of February 1, 2006 addressed to William A. Atzl, Jr. and investigate the financial affairs of PCL&P, and seriously consider electric rate rebates proposed by Complainant Dalton. The PUC should also follow through and address the concerns raised above in this Reply Brief. Finally, the PUC should be more vigilant in its application and approval process to protect electric (and gas) customers from corporate harm.

Respectfully Submitted,



John W. Dalton, Jr.

Complainant C-20066481

207 Pond Drive

Matamoras, PA 18336-2304

PA Relay: (1st) 800-654-5988

TTY/TDD: (2nd) 570-491-4445

(Telephone usage is limited to

TTY via Relay Service first)

johnmaxdalton@optonline.net

COPY

John W. Dalton, Jr.
207 Pond Drive
Matamoras, PA 18336-2304
February 26, 2007

Honorable Ember S. Jandebaur
Administrative Law Judge
Pennsylvania Public Utility Commission
100 Lackawanna Avenue Rm. # 317
Scranton, PA 18503

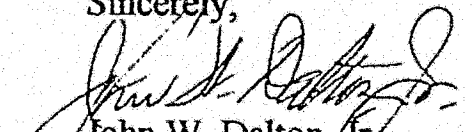
County of Pike, et al.]
v.] ==> Docket Nos. C-20065942, et al
Pike County Light & Power]

Dear ALJ Jandebaur:

Enclosed is my Reply Brief in the above referenced matter.

All parties listed on the reverse side showing the Certificate of Service
have been served by First-Class Mail, Monday, February 26, 2007 with nine
(9) copies to the Pennsylvania Public Utility Commission in Harrisburg, PA.

Sincerely,


John W. Dalton, Jr.
Complainant C-20066481

cc: Parties on Certificate of Service

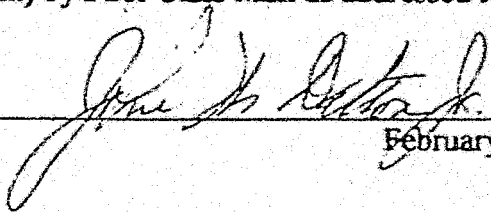
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OFFICE OF SPECIAL
ASSISTANTS

2007 MAR -1 PM 9:35
RECEIVED

CERIFICATE OF SERVICE

County of Pike et al - Complainants]
v.] ==> Docket No. C-20069542, et al
Pike County light & Power - Respondent]

I, John W. Dalton, Jr. - Complainant C-20066481 - herby certify that I have this day served true copies of the Reply Brief of Complainant John W. Dalton, Jr. upon the parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant) by First-Class Mail as addressed to those parties listed here:


February 26, 2007

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Harrisburg, PA 17101
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Consumer Advocate
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Forum Place
Harrisburg, PA 17101-1923
Counsel for OCA

Daniel G. Ausmus
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
Counsel for OSBA

James P. Melia, Esquire
Kirkpatrick & Lockhart
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Counsel for Large Users Group

Deanne O'Dell, Esquire
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Harrisburg, PA 17108-0865
Counsel for Direct Energy

PA. Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Peter P. Kenny, Complainant
120 Elena Lane
Milford, PA 18337

April 19, 2007

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor, North
Harrisburg, PA 17120

ORIGINAL

Re: County of Pike, et al., v. Pike County Light & Power Company;
Docket No. C-20065942, et al. (Consolidated)

Dear Mr. McNulty:

Enclosed for filing please find an original and three (3) copies of the Notice to Plead and Joint Petition of Pike County Light & Power Company and The County of Pike to Reopen the Proceeding with regard to the above-referenced matter.

Please do not hesitate to contact the undersigned if you have any questions or concerns.

Sincerely,



Edward G. Lanza
Counsel for Pike County Light
& Power Company

c: The Honorable Ember S. Jandebour (w/enc.)
Parties on Certificate of Service
James P. Melia, Esq. (w/enc.)
John L. Carley, Esq. (w/enc.)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike, et al., :
:
Complainants, :
:
v. : Docket No.: C-20065942, et al.
: (consolidated)
Pike County Light & Power Company, :
:
Respondent. :

NOTICE TO PLEAD

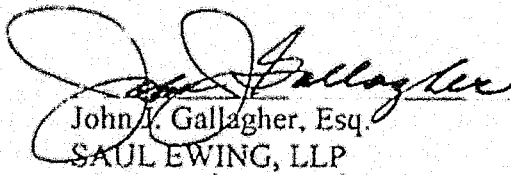
To: All Parties of Record

You are hereby notified to file a written response to the attached Joint Petition of Pike County Light & Power Company and the County of Pike to Reopen the Proceeding within ten (10) days from service hereof or a judgment may be entered against you.

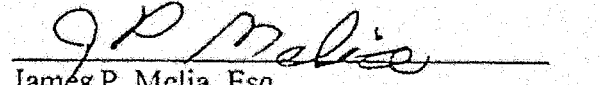
Respectfully submitted,

For Pike County Light and Power Company

For the County of Pike



John J. Gallagher, Esq.
SAUL EWING, LLP
2 North 2nd Street, 7th Floor
Harrisburg, PA 17101-1916



James P. Melia, Esq.
Kirkpatrick & Lockhart, Nicholson, Graham
17 North 2nd Street, 18th Floor
Harrisburg, PA 17101-1507

Date: April 19, 2007

SECRETARY'S OFFICE
2007 APR 19 PM 4:00

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU

2007 APR 19 PM 4:00

County of Pike, et al.,
Complainants,
v.
Pike County Light & Power Company,
Respondent.

Docket No.: C-20065942, et al.
(consolidated)

ORIGINAL

JOINT PETITION OF
PIKE COUNTY LIGHT & POWER COMPANY
AND THE COUNTY OF PIKE
TO REOPEN THE PROCEEDING

Pursuant to Section 5.571 of the Commission's Rules of Practice and Procedure, 52 Pa. Code § 5.571, Pike County Light & Power Company and the County of Pike ("Joint Petitioners") respectfully request that the presiding officer reopen the record in this proceeding and allow an extension of the 90-day time period for the issuance of a decision in this matter. In support of this request, the Joint Petitioners set forth the following:

1. On January 19, 2007, evidentiary hearings were concluded in this proceeding.
2. The record in the case was closed on February 26, 2007.
3. Pursuant to Section 332(g) of the Public Utility Code, 66 Pa.C.S. § 332(g), the Administrative Law Judge is required to render a decision within 90 days after the record is closed.
4. Under Section 332 (g), the presiding officer's Initial Decision is due to be issued on or before May 28, 2007.

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5. Since the closing of the record in this matter, Joint Petitioners have engaged in settlement discussions in an attempt to address the issues raised in this matter by way of a negotiated agreement.

6. The Joint Petitioners have exchanged settlement proposals and continue to engage in discussions aimed at resolving their disagreements.

7. The Joint Petitioners believe, and therefore aver, that additional time to continue settlement negotiations would be beneficial and may afford the parties an opportunity to reach an agreement on the issues in this matter.

8. It is the policy of the Commission to encourage settlements. 52 Pa. Code § 5.231.

9. The reopening of the record and an extension of time for the issuance of a decision in this matter would encourage a settlement.

10. The public interest requires the reopening of the record and an extension of time for the issuance of a decision in this matter.

11. The existence and continuation of settlement discussion between the Joint Petitioners constitutes a significant change in the conditions of fact in this matter sufficient to justify the reopening of the record and an extension of time for the issuance of a decision in this matter.

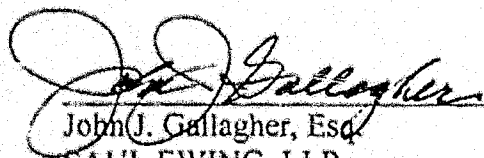
12. The Joint Petitioners respectfully request that the presiding officer reopen the record in this matter and extend the time for the issuance of a decision by an additional thirty (30) days so that the ALJ's decision will be rendered on or before June 27, 2007.

WHEREFORE, based of the foregoing, Joint Petitioners respectfully request that the presiding officer issue an order to (1) reopen the record in this proceeding, (2) extend the time for the issuance of a decision in this matter by thirty (30) days, and (3) grant any such further relief as the presiding officer may deem appropriate.

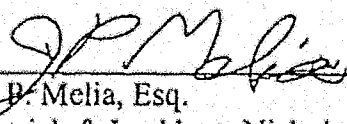
Respectfully submitted,

For Pike County Light and Power Company

For the County of Pike



John J. Gallagher, Esq.
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Harrisburg, PA 17101-1916



James H. Melia, Esq.
Kirkpatrick & Lockhart, Nicholson, Graham
17 North 2nd Street, 18th Floor
Harrisburg, PA 17101-1507

Date: April 19, 2007

BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

COUNTY OF PIKE, et al.

Complainants

v.

PIKE COUNTY LIGHT & POWER COMPANY,

Respondent

Docket No. C - 20065942, et al.
(Consolidated)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Petition to Reopen Record upon the participants, listed below, in accordance with the requirements of Section 1.54 of the PUC's Regulations, 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Ember S. Jandebaur, ALJ
Pennsylvania Public Utility Commission
317 State Office Building
100 Lackawanna Avenue
Scranton, PA 18503

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John W. Dalton, Jr.
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Matamoras, PA 18336

Peter P. Kenny
120 Elena Lane
Milford, PA 18337

Respectfully submitted,



Edward G. Lanza, Esq.
SAUL EWING, L.L.P.
2 North 2nd Street, 7th Floor
Harrisburg, PA 17101
(717) 257-7571
(717) 237-7437

Dated: April 19, 2007

Counsel for PCL&P

SEAL OF THE PUBLIC UTILITY COMMISSION
2007 APR 19 PM 4:00

DATE: April 24, 2007

SUBJECT: C-20065942

TO: Office of Administrative Law Judge

FROM: James J. McNulty, Secretary *KB*

County of Pike, et al v. Pike County Light & Power Company

Attached is a copy of a Joint Petition to Reopen the Proceeding filed by Pike County Light & Power Company and County of Pike, in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: OTS

ksb

DOCUMENT
FOLDER

BTL

DOCKETED
APR 24 2007