



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
October 23, 2006

PLEASE DOCKET

IN REPLY PLEASE
REFER TO OUR FILE

In Re:	C-20065922	C-20066264
	C-20065942	C-20066336
	C-20066194	C-20066481
	C-20066260	C-20066546
	C-20066264	C-20066668
	C-20066261	C-20066722
	C-20066262	C-20066725
	C-20066263	C-20066753

(SEE LETTER DATED 10/3/06)

C-20065922 Delaware Valley School District
C-20065942 Pike County
C-20066194 Joseph Fretta
C-20066260 Small Properties, Inc.
C-20066264 Small Properties, Inc.
C-20066261 Three Lane Utilities, c/o Richard Snyder
C-20066262 Three Lane Utility Corporation
C-20066263 Richard Snyder
C-20066264 Small Properties, Inc.
C-20066336 Altec Lansing
C-20066481 John W. Dalton, Jr.
C-20066546 Peter P. Kenny
C-20066668 - Joan Stohr
C-20066722 - Hotel Fauchere, LLC
C-20066725 - Community Building Projects
C-20066753 - Dana Gobin
and Office of the Consumer Advocate Party Intervenor
and Office of the Small Business Advocate Party Intervenor
v.
Pike County Light & Power Company

Rate/Billing Dispute.

Hearing Cancellation/Reschedule Notice

This is to inform you that the Initial & Further Hearings on the above-captioned case previously scheduled for January 9 & 10, 2007 have been canceled.

The hearings have been rescheduled as follows:

Type: Initial & Further Hearings

Date: Monday, November 6, 2006
Tuesday, November 7, 2006
Wednesday, November 8, 2006
Thursday, November 9, 2006

Time: 10:00 a.m.

Location: Room 318
Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503

Presiding: Administrative Law Judge Ember S. Jandebaur
Room 317
Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503
Telephone: 570.963.4818
Fax: 570.963.3310

Please mark your records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988

Note: There will be a real time reporter at the hearings.

pc: Judge Jandebaur
Dawn Reitenbach
Beth Plantz
Docket Section
Calendar File

DOCUMENT
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CERTIFICATE OF SERVICE

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2006 OCT 24 PM 4:06
PIKE COUNTY
SECRETARY'S BUREAU

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate Interrogatories Set IX, 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:

Dated this 24th day of October 2006.

SERVICE BY E-MAIL and FIRST CLASS MAIL

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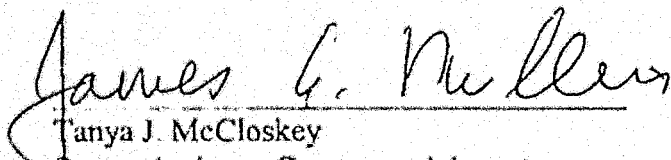
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BTL

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COMMONWEALTH OF PENNSYLVANIA

DATE: October 25, 2006
SUBJECT: C-20065901 et al
TO: Office of Administrative Law Judge
FROM: James J. McNulty, Secretary KB /

C-20065942

Valerie McCutchen, et al
v.
Pike County Light & Power Company

Per order entered October 24, 2006, the
above docketed proceeding is being remanded to
your Office for appropriate action.

ksb

DOCKETED

OCT 25 2006

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FOLDER

BTL

ORIGINAL

October 26, 2006

BY HAND

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

**DOCUMENT
FOLDER**

RECEIVED
2006 OCT 26 PM 4:14
SECRETARY'S BUREAU
PA P.U.C.

**Re: County of Pike, et al. v. Pike County Light and Power Company
Docket Nos.: C-20065942, et al. (consolidated)**

Dear Mr. McNulty,

Pursuant to 52 Pa. Code § 5.302(b), enclosed for filing please find an original and nine (9) copies of the Brief of Pike County Light & Power Company (PCL&P) in Support of its Petition for Interlocutory Review.

The Brief is being filed to comply with the requirements of the Commission's regulation and to protect the interests of PCL&P in this proceeding. If an Order is issued satisfactorily addressing and clarifying the question raised by PCL&P prior to a Commission decision, the Company will withdraw its Material Question Petition and this Brief.

The Brief has been served on all active parties as evidenced by the attached Certificate of Service.

Please call if you have any questions.

Sincerely,



Edward G. Lanza, Esq.
Counsel for Respondent
Pike County Light & Power Company

BTL

cc: Parties on Certificate of Service
Hon. Ember S. Jandebour, ALJ
John L. Carley, Esq.

37

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.

RECEIVED
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SECRETARY PUBLIC UTILITY BUREAU

ORIGINAL

BRIEF IN SUPPORT OF THE PETITION OF
PIKE COUNTY LIGHT & POWER COMPANY
FOR INTERLOCUTORY REVIEW BY THE COMMISSION
OF THE CONCLUSION OF LAW
FOUND BY ALJ EMBER S. JANDEBEUR
AS TO THE BURDEN OF PROOF

DOCKET
OCT 27 2006

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INTRODUCTION

On September 21, 2006, Administrative Law Judge Ember S. Jandebaur ("ALJ"), in response to Preliminary Objections filed by Pike County Light & Power Company ("PCL&P" or "the Company") issued her Interim Order Re. Preliminary Objections And Outstanding Motions ("Interim Order") in the above-referenced dockets.

In the Interim Order, Judge Jandebaur denied certain of the Company's objections, sustained one objection and certified a material question to the Commission.

The ALJ also made certain conclusions of law, including the following:

PCL&P bears the burden of proving their service and/or facilities are adequate, efficient, safe and reasonable. 66 Pa. C.S. § 315 (c).

Interim Order at 14, Conclusion of Law, para. 3. On October 16, 2006, PCL&P filed its "Petition On Behalf Of Pike County Light & Power Company For Interlocutory Review

By The Commission Of The Conclusion Of Law Found By ALJ Ember S. Jandebaur As To The Burden Of Proof" (hereinafter "Petition"). The Petition disputed and sought interlocutory review of the ALJ's finding that PCL&P bears the burden of proving that its service is adequate, efficient, safe and reasonable. Pursuant to 52 Pa. Code § 5.302(b), PCL&P hereby files its brief in support of the Petition.

On October 19, 2006, the ALJ issued an "ERRATA" to her September 19, 2006 Interim Order. The ERRATA stated that the conclusion of law in paragraph 3 finding that PCL&P had the burden of proof on the service issues was "incorrect." The ERRATA then ordered that paragraph 3 be deleted from the Interim Order. The simple deletion of the conclusion of law, nevertheless, leaves the issue in doubt. The Interim Order clearly assigned the burden of proof on rate issues to the complainants (see Interim Order, Conclusions of Law, paragraph 2). While the Company appreciates the ALJ's effort to resolve this matter, the failure of the ERRATA similarly to assign the burden of proof on service issues to the complainants, regreifully, makes it necessary for the Company to maintain this petition for interlocutory review.

On October 25, 2006, the Office of Consumer Advocate (OCA) sent a letter to the ALJ stating that it had no objection to PCL&P's request for an issuance of an order that clarifies that the burden of proof is on the Complainants to show that PCL&P's service and/or facilities are not adequate, efficient, safe and reasonable. The OCA October 25, 2006 Letter is attached as Appendix A. In the October 25, 2006 letter, the OCA and the County of Pike accepted the Company's commitment to withdraw the Material Question Petition upon the entry of an order clarifying the burden of proof issue.

ARGUMENT

I. THE ALJ'S FINDING WILL PREJUDICE PCL&P BECAUSE IT IS CONTRARY TO LAW.

52 Pa. Code § 5.302 states in relevant part that:

(a) During the course of a proceeding, a party may file a timely petition directed to the Commission requesting review and answer to a material question which has arisen or is likely to arise. The petition must...[demonstrate] the compelling reasons why interlocutory review will prevent substantial prejudice.....

The compelling reason why the Commission should hear the Company's petition is that the ALJ's conclusion of law is contrary to the Public Utility Code and will unduly prejudice the Company. Indeed, the ALJ now concedes this is the case. See ERRATA dated October 19, 2006.

The ALJ based her original conclusion of law that PCL&P has the burden of proof on service issues upon her reading of 66 Pa. C.S. § 315 (c). That section actually provides:

c) Adequacy of services and facilities.--In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, the burden of proof to show that the service and facilities involved are adequate, efficient, safe, and reasonable shall be upon the public utility (emphasis supplied).

These complaints, of course, were not brought "upon motion of the commission." The complainants herein are individual litigants and neither the Commission nor its staff played any role in initiating these proceedings. Therefore, as the ALJ apparently now recognizes, section 315(c) is inapplicable to these proceedings.

In fact, section 332 plainly applies to these proceedings. It states:

§ 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.

Inasmuch as complainants are the proponents of an order finding that the Company's service is not adequate, efficient, safe or reasonable, the complainants, and not the Company, 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 herein.

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).

The Commission also has found:

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. Consequently, the burden of proof should be clearly assigned to them.

II. HAVING THE BURDEN OF PROOF, THE COMPLAINANTS MUST ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT PCL&P IS VIOLATING ITS STATUTORY OBLIGATIONS.

Having the burden of proof, the Complainants must show, by a preponderance of substantial 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. *Morrissey 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:

Regarding the respective parties' burden of proof, section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides as follows:

(a) Burden of proof.--Except as may be otherwise provided in section 315 (relating to burden of proof) or other provision of this part or other relevant statute, the proponent of a rule or order has the burden of proof.
n1

(Footnote added.) 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. n2 *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 service obligations. Nothing less will suffice.

III. A CLEAR AND CONCISE ASSIGNMENT OF THE BURDEN OF PROOF TO COMPLAINANTS WILL EXPEDITE THE CONDUCT OF THESE PROCEEDINGS.

The clear assignment of the burden of proof on service issues to the complainants "will...expedite the conduct of these proceedings."

By simply deleting paragraph 3 of the Interim Order, instead of mirroring paragraph 2's format, the parties are forced to speculate as to whether the burden of proof has been assigned to the complainants, as it should be under the Public Utility Code. The Company believes that, rather than be deleted, Paragraph 3 should be amended to state "The Complainants bear the burden of proof to show that PCL&P's service and/or facilities are not adequate, efficient, safe and reasonable."

Second, if, in reliance on the Errata Order, PCL&P simply fails to file a brief, we are concerned that the Company will be deemed to have abandoned or failed to perfect its petition. Under the regulations, if the Commission fails to act on the petition, it is deemed denied. 52 Pa. Code § 5.303(b). We are concerned that there might be a disconnect between the Errata Order and the Commission's action on the appeal.

The Company has asked the presiding ALJ to issue a revised Errata Order containing an amendment of Paragraph 3 of the Conclusions of Law as proposed by PCL&P. If that is done prior to a decision by this Commission on this issue, the Company would commit to file a withdrawal of its petition based on the assignment of the burden of proof on service issues to the complainants.

Placing the burden of proof on the complainants, where it properly belongs, will expedite the conduct of these proceedings by requiring the complainants to demonstrate with specificity how PCL&P allegedly has failed to provide adequate, efficient, safe and

reasonable service. Moreover, such a demonstration will facilitate PCL&P's response to the complainant's allegations and allow for the efficient and thorough joining of issues in these proceedings. Only in this manner will a proper record be developed for the Commission's consideration.

CONCLUSION

The complainants bear the burden of proof in these proceedings. They must demonstrate, by a preponderance of substantial evidence, that PCL&P is failing to provide such adequate, efficient, safe and reasonable service. Only in this manner will the statutory requirements for a fair and orderly complaint procedure be satisfied.

The Commission, accordingly, should grant the Company's petition for interlocutory review and remand the matter to Judge Jandebour with instructions to assign the burden of proof on service issues to the complainants in these proceedings.

If the ALJ issues an Order clarifying that the Complainants bear the burden of proof to show that PCL&P's service and/or facilities are not adequate, efficient, safe, and reasonable, the Company will withdraw its Material Question Petition.

Respectfully submitted,



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Bruce V. Miller, Esq. PA ID No. 201922
Edward G. Lanza, Esq. PA ID No. 81081

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Counsel for Respondent
Pike County Light & Power Company

Dated: October 26, 2006

APPENDIX A

COMMONWEALTH OF PENNSYLVANIA



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FAX (717) 783-7152
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October 25, 2006

Honorable Ember S. Jandebour
Pennsylvania Public Utility Commission
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100 Lackawanna Avenue
Scranton, PA 18503

RECEIVED
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SECRETARY'S BUREAU

RE: County of Pike
v.
Pike County Light & Power Company
Docket No. C-200065942, et al.

Dear Judge Jandebour:

In response to the correspondence served by Pike County Light & Power Company (PCL&P) on October 24, 2006 in the above-captioned proceeding, the Office of Consumer Advocate (OCA) and the County of Pike (County) have no objection to the proposal of PCL&P that Your Honor issue an Errata that clarifies that the burden of proof is on the Complainants to show that PCL&P's service and/or facilities are not adequate, efficient, safe, and reasonable. The OCA and the County also accept PCL&P's commitment to withdraw its Petition upon entry of the Errata by Your Honor so that the parties can avoid the commitment of resources necessary to filing a Brief.

Sincerely,

James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066

Enclosures

cc: Parties of Record

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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing letter, 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:

Dated this 25th day of October 2006.

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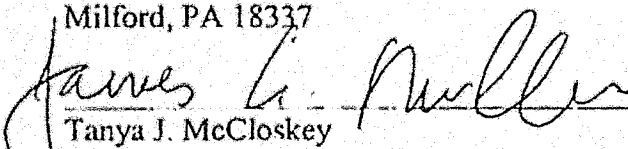
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00090030 DOC

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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2006 OCT 26 PM 4: 14
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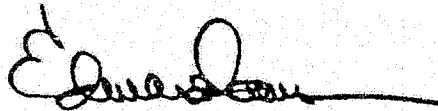
Altec Lansing
535 RT 6 & 209
Milford, PA 18337
570-575-2390

Peter P. Kenny
120 Elena Lane
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570-409-8206

Hotel Fauchere LLC
Fauchere Hospitality LLC
401 Broad Street
Milford, PA 18337
570-409-1212

Dana Gobin
114 Pine Terrace Road
Matamoras, PA 18336
570-606-4976

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

Counsel for PCL&P

Date: October 26, 2006



ORIGINAL

OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

October 27, 2006

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

RECEIVED
2006 OCT 27 PM 4:01
SECRETARY'S BUREAU

RE: County of Pike
v.
Pike County Light & Power Company
Docket No. G-200065942, et al
C-20065942, et al

Dear Secretary McNulty:

Enclosed for filing are an original and nine (9) copies of the Brief of the Office of Consumer Advocate and County of Pike in Response to Pike County Light & Power Company's Petition for Interlocutory Review, in the above-referenced proceeding.

Copies have been served on the parties of record as indicated on the enclosed Certificate of Service.

Sincerely,

James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066

DOCUMENT
FOLDER

Enclosures

cc: Honorable Ember S. Jandebaur
Certificate of Service

00091335 DOC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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ORIGINAL

County of Pike

v.

Docket No. C-20065942, et al

Pike County Light & Power Company

BRIEF OF THE OFFICE OF CONSUMER ADVOCATE AND
THE COUNTY OF PIKE IN RESPONSE TO PIKE COUNTY
LIGHT & POWER COMPANY'S PETITION
FOR INTERLOCUTORY REVIEW

On October 16, 2006, Pike County Light & Power Company (PCL&P or Company) filed a Petition seeking to reverse a portion of ALJ Ember S. Jandebour's September 19, 2006 Interim Order in the above captioned proceeding. In her Interim Order, ALJ Jandebour concluded as follows:

CONCLUSIONS OF LAW

3. PCL&P bears the burden of proving their service and/or facilities are adequate, efficient, safe and reasonable.

Interim Order Re: Preliminary Objections and Outstanding Motions at 14.

DOCUMENT
FOLDER

DOCKETED
NOV 01 2006

The Company objected to the ALJ's conclusion of law on the grounds that the Public Utility Code does not place the burden of proof on PCL&P during the consolidated Complaint proceedings. However, on October 19, 2006, Judge Jandebour issued an ERRATA to her Interim Order, which reads in pertinent part:

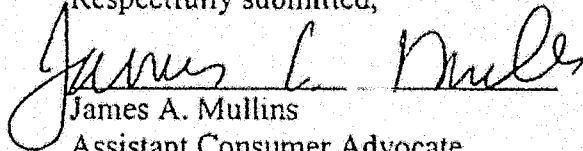
On September 21, 2006, Interim Order Re: Preliminary Objections and Outstanding Motions was served to the parties in the above captioned matter. That Interim Order contained Conclusion of Law Paragraph 3 that stated "PCL&P bears the burden of proving their service and/or facilities are adequate, efficient, safe and reasonable. 66 Pa. C.S. § 315 (c)." That Conclusion of Law is incorrect and is hereby deleted from the Interim Order.

ERRATA Re: Interim Order (dated October 19, 2006)

In light of this ERRATA, the Office of Consumer Advocate (OCA) and the County of Pike (County) believe that the issue raised in the Company's Petition is now moot. That is, the Conclusion of Law which the Company correctly challenged has been deleted from Judge Jandebour's Interim Order. Nevertheless, in response to the ERRATA, the Company filed a letter on October 24, 2006 requesting a further ERRATA clarifying that the Complainants bear the burden of proof to show that PCL&P's service and/or facilities are adequate, efficient, safe and reasonable. PCL&P committed to withdraw its Petition when the ERRATA was issued. The OCA and the County of Pike submitted a letter on October 25, 2006, in which they stated that they would not object to such a clarifying ERRATA. A copy is attached as Attachment A.

THEREFORE, the OCA and the County submit that PCI&P's Petition should be dismissed as moot. Alternatively, the OCA and the County would not object to a further ERRATA as set forth in their letter of October 25, 2006.

Respectfully submitted,



James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066
E-Mail: JMullins@paoca.org
Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

Counsel for:
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Consumer Advocate

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Kirkpatrick & Lockhart
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E-Mail: jmelia@kling.com
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(717) 231-4500

Counsel for: County of Pike

Dated: October 27, 2006

00091231 DOC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike

v.

Pike County Light & Power Company

:
:
:
:
:

Docket No. C-20065942, et al

ATTACHMENT A TO THE
BRIEF OF THE OFFICE OF CONSUMER ADVOCATE AND
THE COUNTY OF PIKE IN RESPONSE TO PIKE COUNTY
LIGHT & POWER COMPANY'S PETITION
FOR INTERLOCUTORY REVIEW

RECEIVED

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PUBLIC
SECRETARY'S BUREAU

COMMONWEALTH OF PENNSYLVANIA



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IRWINA POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

October 25, 2006

Honorable Ember S. Jandebaur
Pennsylvania Public Utility Commission
317 State Office Building
100 Lackawanna Avenue
Scranton, PA 18503

RE: County of Pike
v.
Pike County Light & Power Company
Docket No. C-200065942, et al.

Dear Judge Jandebaur:

In response to the correspondence served by Pike County Light & Power Company (PCL&P) on October 24, 2006 in the above-captioned proceeding, the Office of Consumer Advocate (OCA) and the County of Pike (County) have no objection to the proposal of PCL&P that Your Honor issue an Errata that clarifies that the burden of proof is on the Complainants to show that PCL&P's service and/or facilities are not adequate, efficient, safe, and reasonable. The OCA and the County also accept PCL&P's commitment to withdraw its Petition upon entry of the Errata by Your Honor so that the parties can avoid the commitment of resources necessary to filing a Brief.

Sincerely,

A handwritten signature in cursive script that reads "James A. Mullins".

James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066

Enclosures
cc. Parties of Record

00091302.DOC

CERTIFICATE OF SERVICE

RECEIVED
2006 OCT 27 PM 4:01
SECRETARY'S BUREAU

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

I hereby certify that I have this day served a true copy of the foregoing letter, 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:

Dated this 25th day of October 2006.

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Counsel For: *Office of Small Business Advocate*

John L. Carley
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Counsel For: *Pike County Light & Power Company*

James P. Melia, Esquire
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Counsel For: *Small Properties, Inc., Three Lane Utility Corporation, and Richard Snyder*

Daniel Clearfield, Esquire
Deanne M. O'Dell, Esquire
Wolf, Block, Schorr and Solis-Cohen, LLP
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Counsel for: *Direct Energy*

SERVICE BY FIRST CLASS MAIL

Joseph Fretta
223 Broad Street
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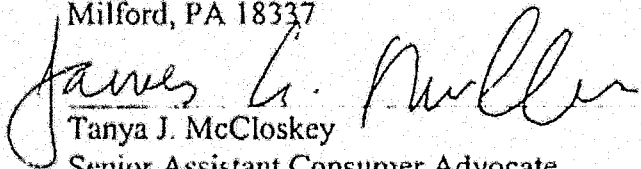
Three Lane Utilities
c/o Richard Snyder
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Richard Snyder
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Milford, PA 17338

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Dana Gobin
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Community Building Projects
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Assistant Consumer Advocates

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Milford, PA 18337

Joan Stohr
112 Mt. Spring Road
Milford, PA 18337

Hotel Fauchere LLC
Fauchere Hospitality LLC
401 Broad Street
Milford, PA 18337

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Brief of the Office of Consumer Advocate and County of Pike in Response to Pike County Light & Power Company's Petition for Interlocutory Review, 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:

Dated this 27th day of October 2006.

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Edward J. Lanza, Esquire
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Counsel For: *Office of Small Business Advocate*

John L. Carley
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Daniel Clearfield, Esquire
Deanne M. O'Dell, Esquire
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Counsel for: *Direct Energy*

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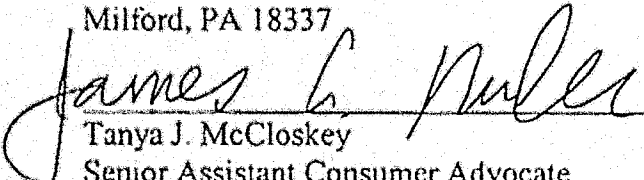
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Senior Assistant Consumer Advocate
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E-Mail: ABeatty@paoca.org
James A. Mullins
PA Attorney I.D. # 77066
E-Mail: JMullins@paoca.org
Assistant Consumer Advocates

Counsel for
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Phone: (717) 783-5048
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00090030 DOC

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Joan Stohr
112 Mt. Spring Road
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Hotel Fauchere LLC
Fauchere Hospitality LLC
401 Broad Street
Milford, PA 18337

ORIGINAL

November 1, 2006

BY HAND

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, Pennsylvania 17120

RECEIVED
2006 NOV - 1 PM 4: 23
PA P.U.C.
SECRETARY'S BUREAU

Re: **Petition of Pike County Light & Power for Interlocutory Review
County of Pike, et al. v. Pike County Light & Power Company
Docket No.: C-20065942, et al. (consolidated)**

Dear Mr. McNulty.

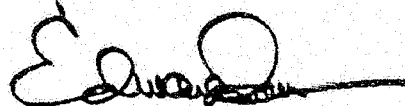
Enclosed for filing please find an original and three (3) copies of the Petition of Pike County Light & Power Company to Withdraw its Petition for Interlocutory Review (Petition to Withdraw).

The Petition to Withdraw has been served on all active parties in the referenced matter as evidenced by the attached Certificate of Service.

Please contact the undersigned if you have any questions or concerns.

DOCUMENT
FOLDER

Sincerely,



Edward G. Lanza
Counsel for Respondent
Pike County Light & Power Company

cc: Parties on Certificate of Service
Hon. Ember Jandebaur, ALJ
Billie Ramsey, Office of Special Assistants
John L. Carley, Esq.

39

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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COUNTY OF PIKE, ET AL., :
 :
Complainants, :
 :
v. : Docket No.: C-20065942, et al.
 :
PIKE COUNTY LIGHT & POWER :
COMPANY, :
 :
Respondent. :

PETITION TO WITHDRAW THE PETITION OF
PIKE COUNTY LIGHT & POWER COMPANY
FOR INTERLOCUTORY REVIEW BY THE COMMISSION
OF THE CONCLUSION OF LAW
FOUND BY ALJ EMBER S. JANDEBEUR
AS TO THE BURDEN OF PROOF

INTRODUCTION

Pursuant to Section 5.94 of the Commission's Regulations, 52 Pa. Code § 5.94, Respondent Pike County Light & Power Company (PCL&P) hereby submits this Petition to Withdraw its Petition for Interlocutory Review of the Conclusion of Law of ALJ Ember S. Jandebaur as to the Burden of Proof. The issues raised by PCL&P in its Petition for Interlocutory Review have been addressed satisfactorily by subsequent orders issued by ALJ Jandebaur, and therefore, it is appropriate for the Commission to permit the withdrawal of PCL&P's Petition for Interlocutory Review.

PROCEDURAL BACKGROUND

On September 21, 2006, ALJ Jandebaur issued an Interim Order ruling on Preliminary Objections filed by PCL&P. *Interim Order Re: Preliminary Objections and*

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Outstanding Motions ("Interim Order I"). In Interim Order I, ALJ Jandebaur made a number of conclusions of law, including the following:

PCL&P bears the burden of proving their service and/or facilities are adequate, efficient, safe and reasonable. 66 Pa. C.S. § 315(c).

Interim Order at 14, Conclusion of Law, para. 3.

On October 16, 2006, PCL&P filed its Petition for Interlocutory Review seeking review of Conclusion of Law 3 and a clarification that Complainants bear the burden of proof on service issues pursuant to Section 332 of the Public Utility Code, 66 Pa. C.S. § 332. In its Petition for Interlocutory Review, PCL&P requested that the Commission remand the matter to ALJ Jandebaur with instructions to assign the burden of proof to the Formal Complainants on service issues.

On October 19, 2006, ALJ Jandebaur issued an "Errata" that concluded that the assignment of the burden of proof on service issues to the Company was erroneous and deleted Conclusion of Law 3 from Interim Order I, which concluded that PCL&P bore the burden of proof. The ALJ's Errata struck Conclusion of Law 3 from Interim Order I, but did not specifically place the burden of proof for service issues on the Complainants.

On October 24, 2006, PCL&P sent a letter to ALJ Jandebaur to explain that the Errata created some confusion and that the Company would prefer an amendment that would make an affirmative burden-of-proof statement. A copy of the October 24, 2006 letter is attached as Exhibit A.

On October 25, 2006, Attorney James Mullins of the OCA sent a letter to ALJ Jandebaur stating that the OCA has no objection to the Company's proposal for a clear statement regarding the assignment of the burden of proof to the Formal Complainants with regard to service issues. A copy of the OCA Letter of October 25, 2006 is attached

as Exhibit B. Also, in its letter of October 25th, the OCA accepted PCL&P's commitment to withdraw its Petition for Interlocutory Review if a clarification on the burden of proof was issued by the judge

October 25, 2006, ALJ Jandebaur issued a Prehearing Order in this matter advising the parties of the procedures to be followed prior to the hearings scheduled for November 6 through 9, 2006. Paragraph 7 of the Prehearing Order sets forth the following:

The complainant bears the burden of proof in this proceeding and must show by a preponderance of the evidence that the respondent has violated the Public Utility Code, a regulation, or an Order of the Commission so that the complainant is entitled to the relief requested in the Complaint.

Prehearing Order at 3. Although the Prehearing Order has an issue date of October 25, 2006, PCL&P did not receive and was not aware of the Prehearing Order until October 27, 2006.

On October 26, 2006, having received no response to its letter of October 24th and the OCA's letter of October 25th, PCL&P filed its brief on the material question in order to comply with the Commission's regulations which require the filing of a brief ten (10) days from the filing of the Petition for Interlocutory Review. See, 52 Pa. Code § 5.202(b).

On October 27, 2006, the OCA filed its brief on the Petition for Interlocutory Review and stated that the Petition should be dismissed as moot because the deletion of Conclusion of Law 3 in the Errata resolved the issue raised by PCL&P. In addition, the OCA reiterated its position that it would not object to the issuance of a clarification of the burden of proof issue as proposed by the Company.

On October 27, 2006 PCL&P received a hard copy of the Prehearing Order issued by ALJ Jandebour on October 25th. The Company is satisfied that its concerns have been addressed by the statement on the burden of proof contained in paragraph 7 of that Prehearing Order.

REASONS FOR WITHDRAWAL

On October 25, 2006, the ALJ issued a Prehearing Order in these proceedings. Included in that order is paragraph 7, which states:

The complainant bears the burden of proof in this proceeding and must show by a preponderance of the evidence that the respondent has violated the Public Utility Code, a regulation, or an Order of the Commission so that the complainant is entitled to the relief requested in the Complaint.

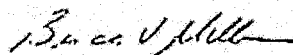
Based on the fact that the ALJ has now properly assigned the burden of proof to the complainants herein, the Company is withdrawing its Petition for Interlocutory Review.

The error in Interim Order I has been corrected and there is no need for the Company to maintain its Petition for Interlocutory Review or for the Commission to issue a ruling on that Petition. Therefore, we ask that the Commission permit PCL&P to withdraw its Petition for Interlocutory Review.

CONCLUSION

Based on the foregoing, Pike County Light & Power respectfully requests that the Commission approve its Petition to Withdraw its Interlocutory Appeal.

Respectfully submitted,



John J. Gallagher, Esq. PA ID No. 24589
Bruce V. Miller, Esq. PA ID No. 201922
Edward G. Lanza, Esq. PA ID No. 81081

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Assistant General Counsel
Pike County Light & Power Company
4 Irving Place, Room 1815-S
New York, New York 10003
(212) 460-2097
(212) 677-5850 (fax)

Counsel for Respondent
Pike County Light & Power Company

Dated: November 1, 2006

EXHIBIT A

October 24, 2006

VIA ELECTRONIC MAIL

Hon. Ember S. Jandebaur
Pennsylvania Public Utility Commission
Scranton State Office Building, Room 317
100 Lackawanna Avenue
Scranton, PA 18503

RECEIVED
2006 NOV - 1 PM 4: 23
STATE SECRETARY'S BUREAU

**Re: Delaware Valley School District, et al. v. Pike County Light & Power Company - Errata Notice re Interim Order, Preliminary Objections and Outstanding Motions
Dockets C-20065922 et. al. (consolidated)**

Dear Judge Jandebaur:

I am writing this letter in lieu of Mr. Gallagher who is out of the country. If Your Honor or the parties need to discuss this letter, I can be reached today and tomorrow before 2 pm at the Firm's Harrisburg Office, 717-257-7500, or you may call Mr. Lanza.

As you are aware, on October 16, 2006, Pike County Light & Power Company ("PCL&P" or "the Company") filed a petition for interlocutory review of Your Honor's conclusion of law that "PCL&P bears the burden of proving their service and/or facilities are adequate, efficient, safe and reasonable." Conclusions of Law, paragraph 3, Interim Order Re: Preliminary Objections and Outstanding Motions dated September 19, 2006. The Company's petition asked the Commission to find that, under the Public Utility Code (66 Pa. C.S. §332), the complainants in the above-referenced actions bear the burden of proof. Under the Commission's regulations, the Company's brief in support of that petition is due on October 26, 2006.

On October 19, 2006, Your Honor issued an "Errata" stating, with reference to Paragraph 3, "That Conclusion of Law is incorrect and is hereby deleted from the Interim Order." While PCL&P is appreciative of Your Honor's effort to act quickly to resolve the matter raised in our petition, we have several concerns regarding the brief that is due on Thursday.

First, Your Honor's ordering paragraph in the Errata Order simply deletes Paragraph 3 of the Conclusions of Law. Paragraph 2 of the Conclusions of Law, however, directly assigned to

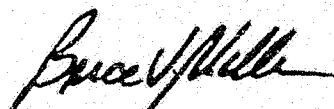
the complainants the burden of proof to show that the Company's approved rates are unreasonable. By deleting paragraph 3, instead of mirroring paragraph 2's format, the parties are forced to speculate as to whether the burden of proof has been assigned to the complainants, as it should be under the Public Utility Code. The Company believes that, rather than be deleted, Paragraph 3 should be amended to state "The Complainants bear the burden of proof to show that PCL&P's service and/or facilities are not adequate, efficient, safe and reasonable."

Second, if, in reliance on the Errata Order, PCL&P simply fails to file a brief, we are concerned that the Company will be deemed to have abandoned or failed to perfect its petition. Under the regulations, if the Commission fails to act on the petition, it is deemed denied. 52 Pa. Code § 5.303(b). We are concerned that there might be a disconnect between the Errata Order and the Commission's action on the appeal.

The Company believes that these questions would be resolved if Your Honor would issue a revised Errata Order containing an amendment of Paragraph 3 of the Conclusions of Law as proposed by PCL&P. If that were done prior to the due date of our brief, instead of filing the brief, the Company would commit to file a withdrawal of its petition based on Your Honor's assignment of the burden of proof on service issues to the complainants.

Because time is short, we are serving this letter by e-mail on all those parties who received Your Honor's e-mail service of the Errata Order.

Respectfully submitted,



Bruce V. Miller
Edward G. Lanza

Attorneys for Pike County Light &
Power Company

cc: Parties on Certificate of Service

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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Daniel Asmus, Esquire
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Altec Lansing
535 RT 6 & 209
Milford, PA 18337
570-575-2390

Peter P. Kenny
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570-409-8206

Hotel Fauchere LLC
Fauchere Hospitality LLC
401 Broad Street
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570-409-1212

Dana Gobin
114 Pine Terrace Road
Matamoras, PA 18336
570-606-4976

Respectfully submitted,



Edward G. Lanza, Esq.
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(717) 257-7571
(717) 237-7437

Counsel for PCL&P

Date: October 24, 2006

EXHIBIT B

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

October 25, 2006

Honorable Ember S. Jandebour
Pennsylvania Public Utility Commission
317 State Office Building
100 Lackawanna Avenue
Scranton, PA 18503

RECEIVED
2006 NOV -1 PH 4:23
PCL
SECRETARY'S BUREAU

RE: County of Pike
v.
Pike County Light & Power Company
Docket No. C-200065942, et al.

Dear Judge Jandebour:

In response to the correspondence served by Pike County Light & Power Company (PCL&P) on October 24, 2006 in the above-captioned proceeding, the Office of Consumer Advocate (OCA) and the County of Pike (County) have no objection to the proposal of PCL&P that Your Honor issue an Errata that clarifies that the burden of proof is on the Complainants to show that PCL&P's service and/or facilities are not adequate, efficient, safe, and reasonable. The OCA and the County also accept PCL&P's commitment to withdraw its Petition upon entry of the Errata by Your Honor so that the parties can avoid the commitment of resources necessary to filing a Brief

Sincerely,

James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066

Enclosures

cc: Parties of Record

00091302 DOC

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing letter, 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:

Dated this 25th day of October 2006.

SERVICE BY E-MAIL and FIRST CLASS MAIL

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Counsel For: *Office of Small Business Advocate*

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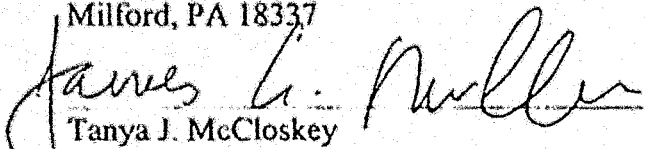
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Joan Stohr
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Milford, PA 18337

Hotel Fauchere LLC
Fauchere Hospitality LLC
401 Broad Street
Milford, PA 18337

BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

RECEIVED
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PA PUC
SECRETARY'S BUREAU

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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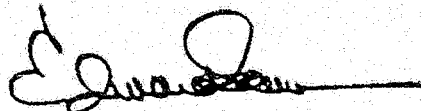
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Respectfully submitted,



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(717) 257-7571
(717) 237-7437

Counsel for PCL&P

Date: November 1, 2006

DATE: November 3, 2006

SUBJECT: C-20065942 et al

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary

County of Pike
v.
Pike County Light & Power Company

Attached is copy of a Petition to Withdraw its Petition for Interlocutory Review, filed by Pike County Light & Power Company, in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: Chairman and Commissioners - w/copy of petition
Office of Administrative Law Judge
Office of Trial Staff

ksb

DOCUMENT
FOLDER

DOCKETED

NOV 03 2006

December 7, 2006

BY 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 v. Pike County Light & Power Company
Docket Nos.: C-20065942**

Dear Mr McNulty:

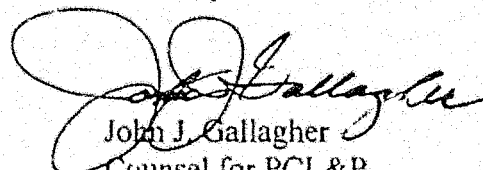
Enclosed for filing please find an original and three (3) copies of the Motion of Pike County Light & Power Company to Strike the Testimony of OCA Witness Nancy Brockway in the above-referenced matter.

All parties have been served as evidenced by the attached Certificate of Service.

Please call if you have any questions.

**DOCUMENT
FOLDER**

Sincerely,


John J. Gallagher
Counsel for PCL&P

cc: Parties on Certificate of Service
Hon. Ember S. Jandebaur, ALJ
John L. Carley, Esq.

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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE, Complainant
V
PIKE COUNTY LIGHT & POWER
COMPANY, Respondent

Complaint Docket No. C - 20065942

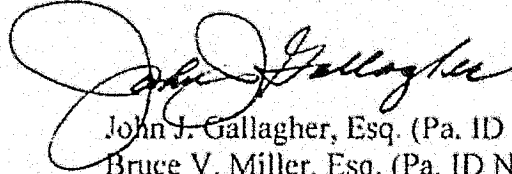
NOTICE TO PLEAD

To: *County of Pike and Office of Consumer Advocate*

You are hereby notified to file a written response to the attached Motion to Strike

Testimony of Nancy Brockway within ten (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,



John J. Gallagher, Esq. (Pa. ID No. 24589)
Bruce V. Miller, Esq. (Pa. ID No. 201922)
Edward G. Lanza, Esq. (Pa. ID No. 81081)
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(212) 677-5850 [Fax]

Counsel for Respondent
Pike County Light & Power Company

Date: December 7, 2006

2006-12-07 14:10
SECTION 709 (b) (2) (A)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
SECURITY DIVISION
NOV 10 2006

COUNTY OF PIKE, Complainant
V.
PIKE COUNTY LIGHT & POWER
COMPANY, Respondent

Complaint Docket No. C - 20065942

ORIGINAL

MOTION OF PIKE COUNTY LIGHT & POWER COMPANY
TO STRIKE THE TESTIMONY OF OCA WITNESS
NANCY BROCKWAY

Pike County Light & Power Company ("PCL&P" or "the Company") hereby moves to strike the direct testimony of Nancy Brockway in the above-captioned proceeding. For the reasons expressed below, that testimony is objectionable because Ms. Brockway has no special credentials that would qualify her as an expert. Moreover, her "testimony" is simply a compendium of hearsay, quotes from public sources, and legal argument having no place in the evidentiary record.

In this motion, the Company will describe the applicable legal standards governing the admission of testimony. Following that, PCL&P will set forth, in detail, the myriad ways in which Ms. Brockway's testimony violates those standards.

I. THE LEGAL STANDARDS

The Commission's regulations are quite clear as to what constitutes admissible testimony:

- (1) Admissibility of evidence.
 - (a) Relevant and material evidence is admissible subject to objections on other grounds.

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(b) Evidence will be excluded if:

(1) It is repetitious or cumulative.

(2) Its probative value is outweighed by:

(i) The danger of unfair prejudice.

(ii) Confusion of the issues.

(iii) Considerations of undue delay or waste of time.

52 Pa. Code §5.401.

In the first instance, Ms. Brockway's testimony is inadmissible because it is neither relevant nor material. It is, moreover, repetitious and cumulative and any negligible probative value it might have is far outweighed by its inherent danger of unfair prejudice, confusion of the issues and the undue delay and waste of time it will cause.

Furthermore, Ms. Brockway is no expert. She is an attorney, admitted in New York, Massachusetts and Maine. Ms. Brockway is not even admitted to practice in Pennsylvania. She lacks any degree or relevant experience in economics, engineering or any discipline relevant to the technical matters about which she testifies in this case. She is a lawyer who relies entirely on hearsay and speculation to support her opinions on the law and the ultimate issues in this case. Her "testimony" is, in significant portions, nothing more than a legal brief. Argument, however, is not evidence.

A. THE TESTIMONY IS NEITHER RELEVANT NOR MATERIAL

"Relevant evidence" tends to prove or disprove a matter in issue. It must be probative and material. Black's Law Dictionary, 7th ed. (1999). The Pennsylvania Rules of Evidence define relevant evidence as that "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Pa R.E. 401. Material evidence" has some logical connection with the

consequential facts or the issues. Black's Law Dictionary, 7th ed. (1999). Ms. Brockway's testimony is neither relevant nor material because she is simply offering legal opinions.

Well over 100 years ago, the Pennsylvania Supreme Court noted the time-honored rule that "expert" testimony by a lawyer is inadmissible as to questions of law:

A statute admits of exact proof by a copy and for this reason it cannot be shown by parol. The expositions of that statute by the courts are not necessarily evidenced by any sort of documentary matter and for this reason may be proved by one who is familiar with them; but a conjecture, or a professional opinion, as to what the law would be held to be upon certain assumed facts, while it might be desirable for the guidance of a client, and be within the appropriate province of an attorney at law to give is not admissible as proof of what the law actually is.

Bollinger v. Gallagher, 170 Pa. 84, 95 (1895). In other words, experts testify, lawyers argue. Ms. Brockway's arguments do not constitute admissible testimony. Furthermore, Ms. Brockway is not even qualified to offer opinion as to the law in Pennsylvania, including the requirements of the Public Utility Code or the Commission's regulations.

Ms. Brockway's testimony is also improper because she offers no particular expertise in matters before this Commission. While she has a law degree and some time spent as a regulator, in New Hampshire, Ms. Brockway has no technical expertise in any other field. The Pennsylvania Supreme Court has stated:

The test to be applied when qualifying an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine.

Miller v. Brass Rail Tavern, 541 Pa. 474, 480-481 (Pa. 1995). Ms. Brockway, a lawyer with no special technical expertise or even grounding in Pennsylvania law, offers nothing outside of the

specialized knowledge of the ALJ or the Commissioners.¹ Furthermore, her tenure as a commissioner in New Hampshire, does not qualify her to lecture to the Pennsylvania Commission on matters unique to Pennsylvania.

Because Ms. Brockway's proffered testimony is bereft of the benefit of any particular expertise, by definition it cannot be relevant or material to this case.

Intertwined with the notion of "general acceptance in the particular field" is the understanding of what constitutes relevant and therefore admissible evidence. We have long held that "any analysis of the admissibility of a particular type of evidence must start with a threshold inquiry as to its relevance and probative value." Relevant evidence "is evidence that in some degree advances the inquiry" Further, as we stated in *Commonwealth v. Kichline*, 468 Pa. 265, 361 A.2d 282 (1976), "it must be determined first if the inference sought to be raised by the evidence bears upon a matter in issue in the case and, second, whether the evidence renders the desired inferences more probable than it would be without evidence."

Commonwealth v. Dunkle, 529 Pa. 168 (Pa. 1992). Ms. Brockway's legal opinions can neither "advance the inquiry" nor "render the desired inferences more probable" than if offered by any other attorney in this proceeding.

Ms. Brockway also opines as to the ultimate result that should obtain in this proceeding. Even if she were an expert witness, and she is not, this would be impermissible:

Following *Yardley*, a litany of decisions have reiterated the principle that an expert cannot weigh contradictory evidence and place his imprimatur upon a particular version.

Kozak v. Struth, 515 Pa. 554, 559-560 (1987).

In fact, even a cursory glance at Ms. Brockway's testimony reveals that it is, in many ways, nothing more than a brief. It is also a surreptitious attempt by Ms Brockway and the OCA to introduce public input testimony into the formal evidentiary record. She copiously quotes the

¹ Indeed, many of the attorneys appearing in this case have credentials and experience that equal or exceed Ms. Brockway's. One might as well permit all counsel to take the stand, or solicit their opinions, as to permit Ms. Brockway to offer evidence.

testimony of others – both public input witnesses and her colleagues in the OCA effort. She refers to cases, laws and decisions. Indeed, in several places the purported “testimony” even copies legal arguments that have been advanced in earlier pleadings by the OCA in this very proceeding. Nowhere, however, does Ms. Brockway offer any facts or technical expertise that are the necessary basis for expert testimony.

B. MS. BROCKWAY’S TESTIMONY IS REPETITIOUS AND CUMULATIVE

Testimony, even if deemed relevant, may be excluded if it is repetitious and cumulative. There are numerous instances where Ms. Brockway simply repeats the opinions of other witnesses, either sponsored by the OCA or the public input witnesses. This tactic not only results in testimony that must be excluded because it is repetitious and cumulative testimony, but it also creates testimony that is highly prejudicial, confusing and wasteful.

The proper vehicle to convey quotations of the testimony of others is a brief. Indeed, by quoting the testimony of others so liberally in her testimony, Ms. Brockway simply confirms that her “testimony” is, in actuality, a brief – not evidence.

C. ANY NEGLIGIBLE PROBATIVE VALUE OF MS. BROCKWAY’S TESTIMONY IS OUTWEIGHED BY ITS POTENTIAL FOR PREJUDICE, CONFUSION, WASTE AND DELAY.

As explained previously, the Commission’s rules provide that testimony may also be excluded if “its probative value is outweighed by: (i)The danger of unfair prejudice; (ii)Confusion of the issues; and (iii)Considerations of undue delay or waste of time.” 52 Pa. Code §5.401. This rule follows the Pennsylvania Rules of Evidence, which provide, in relevant part:

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Pa.R.E. 403.

Ms. Brockway's testimony should be excluded because any possible probative value it might have, is far outweighed by the prejudice, confusion and needless repetition it produces.

There is little or nothing in Ms. Brockway's testimony that is original or unique. Her recitation of what witnesses at the public input hearing said is prejudicial, confusing and repetitious. Those statements are already in the record of this proceeding. No purpose is served by Ms. Brockway's repetition of them. Her speculation as to what the witnesses meant, is just that - inexpert speculation. Her recounting of what such witnesses told her is hearsay and prejudicial.

Equally prejudicial, cumulative and confusing are Ms. Brockway's statements as to the law or situations in other jurisdictions. Again, by attempting to transform legal argument into expert opinion, witness Brockway has improperly blurred the bright line between testimony and advocacy.

D. MS. BROCKWAY'S TESTIMONY IS IMPROPER HEARSAY

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Pa.R.E. 801. While the norm in administrative proceedings has become that hearsay is often admitted and given the requisite weight by the trier of fact, the admission of Ms. Brockway's hearsay statements would be highly prejudicial and unwarranted.

First of all, hearsay is admitted in administrative proceedings largely to permit an *expert* witness to rely on reports prepared by others. See, e.g., Commonwealth v. Thomas, 444 Pa. 436, 445 (Pa. 1971). Here, however, the witness is not an expert. Consequently, there is no reason to permit Ms. Brockway to sponsor hearsay testimony. This is all the more important, where the

hearsay is being offered for the truth of the matter asserted and it is clear that Ms. Brockway has no idea of the truth of the proffered hearsay.

Second, the hearsay testimony sponsored by Ms. Brockway is offensive because it will violate the Commission's rules against admitting testimony that is prejudicial, confusing and a waste of time and effort. 52 Pa. Code §5.401.

For the above reasons, Ms. Brockway's hearsay statements should be excluded.

II. THE OFFENDING PORTIONS OF MS BROCKWAY'S TESTIMONY

The following are the portions of Ms. Brockway's testimony that violate the above-discussed standards for admissibility. When considered as a whole, it should become obvious that the entirety of Ms. Brockway's testimony should be excluded, because, when all the offending parts are removed, the sketchy remains of Ms. Brockway's proffer are meaningless.

PCL&P hereby moves to strike the following:

P.2 lines 20-22.

"The Pike rates are totally out of line with other Pennsylvania utilities, thus putting this tiny portion of the Commonwealth at an extreme economic disadvantage."

REASON:

Witness pretends to discuss "economic disadvantage" Witness is not an economist and has no expertise in this area. Witness is not competent to testify to the subject matter.

P.2 lines 22-24.

"Given the size of the utility and the fact that it is only linked to the NYISO wholesale markets, the chances of solving this problem are low if Pike remains a subsidiary of Orange and Rockland."

REASON:

Witness has no expertise in the areas of system design and power marketing. Witness is not competent to testify to the subject matter.

P.2 lines 26-28.

"And, as Mr. Kahal testifies, the small size of the company and the limited inter-ties, plus the absence of any industrial load, make it unlikely that retail competition will ramp up to provide sufficient alternatives for Pike customers to high-priced POLR service."

REASON:

Simply repeats what witness Kahal says. Hearsay and needless repetition

P.3 lines 1-3.

"It is not just the extraordinary rate increase that has affected Pike's customers. Since Consolidated Edison (Con Edison) took over Orange and Rockland, and thus Pike, the service quality has deteriorated, as shown in the testimony of Mr. Lanzalotta."

REASON:

Simply repeats what witness Lanzalotta says. Again, hearsay and needless repetition.

P.3 lines 3-9.

"The public input testimony and complainant testimony demonstrate that customers' perceptions agree with the data. In addition, the company's community presence in Pike County has evaporated. When combined with the horrendous rate increase, these factors have resulted in customers who are extraordinarily dissatisfied with their utility and its service, and who have no confidence that the utility is concerned with their circumstance or intends to take any steps to address the problems."

REASON:

Simply summarizes and characterizes public input testimony. The witness has no expertise to comment on testimony. Hearsay, repetition and prejudicial.

P.3 lines 16-17

"While two neighboring Pennsylvania utilities could in theory be potential buyers of the Pike system, they have not shown interest."

REASON:

Hearsay, lack of foundation, lack of expertise to discuss potential buyers. Simply inexpert speculation.

P.3 lines 17-19

"Also, it would be expensive to interconnect with them, as shown by the testimony of Mr. Lanzalotta."

REASON:

Simply repeats Lanzalotta. Hearsay, repetitive and prejudicial

P.3 lines 20 to p. 4 line 6

"However, there is a suitor who appears ready, willing and able to provide relief to Pike customers.

The Sussex Rural Electric Cooperative (Sussex), just over the Delaware River from the Pike service area, has expressed an interest in buying Pike's system. 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, as attested by Mr. Kahal's evidence, as long as Pike remains a part of the Con Ed system and is served through the New York ISO. Sussex is interconnected with the PJM Interconnection, and has access to reasonably-priced power from the Allegheny Electric Cooperative, Inc. (Allegheny), a PJM member. The 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."

REASON:

Simply repeats Kolling and Kahal. No expertise, hearsay and prejudicial and repetitive.

P.4 line 7

"Such a sale would not be unprecedented."

REASON:

Simply repeats cumulative testimony. Repetitive, lacks foundation.

P.4 line 15-21.

"In making my analysis, I reviewed, and have relied on, the testimonies of OCA witnesses Kahal and Lanzalotta. I also attended the public hearings in Milford, Pennsylvania on October 4, 2006. I spoke with County Commissioners Forbes and Wagner, with counsel for certain individual business complainants, and with some of the individual customers who had given testimony. I reviewed the transcript of the fact-finding hearing on February 27, 2006, and read the original and amended Complaint of the County Commissioners, as well as the various pleadings filed by the utility and other parties."

REASON:

Admits relying on the other testimony of OCA witnesses and public statements. Hearsay, repetitive, and prejudicial. Witness has no specialized expertise to justify reliance on statements of others to reach a conclusion.

P.4 line 22 to P.5 line 1 to 6.

"I spoke with Mr. Robert M. Kolling, President of Sussex, concerning his interest in the Pike system, his efforts to interest Pike's ultimate parent, Consolidated Edison, Inc. (ConEd or Con Edison) in selling it, and his plans for the Pike system and its customers in the event Sussex were able to purchase it. I toured the service area, and traveled across the river along the line where I understand an interconnection could be made with Sussex. I reviewed Mr. Kolling's

letter to Con Edison's Chief Executive Officer proposing a purchase of the Pike utility. I researched demographic and economic information concerning Pike County."

REASON:

Hearsay. Mr. Kolling is already a witness so repetitive and prejudicial. Witness relies on economic data and makes recommendations beyond her expertise

P.5 Line 7-17

"I reviewed the history of Pike itself, including its purchases of power from Orange and Rockland, and the purchase of Orange and Rockland by Con Edison. I reviewed the annual report of Pike to the Pennsylvania PUC, and the annual financial report of Con Edison. I reviewed reports filed by Pike with the PA PUC concerning customer service and reliability, and reviewed other data responses filed by Pike. I reviewed examples of cases in which utilities have been required to transfer their operations to other owners, including cooperatives, in order that customers may receive safe and adequate service at just and reasonable rates. Finally, I relied on my utility regulatory experience of over 20 years – including five years as a public utility commissioner, in assessing customer attitudes towards Pike, and the viability of potential solutions to the problems facing the Pike system."

REASON:

Admits she simply offers experience as a public utility lawyer, bringing no special expertise to assessment of customer attitudes. Witness also lacks expertise to evaluate the viability of solutions and, in any event, OCA has technical witnesses that purport to do so. There has been no showing that serving as a utility commissioner in New Hampshire provides a basis to assess customer attitudes, and certainly not those in a different jurisdiction

P 5 Line 19 to p 6 line 11.

"After providing a brief background description of the corporate structure of Pike and its parent companies, I turn first to the complaint of rate shock, the primary concern of the complainants and the customers in this proceeding. I provide evidence of the negative consequences the rate increases have had on individual customers and on the community. Next I address Pike customers' concerns about service quality, in particular reliability. I note the deterioration in customers' opinions of their service quality, particularly in recent years. I then provide my opinion as to the negative adversarial relationship that has developed between Pike and its customers. I tie the customers' attitudes to the problem of Pike as a small utility controlled by a large out-of-state holding company. I next summarize the expectations that Pike consumers have of the Commission, and their plea for help in extricating them from what they see as an intolerable situation. I list the options for resolution of these issues that were identified in the Staff Report and provide my assessment of the viability of the options in light of what has emerged through this hearing process. I then turn to the option of the purchase of Pike by Sussex. I analyze the pros and cons of this option, and provide my opinion that this is the best option to address the problems facing Pike and its customers."

REASON:

Concedes that her testimony is simply a compendium of the public input testimony and thus is merely "a brief." This is not expert testimony but merely speculation. The witness lacks any technical expertise to comment on the matters addressed.

P7 lines 12 to 21.

"Pike County and Pike customers are extremely upset about the shocking increase in their electricity rates beginning in January 2006. They filed numerous formal and informal complaints with the Commission to register their concern and to describe the severe hardship this has brought to them and their 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."

REASON:

Simply recounts testimony and filings. As such it is hearsay, repetitive and highly prejudicial. It attempts to provide mere argument with an evidentiary gloss. Again, it is a brief attempting to masquerade as evidence.

P7 lines 22 to p. 11 line to p. 10 line 5.

"This formal proceeding was begun when the County of Pike and several other parties filed formal complaints alleging that the Pike County Light & Power Company has instituted rates that constitute an unfair burden on the customers of the Company. Subsequently, the County filed an amended Complaint in which the County alleged that the rates charged were not just and reasonable; that the service was not safe and adequate; and that the Company had no employees or facilities in Pennsylvania. The County requested that the Commission order the sale of PCL&P to another utility or rural electric cooperative and to take such other actions, including those set forth in the Law Bureau's June 1, 2006, Report that the Commission determined to be just and reasonable and in the public interest."

"In 1998, in Docket No. R-00974150, the Commission approved a Restructuring Settlement Agreement under which the Commission determined that Pike would be the provider of last resort (POLR) for Pike customers.

Under the Restructuring Settlement, the rates would be set in two phases. Historically, Pike has received 100% of its generation requirements from its parent, Orange and Rockland. At the time of restructuring in Pennsylvania, Orange and Rockland was in the process of opening its New York state system to retail competition, and had agreed to sell its generation. The Pike Restructuring Settlement provided that before the sale, 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. Then, when Orange

and Rockland divested itself of its generation, Phase II would commence, and Pike's POLR rates would increase based on the treatment of the Competitive Transition Charge as a result of the proceeds from the sale of generation. Pike's total generation charge, i.e. the POLR rate and the CTC, was not to exceed the 5.134 cents per kwh.

On June 25, 1999, the Commission entered its order approving the sale by Orange and Rockland of its generation to Southern Company. After application of the proceeds of the sale, Pike's CTC was decreased to 0.070 cents/ kWh, and its POLR rates correspondingly increased from 3.4 cents to 5.064 cents/kWh.

In February, 2001, Pike filed a petition for an exception to the rate cap limitations that it had agreed to in its Restructuring Settlement. After lengthy litigation, in 2002, Pike entered into a POLR Settlement with interested parties regarding its post-transition POLR rates. Under the settlement, approved in August of 2002, 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 the Company 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, PCL&P was also required to file a plan for procuring future POLR supply. The POLR Settlement also required Pike to maintain its delivery rates at then-current rates through December 31, 2004, subject to certain exceptions. As of January 1, 2005, Pike invoked the provision of the POLR Settlement allowing it to increase POLR rates by 5%, to 5.93 cents/kilowatt hour.

At the end of the time for filing of a plan for post-2005 POLR service, May 31, 2005, Pike filed a proposed financial swap auction process. The Commission approved the plan with modifications on August 25, 2005, reducing the length of the contract to be bid from three years to two years. On October 25, 2005, Pike 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 price increase of 129%."

REASON:

Simply recounts previous PUC petitions and proceedings. Again merely a brief

P. 10 lines 19-21.

"Based on public testimony, it is clear that Pike County customers were shocked and many were outraged by the generation price increase. They vigorously complained to the Commission about the POLR prices."

REASON:

Simply recounts and characterizes testimony already in the record. Concedes that her testimony is simply a compendium of the public input testimony and thus is merely "a brief."

P. 10 line 23 to p. 11 line 2.

"In light of the numerous complaints from residents of Pike County, the Commission opened a fact finding investigation. While the investigation was proceeding, and as part of the efforts of the Commission and others to find relief from the high POLR rates facing Pike customers, consideration was given to seeking an alternative POLR supplier. These discussions bore fruit with a proposal from Direct Energy Services, LLC (Direct)."

REASON:

Simply recounts previous PUC petitions and proceedings. Again merely a brief.

P. 11 lines 4-15.

"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."

REASON:

Simply summarizes previous PUC proceedings. Again merely a brief. Repetitious and wasteful of time. Not expert testimony.

P12 lines 8-9.

"Small business owners at the public hearings described increases of 25%, 42%, 72%, 85%, and, for more than one customer, over 100%."

REASON:

Simply recounts testimony. Hearsay and repetitive. Again merely a brief.

P. 12 Lines 14-24.

"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."

"...Rate shock is not a precisely defined term. But 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."

REASON.

No expertise. Contradicts herself. Tries to define "rate shock" but admits that it "is not precisely defined."

P.13 lines 1-24 to p. 14 line 2.

"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."

"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 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 holiday decorative lighting. But despite these efforts, many testified that they are struggling to stay afloat. Several explained that they cannot raise their prices because tourists and local consumers will go elsewhere to shop if they do, but that they cannot meet their expenses with the high electricity prices. 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. A number expressed the concern that if they could not see significant rate relief soon, they would go out of business within the year.

REASON:

Hearsay. Her testimony of the impact of the increase is based entirely on the public input testimony. This is repetitive and improper. That testimony stands for itself. The witness is also incompetent to testify as to economic impact as she has no training in that discipline.

P.14 lines 7 to 15.

"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 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.”

REASON:

No expertise so cannot rely on hearsay of others. Purports to describe Pike's economy but has no expertise as an economist

P.16 lines 15-19.

“As explained by Mr. Kahal, the problems in the Pike generation rates are not simply a matter of bad luck in the timing of the auction (although that was a contributing factor in October 2005). Because of its small size and unique situation as a Pennsylvania utility connected to the New York ISO, Pike is not in a good position to prevent a recurrence of the 2006 price spike unless some structural change is made.”

REASON:

Repetitive of Mr. Kahal and draws conclusions beyond the scope of her "expertise." Witness is not competent to testify to the subject matter. Prejudicial and waste of time

P.16 line 23 to p. 17 line 8.

“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.”

REASON:

Hearsay and repetitive. Everyone can read a transcript. This is nothing more than inexpert speculation.

P.17 line 11 to p. 18 line 3.

“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 witnesses said they felt that they got worse service than customers of Orange and Rockland, Pike's parent company across the river. Attorney 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."

REASON:

Hearsay. Repetitive. Wasteful. Simply summarizes and characterizes testimony at public input hearings. Again, a brief, not evidence.

P.18 line 12.

"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."

REASON:

Simply inexpert speculation based on hearsay.

P.18 line 18 to p. 19 line 2.

"If one were to look only at the reports of Pike's customer surveys, it would appear that Pike customers have few complaints about Pike's customer service. See responses of Pike to OCA Interrogatories, Set I, questions 18 and 19. However, these surveys do not tell the whole picture. The number of Pike 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. OCA Interrogatory Set I, question 17. The evidence from the fact-finding hearing and the public hearings suggests that many Pike customers are in fact dissatisfied with Pike's customer relations."

REASON:

Hearsay. Lacks expertise to discuss surveys. Witness is not competent to testify to the subject matter. Also inexpert speculation.

P. 19 lines 6-11.

"Customers were very angry that the utility had given very little advance notice of the huge rate increase they experienced in January of 2006. As I've noted above, 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). Customers complained that Pike no longer maintains a customer service office in the Pike service area, and has withdrawn all personnel to New York."

REASON:

Hearsay and repetitive of statements previously adduced at hearing. Attempt to characterize the testimony of others. Argument, not evidence.

P. 19 lines 17-22.

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.

REASON:

Inexpert speculation. Argument, not evidence.

P. 19 line 26 to p. 20 line 22.

"Customers testified at both the February 27, 2006 fact-finding hearing and the October 4 public input hearing that they do not believe that Pike is acting in the interests of its customers. Rather, they believe that Pike's parent company, Orange and Rockland, runs Pike for its own benefit, ignoring the needs of Pike County customers. 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 Pike's auction process leading to the POLR contract with a Pike affiliate. They are deeply frustrated with their situation, and describe themselves as 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.

The frustration of the public is palpable in reading the transcript of the February 27, 2006 hearing. One witness spoke for many when he 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 boy² to take high rates." Another expressed what I would say was a feeling of a great many of the witnesses:

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.

Tr. February 27, 2006, p. 54, lines 11-25.

REASON:

Hearsay, repetitive, Inexpert speculation, Prejudicial, Improperly characterizes testimony.

P. 21 lines 1-9.

"No. The surge of complaints after the price increase is extraordinary. For example, customers had not previously complained about service quality in proportion to their own experiences. Based on the testimony at the hearings, it seems that at least some customers had grown accustomed to substandard service, or felt that complaining was useless. But the rate increase has been so high that customers are not willing to tolerate such problems with their service."

REASON:

Hearsay, speculation, and repetitive. Nothing more than a brief. Not expert testimony.

P. 21 line 15 to p. 22 line 2.

"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. 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."

REASON:

Hearsay, repetitive, and inexpert speculation. Simply summarizes public input transcript. Is a brief, not testimony.

P. 22 lines 6-12.

"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."

REASON:

Hearsay and inexpert speculation. Repetitive and prejudicial. Argument, not evidence.

P. 22 line 15-23.

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."

REASON:

Hearsay, and inexpert speculation. Simply summarizes and characterizes the public input transcript. Argument not evidence.

P. 23 lines 1 to 11

"...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 POI.R 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..."

REASON:

Inexpert speculation. Argument, not evidence

P. 23 line 19 to p. 24 line 26.

"Pike customers expect the Commission to fix the problems. Petitions seeking relief by

the Commission were signed by 427 residential customers and 116 business owners. At the public hearings, some expressed great faith in the Commission's power and authority. Others blamed the Commission for letting the situation develop. But all called upon the Commission to remedy the situation. For example, many customers made statements like the following, given at the Milford hearing in October:

- I implore you...please do something about this ...
- ...like I say, you guys are my partner now. And maybe you guys can work together and see if we can work it out.
- I'd like to challenge each and every one of you to dig out your mother's creative gene and do something creative to fix this problem.
- I feel that this should be corrected. And that if we can't be given a choice, as we can choose to go to Fretta's [Italian grocery in Milford] or not. But we can't be given a choice here, then it's your responsibility to do something about this and correct this.
- ... I would like to know that since we don't have choice in this area, and according to the PUC documents, the PUC will continue to regulate.
- ... we have full faith and confidence in you and we are going to be expecting it.
- ... we're looking for the PUC to give us some kind of relief, because this is outrageous.
- We desperately need your help at this critical time.
- As a resident of the state of PA, we rely on you to protect us from the kind of blatant and exorbitant increases that we are now facing.

REASON:

Inexpert speculation, hearsay that summarizes, and quotes the public input transcript. Wasteful and repetitive.

P.24 lines 29-31.

Customers offered a variety of solutions, ranging from interconnection with Met Ed to sale of the utility to a neighboring utility or to the rural electric cooperative across the river.

REASON:

Speculation, repetitive, and hearsay.

P. 24 lines 35-38.

On June 1, 2006, the Staff of the Commission issued its Report on Competitive Market Conditions Regarding the Pike County Light & Power Company. In this report, directed by the Commission, the Staff examined what options might exist to deliver the promise of restructuring and competition to the customers of Pike.

REASON:

Inexpert speculation about Commission's most likely responses. Witness is not competent to testify to the subject matter. Repetitive and wasteful. References to the report exist throughout the OCA's filings in this case.

P. 25 lines 4-7.

"...In light of the evidence I have seen, including the analyses by Messrs. Lanzalotta and Kahal on behalf of the Office of the Consumer Advocate, some of the recommendations will not be viable, and some will provide some relief but not complete relief...."

REASON:

Hearsay and repetitive – merely repeats what Lanzalotta and Kahal says. Witness is not competent to testify to the subject matter. Wasteful and prejudicial.

P. 25 lines 13-20.

"Recommendation 5, the formal consideration of Pike's proposal to introduce "PowerSwitch" to Pennsylvania, and Recommendation 6, the indefinite waiver of Electronic Data Interchange rules, will likely not avail to bring retail choice to Pike. As Mr. Kahal explains, Pike's service area is too small, the wholesale power options for resale to Pike retail customers are too few, the customer base is too heavily weighted to small customers with relatively high retail transaction costs compared to potential margins on sales. All these factors mean that it is exceedingly unlikely that any combination of "forcing" retail competition in the service area will succeed."

REASON:

Hearsay and repetitive – merely says what Kahal says. Witness is not competent to testify to the subject matter.

P.25 line 22 to p. 26 line 14.

"In Recommendation 1, the Staff proposes that the Commission explore the integration of energy procurement with Orange and Rockland or with Rockland Electric Company, two retail distribution affiliates of Pike in New York and New Jersey. If this could be accomplished via inter-affiliate transactions, it might provide a larger base to attract prospective wholesale bids. However, as the Staff points out, unless the collaboration were with RECO, which is interconnected with PJM, it would be unlikely to produce appreciable price breaks for Pike. And since not all of RECO is interconnected with PJM, it would likely require some agreement not only of RECO (and the parent companies Orange and Rockland and Con Edison) but also of the New Jersey Board of Public Utilities to accomplish a blending of Pike costs with those of the Eastern Division of RECO, the part of RECO that is in PJM. It is by this blending, an administrative determination by the New Jersey Board of Public Utilities, that the Middle and Western Divisions of RECO enjoy the lower POLR rates made possible by reflection of PJM purchases in the RECO mix. Joint procurement strategies with other utilities in

Pennsylvania would not be viable without enjoying an interconnection with PJM, as other Pennsylvania utilities have. Mr. Lanzalotta describes the relative costs of various approaches to interconnecting with PJM. Mr. Kahal and I conclude that there are better alternatives than Pike making its own direct connection to participate in its own purchases from PJM."

REASON:

Hearsay, repetitive, inexpert speculation – repeats what Lanzalotta and Kahal say and summarizes Law Bureau report. Law Bureau report is public and stands for itself – do not need the inexpert summary proffered by this witness. Witness is not competent to testify to the subject matter.

P. 26 line 24 to p.27 line 3.

It is unlikely that sufficient alternative and renewable power exists in the area to reduce the high bills facing Pike customers, and providing alternative wholesale supplies will not resolve the relations between the customers and Pike, and the reliability concerns expressed by customers. It is possible to pursue alternatives and renewables as part of the implementation of other recommendations, but it would not work to rely solely on this particular option.

REASON:

Inexpert speculation and hearsay. Witness is not competent to testify to the subject matter. Witness claims no expertise in power markets or economics.

P.27 lines 7-12

"Staff recommendations 2 (interconnection with PJM) and 3 (sale to another Pennsylvania EDC or to a rural cooperative) hold out the greatest promise for mitigating the Pike problem. In particular, a sale of Pike to the Sussex Rural Electric Cooperative will both accomplish the interconnection with PJM (Recommendation 2) and the sale to another utility (Recommendation 3), and in so doing, lower rates, improve service quality, and restore Pike consumer confidence."

REASON:

Inexpert speculation. Witness is not competent to testify to the subject matter. Argument, not evidence

P. 27 line 14 to p.28 line 2.

All the OCA witnesses (and a good many of the consumer witnesses) agree 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 Pike to be interconnected 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. In addition, as Mr. Kahal explains, Sussex has

access to lower cost power through its contract with Allegheny Electric Cooperative. 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 Consolidated Edison regarding this issue is attached to this testimony as Exhibit NB-7. Pike customers who have discussed the Sussex option have spoken positively about it. Mr. Forbes, Chair of the Pike County Commissioners, has testified that he expects Pike customers to welcome participation in the cooperative in lieu of continued ownership of Pike by Orange and Rockland."

REASON:

Hearsay, a brief. Simply a "me too" that adds nothing of value. Inexpert summary of what others think. This is not expert testimony. Witness is not competent to testify to the subject matter. Also repetitive, wasteful and prejudicial because it is argument, not evidence.

P. 28 lines 6-24.

Not in this instance. 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. Because it is part of the New York ISO, rather than PJM, Pike is at a disadvantage when it comes to meeting the requirements of the Pennsylvania Alternative Energy Portfolio Standards Act. This disadvantage would not affect Sussex.

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. Finally, according to the testimony of Mr. Lanzalotta and Mr. Kahal, lower prices and transfer to an entity with a chance of establishing a positive relationship with its customers could occur fairly quickly for Pike customers if the sale were to proceed now. Customers of Pike were anxious about their problems dragging on with no relief in sight. A sale of the Pike system to Sussex could produce a smooth transfer from Pike to Sussex as early as the end of current Pike POLR rate period and Direct aggregation contract in December 2007.

REASON:

Again, hearsay and inexpert speculation and repetition. Witness is not competent to testify to the subject matter. Prejudicial and repetitive and attempt to cloak argument as evidence.

P. 29 lines 13 to p. 30 line 29.

"Intractable problems with rates and service tend in my experience to happen most often in the case of very small utilities. One example is Big Run Telephone Company (Big Run or BRTC), here in Pennsylvania. Between 1979 and 1981, 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

Consumer Advocate sought an order to show cause why the Commission should not rescind Big Run's certificate of public convenience and necessity. The Consumer Advocate cited the "wide-spread disconnections, the oppressive rates, the unconscionable service and the community of dissatisfaction in Big Run." Petition at 2. Outages, oppressive rates, unacceptable service and a community of dissatisfaction all exist in the areas of Pike County served by Pike County Light and Power. The Administrative Law Judge, Joseph J. Klovekorn, issued his recommended decision on September 8, 1982. In his decision, Judge Klovekorn 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."

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

As the Staff summarized the Big Run decision in its Report, there was "no real way to address unreasonable rates and poor service in this company's service territory other than a sale of the company's assets." Staff Report at 19. Those findings have direct parallels to the situation in Pike County. If Pike were sold to Sussex, the testimony in this case suggests that the level of service would improve, and the level of rates would almost certainly come down. Sussex can provide service more in line with the wishes of Pike's customers. The good offices of the Commission can help facilitate such a resolution.

REASON:

Inexpert speculation and argument, not evidence. The record does not need a summary of Big Run. This is just a brief. The witness has no personal experience with the Big Run situation and thus adds nothing to the record. Prejudicial and wasteful.

P. 31, lines 1 to 24.

REASON

Entire page is more argument masquerading as evidence. It is nothing but a brief. Discusses the Small Water company takeover law. Again, just a brief. As such, it is improper, wasteful, inexpert and prejudicial.

P. 32 lines 1 to 24.

REASON:

Again this is simply a brief. The narrative talks about Monongahela Power in Ohio. If the ALJ believes that she's seen this before, she's right. The presentation in Ms. Brockway's testimony was virtually lifted from OCA's previous pleadings in this case. If that doesn't prove that Ms. Brockway's "testimony" is nothing more than a brie, it is difficult to know what would. To allow this argument as "evidence" would be highly prejudicial and improper.

P. 33 lines 1 to 22.

REASON:

Again, this is just an effort to clothe a brief as "expert testimony." But Ms. Brockway is not an expert witness. The record certainly does not need testimony on the Ohio law or on a case in New Hampshire. OCA can brief it and the ALJ and Commission are more than capable of understanding the law. The effort to turn argument into evidence is highly prejudicial and improper.

P. 34 lines 1 to 24.

REASON:

This is simply more improper briefing. It is prejudicial, wasteful and repetitive.

P 35 lines 1 to 8.

REASON:

Again, simply more improper briefing.

P 35 lines 14 to 26.

If completion of a sale to Sussex takes until close to the end of the Direct aggregation contract, it is true that some businesses in Pike County may not survive until rate relief can be afforded by Sussex. However, it is unlikely that any alternative could be put in place any sooner. Also, the Sussex alternative promises the sharpest decrease in ultimate rates, and the largest improvement in quality of service over the long term. In addition, for many businesses and families it may be enough to have certainty that significant rate relief is on the way, and that it will come at a particular time. If they have reason to hope that exorbitant electric bills will eventually return to more normal levels, they will be better able to plan to ride out the current situation and hang in until rates become more manageable. The key, however, is getting the solution in place sooner,

rather than later. The customers of Pike are getting litigation fatigue – they will lose hope and many will give up and close their businesses or leave the area if they cannot have a solution announced soon.

REASON:

If any one excerpt summarizes the myriad evidentiary problems inherent in Ms Brockway's "testimony" this is a serious contender. Ms Brockway has no idea whether Sussex offers lower rates and improved service. She relies on Kahal and Lanzalotta for that information. She also has no clue as to whether businesses will close. Her observation about the reaction of families and businesses is a guess and her claim that customers are getting "litigation fatigue" and will give up hope smacks of pop psychology. In legal terms this is grossly improper and inexperienced speculation. The witness is not an expert and therefore cannot rely on the hearsay statements of others. The references to the Sussex "relief" are repetitive and prejudicial, having no basis in any expertise claimed by this witness. This, again, is simply argument attempting to camouflage itself as evidence

P 36 lines 3 to 8.

I recommend that Pike County Light and Power should be required to enter into good faith negotiations with Sussex, offer its electric utility for sale to Sussex at a reasonable price based on its net book value or another mutually agreeable price, with the closing to happen soon enough to permit rates to be reduced in the service area concurrently with the end of the Direct Energy contract.

REASON:

Finally, there is no basis for Ms Brockway's recommendation. It is not backed by any expertise as to valuation of utilities, ongoing gas operations, or direct knowledge as to whether transfer of customers to Sussex is in the customers' interest. The witness is simply not competent to testify to the subject matter.

CONCLUSION

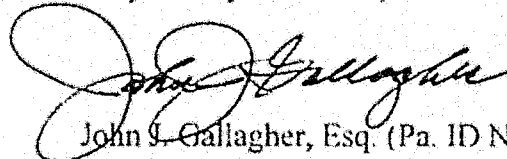
For the reasons expressed, the testimony of OCA Witness Nancy Brockway should be excluded from evidence in this proceeding. There is simply nothing in the testimony that validly qualifies as expert testimony. Ms. Brockway has not "any reasonable pretension to specialized knowledge on the subject under investigation." Miller v. Brass Rail Tavern, supra. Neither does she provide relevant evidence that "advances the inquiry." Commonwealth v. Dunkle supra. Instead, the testimony is a hash of hearsay, inexperienced speculation and argument. It is wholly bereft of any independent factual content and is repetitive and confusing. It is a thinly disguised

attempt to bootstrap existing public input testimony into the formal evidentiary record.

Permitting such testimony into the record would be highly prejudicial to the Company. As such, it is manifestly a waste of the valuable time of the ALJ and the parties to even consider Ms.

Brockway's proffered testimony and it should be excluded from evidence.

Respectfully submitted,



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Bruce V. Miller, Esq. (Pa. ID No. 201922)

Edward G. Lanza, Esq. (Pa. ID No. 81081)

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Counsel for Respondent

Pike County Light & Power Company

Date: December 7, 2006

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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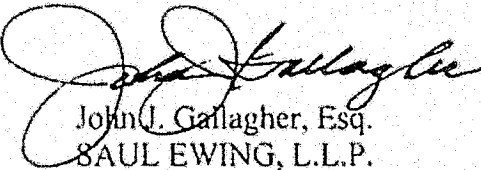
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MAY 17 11:10

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Date: December 7, 2006

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DOCUMENT
FOLDER

December 11, 2006

VIA E-MAIL AND FEDERAL EXPRESS

Hon. Ember Jandebeur
Administrative Law Judge
PA Public Utility Commission
Room 317 Scranton State Office Bldg.
100 Lackawanna Avenue
Scranton, PA 18503

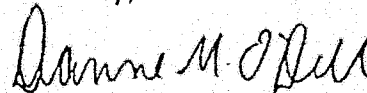
SECRETARY'S BUREAU
2006 DEC 12 AM 10:24

Re: County of Pike, et al. v. Pike County Light and Power
Company Docket Nos.: C-20065942, et. al. (consolidated)

Dear Judge Jandebeur:

On behalf of Direct Energy Services, LLC, enclosed please find Testimony of Frank Lacey with regard to the above-referenced matter. A copy has been served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

cc: Certificate of Service w/enc.
James McNulty (Cert of Service only)

BTL

HAR 70140.1/DIR023-235354

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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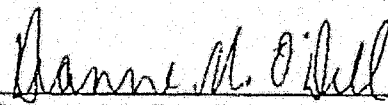
SECRETARY'S OFFICE

2005 DEC 12 11:10:24

Community Building Projects
Sean O. Strub
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Dana Gobin
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Matamoras, PA 18336

Dated: December 11, 2006



Deanne M. O'Dell, Esq.

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate Responses to Pike County Light & Power Company Interrogatories Set II and IV, 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:

Dated this 7th day of December 2006.

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Counsel for: *Direct Energy*

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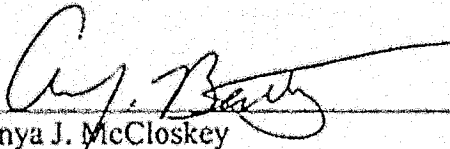
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ORIGINAL

December 11, 2006

James P. Melia

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Via Hand Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg., 2nd Floor
400 North Street
Harrisburg, PA 17120

DOCUMENT
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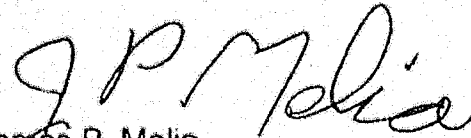
Re. County of Pike, et al. v. Pike County Light & Power Company
Docket Nos. C-20065942, et seq.

Dear Secretary McNulty.

Enclosed for filing please find an original and three copies of a Certificate of Service evidencing service of the PCLP Large Customer Group's responses to PCLP's Set VI Interrogatories in this matter.

Copies of these responses have been served on the parties indicated on the enclosed Certificate of Service.

Very truly yours,


James P. Melia
PA Attorney I.D. 35265
Counsel for the PCLP Large Customer Group

JPM/cem
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, et seq.

CERTIFICATE OF SERVICE

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

Via E-mail and First Class Mail

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Edward G. Lanza, Esquire
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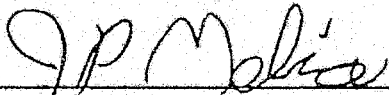
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JAN 20 2006

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jmelia@king.com



James P. Melia
PA Attorney I.D. 35265

Counsel for the PCLP Large
Customer Group

Dated: December 11, 2006

ORIGINAL

December 11, 2006

VIA REGULAR AND ELECTRONIC MAIL

Hon. Ember S. Jandebaur, ALJ
Pennsylvania Public Utility Commission
Scranton State Office Building, Room 317
100 Lackawanna Avenue
Scranton, PA 18503

DOCUMENT
FOLDER

Re: County of Pike, et al. v. Pike County Light & Power Company
Docket No.: C-20069542, et al.

Dear Judge Jandebaur,

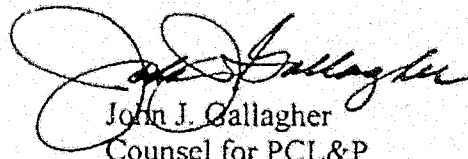
Enclosed please find copies of the Testimony of Pike County Light & Power Company ("PCL&P") as follows:

PCL&P Statement No. 1 – Rebuttal Testimony of James J. O'Brien.
PCL&P Statement No. 2 – Rebuttal Testimony of Angelo M. Regan.
PCL&P Statement No. 3 – Rebuttal Testimony of Joseph A. Holtman.

Copies of the attached testimony have been served on all parties of record as evidenced by the attached Certificate of Service.

Please call the undersigned if you have any questions or concerns.

Sincerely,


John J. Callagher
Counsel for PCL&P

cc: All Parties on Certificate of Service
James J. McNulty, PUC Secretary (by hand)
John L. Carley, Esq.

SECRET
2006 DEC 11 10:27

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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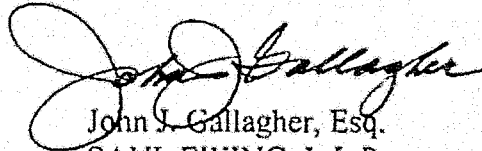
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SECRETARY'S OFFICE
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Respectfully submitted,



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(717) 257-7591

Counsel for PCL&P

Date: December 11, 2006

ORIGINAL

PCL&P STATEMENT NO. 1

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)

REBUTTAL TESTIMONY

OF

JAMES J. O'BRIEN

ON BEHALF OF

RESPONDENT

PIKE COUNTY LIGHT & POWER COMPANY

DECEMBER 11, 2006

SECRETARY'S OFFICE

NOV 13 2006 11:27

**Pike County Light & Power Company
Testimony of
James J. O'Brien**

1 Q. Please state your name and business address.

2 A. My name is James J. O'Brien and my business address is 390 West Route 59, Spring
3 Valley, New York 10977.

4 Q. By whom are you employed and in what capacity?

5 A. I am employed by Pike County Light & Power Company ("Pike" or the "Company") as
6 Vice President – Customer Services. I also am the Vice President – Customer Services
7 for Pike's parent company, Orange and Rockland Utilities, Inc. ("Orange and Rockland"),
8 and its affiliate, Rockland Electric Company ("RECO").

9 Q. Please provide your educational background and professional experience.

10 A. I have an M.S. Degree from the University of Bridgeport in Human Resource
11 Development and a B.B.A. Degree from Baruch College in Business Administration. I've
12 been Vice President of Customer Service with the Company since June of 1999 and
13 prior to that worked at Consolidated Edison Company of New York, Inc. ("Con Edison")
14 since 1963. My experiences with Con Edison included General Manager of Customer
15 Service during various periods for the Manhattan, Queens and Westchester Divisions. I
16 was also Director of Gas Marketing and worked in the Company's Corporate Planning
17 department. I am currently on the Board of Directors for Dominican College and serve as
18 Chairman of the Rockland County Salvation Army Advisory Council.

19 Q. Have you ever previously sponsored testimony before the Pennsylvania Public Utility
20 Commission ("PAPUC") or any other state utility commission?

21 A. I have not testified previously before the PAPUC, however, I have previously testified in
22 Con Edison Gas Rate Case proceedings and have participated in the New York State
23 Public Service Commission proceedings concerning retail access and other issues
24 related to the implementation of competition in New York State.

25 Q. What is the scope of your testimony in this proceeding?

James J. O'Brien

1 A. I testify as to the various customer services that Pike provides to its customers, as well
2 as the formal customer complaints that Pike has received since 2001. I also will discuss
3 briefly the services provided by Direct Energy Services LLC ("Direct").

4 Q. Please discuss the various means by which Pike provides customer services to its
5 customers

6 A. Pike customers can pay their bills and speak with customer service representatives at
7 Orange and Rockland's office located in Port Jervis, New York. The office is staffed by
8 two customer service representatives from 8:00 a.m. to 4:30 p.m., Monday through
9 Friday. This office, which is located less than 1 mile from Matamoras and seven miles
10 from Milford, PA, is readily accessible and convenient to Pike's customers. Until October
11 31, 2004, Pike maintained an office at 219 Broad Street in Milford, PA. This office was
12 usually staffed by one person who handled bill paying and customer inquiries, and was
13 open from 8:00 a.m. to 4:30 p.m., Monday through Friday. Commencing on November
14 1, 2004, Pike consolidated this office with Orange and Rockland's Port Jervis office. Pike
15 also provides its customers with a toll free telephone number that they can use to
16 contact Pike customer service representatives regarding billing and service issues.
17 Pike, along with Orange and Rockland and RECO, operate a call center that is staffed
18 from 8:00 am to 9:00 pm Monday through Friday, and Saturday from 9:00 am to 5:30
19 pm. Emergency dispatchers answer after hour emergency calls. All calls are answered
20 by a NEC phone switch and then routed to a Voice Response Unit ("VRU"). Pike, along
21 with Orange and Rockland and RECO, maintain a website that provides customers with
22 much useful information.
23 The VRU and website are available to customers on a 24 hours a day, seven days a
24 week, basis and include numerous self-help features. For example, customers can pay
25 their bills over the Internet, enroll in budget billing, obtain a payment agreement, and
26 start and stop service.

James J. O'Brien

1 Q. Please discuss Pike's interaction with the communities it serves.

2 A. In addition to the services discussed above, Pike has assigned a Community Relations
3 Manager to serve as a liaison with the various municipal officials in Pike's service
4 territory. This Community Relations Manager is available 24 hours a day, seven days a
5 week, to all the Pike County Commissioners, Mayors, Township Supervisors,
6 Emergency Management Officials, Police, Township and Borough Administrative Staff
7 and Council Members. Over the years, the Community Relations Manager has
8 resolved and/or expedited satisfactorily numerous municipal requests including, but not
9 limited to, billing issues, lighting requests, tree trimming, electric service requests, safety
10 concerns, customer inquiries, and storm restoration.

11 Q. Please continue.

12 A. Pike has established an excellent working relationship with the Borough of Milford Shade
13 Tree Commissioner. Over the years, Pike has assisted the Borough with its extensive
14 tree management program. Our assistance during the application process has helped
15 the Borough secure federal grant money. Since both the Boroughs of Milford and
16 Matamoras have very limited Department of Public Works resources, Pike assists both
17 Boroughs in removing hazardous trees.

18 Through the Company's Community Response Team ("CRT"), during severe storms,
19 Pike assists both County and Township Emergency Management Officials at their
20 respective Emergency Management Centers in Milford and Westfall / Matamoras
21 locations. The CRT has been activated numerous times in the past due to severe
22 flooding. The Company also has a very good relationship with Milford Emergency
23 Management personnel and we are in the process of partnering with them on the
24 purchase and installation of an emergency generator to serve the communications
25 facilities located at the Company's Greenville site. The Company has allowed Pike
26 County to attach its communication facilities on our Greenville tower.

James J. O'Brien

1 Q. Please discuss the Company's procedures for notifying customers regarding
2 developments in the event of an electric service outage.

3 A. Once an unexpected outage (e.g., storms, floods, car accidents, wind, animal contacts)
4 has commenced, depending on the expected duration of the event, the Company uses
5 various forms of communication to provide customers with information concerning the
6 outage. The Company communicates via 24 hour VRU, radio, newspaper, and by direct
7 contact with local municipalities to provide updated information on the expected duration
8 of the event.

9 For planned or pre-scheduled outages, in the event more than 25 customers will be
10 affected by the interruption, an outbound VRU call is made to customers, seven days in
11 advance of the interruption. A follow-up or second call is made one day before the
12 scheduled interruption. The VRU call will include the location of the outage, the date,
13 start time and duration, rain date and customer service contact number. Large
14 commercial and municipal customers will be contacted by New Construction Services
15 and/or Community Relations either by telephone or personal visit. The notification of a
16 scheduled interruption affecting less than 25 customers is done by door to door
17 visitation. If a customer is not home, a door hanger is left explaining the process and
18 providing a customer service contact number.

19
20 Q. Please discuss the complaints that customers have filed against the Company since
21 2001.

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1 A. Set forth below is a summary of the complaints that Pike has received since 2001.

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

2

3 Q. What conclusions can you draw from this summary?

4 A. This summary demonstrates that prior to the increase in the Company's default service
5 rates in January 2006, the Company experienced a very modest number of complaints
6 each year. I also would note that no service related complaints were filed by any of the
7 complainants in this proceeding prior to January 2006.

8 Q. Please comment on the suggestion offered by OCA's witnesses that prior to this
9 increase in default service rates, customers were willing to tolerate poor service.

10 A. I don't find such testimony credible. My experience, the vast majority of which, as
11 outlined above, has been in the Customer Service area, indicates that if service is poor
12 and unreliable, customers complain about it. Customers' inclination to complain about
13 service outages, regardless of the price of such service, only has increased as
14 households become increasingly reliant on technologies (e.g., computers) which require
15 continuous electric service.

16 Q. Please comment on OCA witness Brockway's criticism (at pages 18 - 19 of her
17 testimony) of the Company's customer surveys.

18 A. In her testimony, Ms. Brockway criticizes Pike's customer surveys on the grounds that
19 they are "transaction based". This criticism is unwarranted. The transactional survey is
20 a useful tool by which the Company measures the service level that we provide to our

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1 customers. The survey is impartially conducted by an outside vendor who also
2 aggregates the information into reports for the Company. When reviewed, we not only
3 look at scoring but also at customer comments. Customers use the survey as a means
4 to provide feedback on various utility related issues that concern them, not just the
5 particular transaction prompting the survey. For example, a customer that called about a
6 "service connection" will share his experience about the VRU, or a customer that called
7 about a budget billing issue will provide comments about rates (i.e. "lower rates").
8 Pike customers for the years 2003-2005 have rated overall transactional satisfaction at
9 86%, 91% and 89% respectively, with few comments on price. For year to date October
10 2006, we are seeing a decrease in overall satisfaction to 78%. We can attribute this
11 decline in overall satisfaction to the price increase, particularly in light of the increase in
12 price/rate related comments captured on the surveys. We have experienced similar
13 decreases in overall customer satisfaction in Orange and Rockland's New York service
14 territory when natural gas and electric commodity pricing increase significantly.

15
16 Q. Please discuss the services provided by Direct in the Company's service territory.

17 A. Pursuant to the PAPUC's Order dated April 20, 2006 in Docket No. P-00062205, in May
18 2006, Pike implemented an opt-out retail aggregation program in the Company's service
19 territory. Pursuant to the PAPUC's Order, Pike's eight primary service customers were
20 excluded from the aggregation program. As of November 1, 2006, 4,139 customers, or
21 91% of all eligible customers, agreed to participate in the aggregation program and
22 thereby purchase their commodity service from Direct. These participating customers
23 commenced taking commodity service from Direct in June 2006. Pike continues to
24 provide delivery service to these participating customers. Moreover, Direct does not bill
25 participating customers directly. Rather, Direct's charges for commodity service are
26 included on Pike's bills to participating customers. I also would note that the vast

1 majority of customers who filed complaints with the PAPUC, regarding the increase in
2 the Company's default service rates, now take their commodity service from Direct.

3 Q. Please describe the PowerSwitch program implemented by the Company's corporate
4 parent, Orange and Rockland in its New York service territory.

5 A. Orange and Rockland's ESCO referral program, PowerSwitch, provides customers with
6 an opportunity to "test the waters" of retail choice for an introductory period with
7 minimum effort and little or no risk. Under the Program, customers sign up with O&R for
8 retail choice and are either assigned to an alternate supplier, or can choose a supplier
9 among those participating in the Program. Customers can sign up for PowerSwitch by
10 speaking with a customer service representative or the Company's VRU, using the
11 Company's website, or mailing in an insert that is sent along with their monthly bill.

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

19 Customers receive a service agreement from the alternate supplier after signing up for
20 PowerSwitch. The service agreement has a month to month term and sets forth the
21 terms and conditions for electric and/or gas supply service after the Introductory Period.
22 If customers find the terms and conditions acceptable, they can continue with the
23 alternate supplier after the Introductory Period, at a price to be determined under the
24 service agreement. If the terms and conditions are not acceptable, they can either
25 rescind the agreement and cancel their enrollment in PowerSwitch, or wait until after the
26 Introductory Period and terminate the service agreement.

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1 The PowerSwitch Program also benefits alternate suppliers by providing them an
2 opportunity to introduce their service to customers without extensive promotional efforts
3 and expenses.

4 Q. Does the Company plan to implement a similar program in its Pennsylvania service
5 territory?

6 A. Yes. The Company has delayed filing an ESCO referral program for Pike because until
7 recently, there was a lack of supplier interest in participating in such a program
8 However, now that the Company has two Electric Generation Suppliers interested in
9 participating in an ESCO referral program. It will file a proposal with the PAPUC prior to
10 year end.

11 Q. Does this conclude your direct testimony?

12 A. Yes.

13

ORIGINAL

PCL&P STATEMENT NO. 2

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)

REBUTTAL TESTIMONY

OF

ANGELO M. REGAN

ON BEHALF OF

RESPONDENT

PIKE COUNTY LIGHT & POWER COMPANY

DECEMBER 11, 2006

SECRETARY'S OFFICE
DECEMBER 11 2006 10:27

PCL&P COUNTY LIGHT & POWER COMPANY
REBUTTAL TESTIMONY OF
ANGELO M. REGAN

1 Q. Please state your name and business address.

2 A. Angelo M. Regan, 390 West Route 59, Spring Valley, New York 10977.

3 Q. By whom are you employed and in what capacity?

4 A. I am employed by Orange and Rockland Utilities, Inc. ("Orange and Rockland"),
5 the corporate parent of Pike County Light & Power Company ("PCL&P" or the
6 "Company"), as Director of Electrical Engineering.

7 Q. Please briefly describe your educational and business experience.

8 A. I received a Bachelor of Science degree in Electrical Engineering in 1985, and a
9 Masters of Science degree in Industrial Engineering Management Science in
10 1987, both from Fairleigh Dickinson University, in Teaneck, New Jersey. I am a
11 registered professional engineer in the State of New York. I was employed by
12 Central Hudson Gas and Electric Corporation as an overhead distribution systems
13 engineer from 1985 to 1987. Since then, I have worked for Orange and Rockland
14 as an overhead and underground Systems Engineer, as Manager of the
15 Distribution Engineering Department, and then as Chief Distribution Engineer,
16 prior to assuming my present position as Director of Electrical Engineering.

17 Q. What is the purpose of your testimony in this proceeding?

18 A. The purpose of my testimony is to discuss the possible interconnection of PCL&P
19 to PPL Electric Utilities, Inc. ("PPL"), Metropolitan Edison Company ("MetEd"),
20 and/or Sussex Rural Electric Cooperative ("Sussex"), and the Company's electric
21 service reliability. I also will address certain issues raised by witnesses during the
22 public input hearings in this proceeding, as well as by formal complainants during

PCL&P COUNTY LIGHT & POWER COMPANY
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1 the evidentiary hearing held before Administrative Law Judge Jandebour on
2 November 6, 2006 in Scranton, Pennsylvania.

3 **Q. Has PCL&P completed an interconnection study?**

4 A. Yes. PCL&P has completed an interconnection study ("Interconnection Study")
5 exploring the costs and benefits of interconnecting its service territory with PJM.

6 A copy of the Interconnection Study was attached as Appendix B to the Report on
7 Competitive Market Conditions Regarding the Pike County Light & Power
8 Company dated June 1, 2006 prepared by the Pennsylvania Public Utility
9 Commission's ("PAPUC") Law Bureau ("Law Bureau Report").

10 **Q. Please describe why the Interconnection Study focused solely on a 69kV**
11 **transmission line extension option from PP&L or MetEd?**

12 A. The 69kV transmission line extension that PCL&P proposed and examined in the
13 Interconnection Study is the proper solution both to improve reliability and to
14 allow for future load growth. PCL&P has serious concerns with proposals, such as
15 those advanced by Office of Consumer Advocate ("OCA") witness Mr.

16 Lanzalotta, utilizing lower voltage systems that offer significant line exposure,
17 and thus added reliability risk, and do not meet the load deliverability
18 requirements of PJM. While alternatives that involve interconnecting the existing
19 area 34.5kV systems may be a short-term solution, the eventual connection to,
20 and service from, the area 69kV transmission systems is the correct long-term
21 solution. At present, as described in the Interconnection Study, the nearest 69kV
22 transmission system is PP&L's 69kV line into the Twin Lakes Substation.

23 However, by the end of 2008, Orange and Rockland will have three 69kV lines

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

9 **Q. At pages 5 and 6 of his testimony, Mr. Lanzalotta describes additional**
10 **possible alternatives, with their associated costs, for interconnecting with**
11 **PP&L and MetEd. Do you agree with his assessment and conclusions?**

12 **A.** No, I do not. First I will address Mr. Lanzalotta's assessment that new
13 distribution circuits could be extended from PP&L's Twin Lakes Substation to
14 supply PCL&P's service area and load. From a field investigation, and in the
15 absence of having actual system information from PP&L, it appears that the Twin
16 Lakes substation has lower voltage distribution circuits serving local area load,
17 probably at 12kV. Even if the Twin Lakes Substation transformer had the
18 capacity to serve an additional 12kV distribution circuit that could be extended to
19 PCL&P, this distribution would not have the capacity to serve PCL&P's present
20 peak load, let alone its projected load growth. There would certainly be adequacy
21 of service and voltage quality issues with serving load centers between eight and
22 14 miles away from the source. Put simply, Mr. Lanzalotta's proposal does not
23 constitute good utility design or practice. I would note that his proposal would

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1 more than double the line exposure of the system that PCL&P presently utilizes to
2 serve its customers. All of the line transformers in PCL&P would have to be
3 changed as well to accommodate the 12kV distribution voltage. With the addition
4 of MetEd's new 34.5kV circuit along Route 6, this corridor, which would remain
5 the most viable one to extend additional circuits towards Milford, is becoming
6 increasingly congested. Any new circuits either would have to be double or triple
7 circuited as overhead construction, or extended for a considerable distance as
8 underground construction. This will significantly raise the difficulty and cost of
9 extending additional circuits in this direction on limited public roads. Moreover,
10 there are other substantial unknown factors which could require significant
11 upgrades and increase costs; namely the actual available capacity of the Twin
12 Lakes Substation transformer, and PP&L's 69kV radial transmission line that
13 presently serves the load at both the Twin Lakes Substation and MetEd's Walker
14 Substation.

15 **Q. Please go on.**

16 With respect to MetEd's Walker Substation, it is apparent that the Walker
17 Substation has an open position where a transformer can be connected to provide
18 an independent 34.5kV source to interconnect with the PCL&P's 34.5kV system.
19 At first glance, this solution appears more viable than the Twin Lakes distribution
20 proposal from the perspective of similar system voltage and more available
21 capacity. Many of the issues and cost concerns that I raised for the non-viability
22 of the Twin Lakes distribution alternative, however, apply to this alternative as
23 well. These include the increased length of exposure to PCL&P's load centers, the

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1 corridor congestion along Route 6 to extend this circuit, and PP&L's available
2 transmission line capacity. There certainly could be adequacy of service and
3 voltage quality issues with serving load centers between eight and 14 miles away
4 from the source. Should the MetEd system have to feed the PCL&P service
5 territory radially from the Walker Substation, it would more than double the line
6 exposure (i.e., from the Walker Substation to Matamoras) of the system that
7 PCL&P presently utilizes to serve its customers. In proposing that PCL&P
8 interconnect at the Walker Substation, Mr. Lanzalotta has failed to address
9 whether MetEd has any future plans for the Walker Substation, and what
10 additional cost and/or operating implications there would be to utilize this space
11 and capacity. It appears that Mr. Lanzalotta has not spoken with representatives
12 of MetEd regarding his interconnection proposal. Indeed, Mr. Lanzalotta has
13 failed to provide any evidence that MetEd would even entertain accommodating
14 PCL&P as an additional tenant in their substation. This is far from an academic
15 question, since PCL&P's interconnection at the Walker Substation would have
16 limited benefit to MetEd.

17 **Q. Do you have any concerns regarding the cost estimates Mr. Lanzalotta uses**
18 **for interconnection at the Walker Substation?**

19 **A.** While it is true that just the substation costs to increase capacity at the Walker
20 Substation would be less expensive than constructing a completely new substation
21 in PCL&P's service territory, I do not agree with Mr. Lanzalotta's assessment
22 (page 6, line 6) that the addition of a 20 to 25 MVA substation transformer would
23 cost from \$500,000 to \$600,000. PCL&P has considerable recent experience in

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1 estimating the costs for, and constructing similar projects. PCL&P projects that
2 the fully installed cost of this facility would be approximately \$1.45 million, with
3 the estimated cost of the transformer to be \$600,000 alone. The substation
4 improvements provided for in this estimate would include the 25 MVA
5 transformer, high and low side breaker protection and protective relay systems,
6 control and SCADA systems, foundations and conduits, and design and
7 construction labor. This cost projection does not include certain other costs, which
8 upon closer inspection could be required, such as any additional costs to modify
9 the PP&L and MetEd systems, or provide any upgrades to the Walker Substation
10 to accommodate an additional tenant.

11 **Q. Do you agree with the size of the transformer that Mr. Lanzalotta**
12 **recommends?**

13 **A.** No, I do not agree with Mr. Lanzalotta's recommendation that PCL&P install a
14 substation transformer of from 20 to 25 MVA. With PCL&P's recent 2006 peak
15 load of 19 MVA, and utilizing its present weather normalized system load growth
16 of 3% for annual future projections, a 25 MVA transformer would exceed its
17 base rating in less than 10 years. A more appropriate size transformer to install
18 would be one with a base rating of 35 MVA. This may provide a 20-year solution,
19 and would increase the cost by an additional \$150k above the \$1.45 million
20 estimate (or to a total cost of \$1.6 million). Additional costs would be required for
21 the 34.5kV circuits, including upgrades to PCL&P's Line 7 mainline facilities, the
22 installation of distribution automation and sectionalizing schemes, and voltage
23 support. The Route 6 corridor congestion likely would require undergrounding or

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1 double circuiting, or a combination of both, for a portion of the new 34.5kV line
2 where there are presently facilities on both sides of the road. PCL&P is estimating
3 that the extension of this line from the Walker Substation to Milford would cost
4 \$1.6 million, upgrades to the PCL&P 34.5kV system to interconnect with the new
5 line would cost \$300,000, voltage support costs are estimated at \$300,000, and
6 automation monitoring and control to cost an additional \$200,000. In total, the
7 line costs associated with interconnecting to the Walker Substation would be
8 approximately \$2.4 million.

9 **Q. Has Mr. Lanzalotta adequately considered the electrical characteristics of**
10 **MetEd's and PCL&P's 34.5kV systems?**

11 **A.** No. Even accounting for the lack of detail in Mr. Lanzalotta's proposal, it would
12 appear that he has not considered the electrical characteristics of the 34.5kV
13 systems in question. PCL&P believes there is a 30-degree phase shift between the
14 MetEd and PCL&P 34.5kV systems that would require the installation of a
15 special transformer to correct. This phase shift could be corrected with the new
16 transformer installation discussed above, however, it should be noted that this
17 new circuit would be 30-degrees out of phase with the existing MetEd 34.5kV
18 circuit presently extending along Route 6, precluding close transition ties.

19 **Q. Do you have any concerns with Mr. Lanzalotta's assessment at page 6, lines**
20 **2-3, which states that the PCL&P load could potentially be served out of the**
21 **MetEd Walker Substation over the existing 34.5kV line?**

22 **A.** Yes. The utilization of the existing MetEd 34.5kV circuit as a stand-alone solution
23 would be even less viable than the second transformer and new 34.5kV line

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1 alternative discussed above, due to capacity issues and the requirement to install a
2 transformer station to correct the phasing problem discussed above. The cost for
3 this transformer station would exceed the projected costs of the station additions
4 at the Walker Substation described above. In order to satisfy PJM deliverability
5 requirements and PCL&P system load growth, as well as the growth on MetEd's
6 own system, likely upgrades would be required to the existing Walker Substation
7 transformer and the existing 34.5kV circuit that would make this alternative even
8 more expensive than the new transformer and line alternative discussed above.

9 **Q. Do you have any other concerns with Mr. Lanzalotta's proposal?**

10 **A.** Yes. As noted above, PCL&P has numerous serious concerns regarding Mr.
11 Lanzalotta's proposal given the speculative and undocumented nature of many of
12 its components. At a minimum, a detailed engineering investigation, local area
13 study and load flow studies would need to be performed to determine
14 conclusively the sizing of facilities and system equipment needs, or even if such
15 an interconnection would be viable from engineering and system operating
16 perspectives. PCL&P estimates that the known costs for a possible
17 interconnection with the MetEd 34.5kV system at the Walker Substation are \$4
18 million at minimum, without any payments to the hosting utility (i.e., MetEd) for
19 upgrades and any other associated fees that may be required as a result. There are
20 still too many unknown variables and costs, many of which could be significant,
21 to determine at present if this is even possible, let alone a cost-effective
22 alternative. As noted above, however, regardless of cost, Mr. Lanzalotta's
23 34.5kV proposal suffers from the fact that it is not as reliable as, and does not

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1 offer the long-term deliverability and system operating requirements that are
2 inherent with, the 69kV alternative.

3 **Q. At page 6, Line 20 of Mr. Lanzalotta's testimony, he discusses PCL&P's**
4 **possible interconnection with Sussex. Do you agree with his assessment and**
5 **conclusions?**

6 **A.** I must preface my response to this question by noting that to date I have been
7 provided no system maps or other relevant information on the Sussex electric
8 delivery system. Accordingly, my response is based on limited field observations.
9 Mr. Lanzalotta suggests that Sussex has a 34.5kV circuit with the capacity to
10 serve the PCL&P load, by extending this circuit between 3 and 13 miles, at a cost
11 of \$1 to \$2 million. He has broken this down to three major components; the costs
12 to connect the Sussex 34.5kV line to PCL&P, the Delaware River crossing, and
13 costs to reconfigure the PCL&P system to prepare it to be fed from the Sussex
14 system. I will address these components in the same order.

15 **Q. Please discuss the first component of Mr. Lanzalotta's Sussex**
16 **interconnection proposal.**

17 **A.** With respect to the first component, Mr. Lanzalotta has not identified the location
18 of the Sussex sources, or the path of interconnection and the facilities that would
19 need to be upgraded to interconnect with the PCL&P 34.5kV system. The nearest
20 34.5kV sources that PCL&P could locate within the Sussex territory are
21 approximately 12 to 14 miles in straight-line distance from PCL&P's facilities;
22 those being at the Sussex Substations located off of Meyer Road and Cemetery
23 Road. In order to reach the PCL&P service territory, the most logical route that

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1 this line would have to traverse would be through New Jersey State parkland, and
2 then proceed through Jersey Central Power and Light's ("JCP&L") service
3 territory. The distance from these sources to PCL&P along roadways is closer to
4 21 miles. Assuming that all of the ROW, parkland, environmental and franchise
5 approvals could be obtained, and some combination of ROW and roadway is
6 utilized for the route, this line extension could be lessened to 17 miles. Mr.
7 Lanzalotta has also utilized a cost of \$115,000 per mile for 34.5kV construction,
8 as provided by Sussex. While this cost is not entirely out of line for just the base
9 34.5kV line construction, PCL&P is not sure if these costs contain other ancillary
10 costs that can typically be part of the overall cost, such as vegetation
11 management, rock holes, flagging or other contingency costs. PCL&P has seen
12 these factors escalate the costs to approach \$150,000 per mile or higher.
13 Assuming there will be stretches of straightforward, as well as more difficult
14 construction, PCI.&P estimates that \$130,000 per mile is more representative for
15 this type of construction. Based on this estimate, the cost for this portion of the
16 interconnection would be at least \$2.2 million. This does not include any
17 additional costs that may be required to, among other things, secure ROW, obtain
18 permits, and complete environmental studies.

19 **Q. Please discuss the second component of Mr. Lanzalotta's Sussex**
20 **interconnection proposal.**

21 **A.** The second major component is to cross the Delaware River. Mr. Lanzalotta
22 utilized the cost that PCL&P incurred over 15 years ago, updated to present day
23 dollars, to cross the Delaware River between Port Jervis and Matamoras. The

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1 costs, that were requested of and supplied by PCL&P, were updated costs to re-
2 construct an existing aerial crossing, not to install a completely new crossing.
3 PCL&P believes that utilizing this cost to be representative of what will be
4 required to cross the Delaware River, particularly if it is near or adjacent to the
5 Route 206 Bridge in south Milford, is inaccurate and most probably understated.
6 A straightforward increase just to correct to present day dollars would not
7 properly account for increases in materials that have escalated at a higher rate
8 than inflation, such as steel, or for factors such as rock removal that certainly
9 could be prevalent near a river bed. If it is permitted to span the Delaware River
10 as overhead construction, the cost to complete this will depend on the location and
11 distance of the crossing. PCL&P is estimating that this cost could exceed
12 \$400,000. However, issues relating to permitting and approvals, including the
13 time required to secure them, could substantially raise this cost. This crossing will
14 be in the Delaware Water Gap National Recreation Area, and the permitting
15 agencies may require the line to be attached to an existing structure, such as the
16 Route 206 Bridge, or installed under the river. More investigation needs to be
17 completed before a reasonable cost estimate can provided. If this section is
18 required to be attached to an existing structure or installed under the river,
19 PCL&P's preliminary observations indicate that the costs to complete this section
20 of the line extension will be extremely expensive, and could be double or more of
21 PCL&P's estimated overhead cost to complete this crossing.

22 **Q. Please discuss the third component of Mr. Lanzalotta's Sussex**
23 **interconnection proposal.**

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1 A. The third major component is to reconfigure the PCL&P system to prepare it to be
2 fed from the Sussex system. As with the MetEd alternative discussed above, this
3 component would include at a minimum upgrades to PCL&P's Line 7 mainline
4 facilities, the installation of distribution automation and control/monitoring
5 schemes, and voltage support. Upgrades to the PCL&P 34.5kV system to
6 interconnect with the new line are estimated to cost \$350,000, voltage support
7 costs are estimated at \$450,000, and automation monitoring and control are
8 estimated to cost \$200,000. Together, these line upgrade requirements are
9 estimated to cost \$1 million.

10 Q. **Are there any other costs that Mr. Lanzalotta should have considered with**
11 **this Sussex alternative?**

12 A. Yes. A fourth major cost component that Mr. Lanzalotta seems to have
13 overlooked is the source costs for this new Sussex 34.5kV line. As with the
14 MetEd alternative discussed above, in order to meet full PJM deliverability
15 requirements and PCL&P system load growth, it is anticipated that a new express
16 feeder, with a 477 AAC conductor and a capacity of 35 MVA at minimum, would
17 need to be installed. As such, and at a minimum, substation upgrade costs would
18 be required to provide a new feeder position, breaker and relay protection,
19 SCADA, and other associated costs. In addition, as noted above, PCL&P believes
20 that there is a 30-degree phase shift between the Sussex and PCL&P 34.5kV
21 systems that would require the installation of a special transformer to correct this
22 phasing problem. Similar to the MetEd alternative, PCL&P estimates that the cost
23 of these substation upgrades would be approximately \$1.6 million. Additionally,

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1 the Sussex sources in this area are fed from 34.5kV lines, and with the proposed
2 load addition of the PCL&P load and projected PCL&P system growth to the
3 Sussex system, it is likely that the Sussex source feeders will need to be upgraded
4 in the short-term. These costs can be substantial and should be identified and
5 accounted for in any cost analysis.

6 **Q. Do you have any other concerns regarding Mr. Lanzalotta's Sussex**
7 **interconnection proposal?**

8 **A.** Yes. PCL&P also has serious concerns regarding adequacy of service and voltage
9 quality issues associated with this alternative. This alternative proposes to serve
10 PCL&P's load centers that are located between 17 to 23 miles away, from the
11 sources I have described above, with a single radial 34.5kV line. As noted
12 previously, this constitutes neither good utility design nor practice. Should this
13 Sussex line have to feed the PCL&P service territory radially from the proposed
14 Sussex source, it would more than triple the line exposure of the system that
15 PCL&P presently utilizes to serve its customers. A detailed engineering
16 investigation, local area study and load flow studies would need to be performed
17 to determine the sizing of facilities and system equipment needs, or even if such
18 an interconnection would be viable from engineering and system operating
19 perspectives. PCL&P estimates that the known costs for this alternative are \$5.2
20 million, and could easily exceed \$6 million depending on the construction
21 required to cross the Delaware River. There are still too many unknown variables
22 and costs, many of which could be significant, to determine at present if this is a
23 viable and cost-effective alternative. Depending on the resolution of these

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1 outstanding issues and unknown costs, while this alternative could seem less
2 expensive than the 69kV alternative that PCL&P originally proposed, it is not
3 nearly as reliable, nor does it offer the long-term deliverability and system
4 operating requirements that are inherent with the 69kV alternative. In conclusion,
5 PCL&P questions the overall adequacy of Mr. Lanzalotta's Sussex proposal, and
6 further contends that this will not be a more reliable solution to the system that
7 presently serves PCL&P customers.

8 **Q. At Page 7, lines 24-27, Mr. Lanzalotta describes the need for PCL&P to**
9 **remain interconnected to maintain the reliability of this interconnection.**
10 **Does PCL&P agree that it should maintain this interconnection should its**
11 **service territory be taken over by Sussex?**

12 **A.** In the event that PCL&P is forced to sell and relinquish its service territory to
13 Sussex or any another entity, it would be under no obligation to remain
14 interconnected with its present facilities in Pennsylvania from its New York based
15 sources. PCL&P will provide no guaranties that it will remain so interconnected.
16 Additionally, it is quite possible that if PCL&P remained interconnected with
17 free-flowing ties to Sussex, in the scenario that Mr. Lanzalotta describes, that
18 PCL&P's significantly stronger source in Port Jervis would not only continue to
19 serve all of PCL&P's current load, but it could end up serving some of the Sussex
20 system load. This would put more demand requirements on Orange and
21 Rockland's Port Jervis substation and the sources feeding it, with no benefits to
22 PCL&P's parent company, Orange and Rockland. Such a free rider scenario is
23 neither attractive nor acceptable to Orange and Rockland. At a minimum, that

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1 interconnection would be subject to rules and regulations of both PJM and the
2 NYISO and require proper payment and accounting of the energy flows.
3

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

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

10 **Q. Please discuss Mr. Lanzalotta's contention that the reliability performance of**
11 **the PCL&P electric system has deteriorated since the merger of Orange and**
12 **Rockland, PCL&P's parent company, with Consolidated Edison, Inc.**
13 **("CEI").**

14 **A.** Mr. Lanzalotta states that electric system reliability performance, as reflected in
15 the Company's reliability data, reflects a substantial degradation in the
16 Company's electric service reliability performance since 1999, the year of the
17 Orange and Rockland and CEI merger. He also contends that this is somehow
18 related to the timing of the merger between Orange and Rockland and CEI. Mr.
19 Lanzalotta's contentions are not justified for the following three reasons. First,
20 Mr. Lanzalotta failed to account for the entire set of data the Company provided
21 in response to the OCA's interrogatories. Mr. Lanzalotta's selective use of this
22 data presents an inaccurate view of the Company's service reliability
23 performance. Second, Mr. Lanzalotta failed to adjust for weather-related outages

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1 or other outages beyond the control of the Company. A utility has virtually no
2 control over the number of these incidents, nor their location, and therefore has
3 little control over their impact on reliability performance. Third, Mr. Lanzalotta
4 failed to account properly for the two major factors that contributed to the
5 customer hours of interruption in 2004 and 2005.

6 **Q. Please discuss the first factor.**

7 **A.** The first factor involved customer outages related to the construction and
8 energization of the new Matamoras Substation. Prior to the completion of the
9 Matamoras Substation, the majority of the customers in the Matamoras area were
10 fed from 34.5kV stepdown transformers at 2.4kV. Prior to the completion of the
11 Matamoras Substation, the local distribution facilities were upgraded and made
12 ready for conversion from the existing antiquated 2.4kV delta system to a modern
13 13.2kV grounded wye connected system that provides a higher level of safety for
14 the general public. All of this construction and make ready work for the new
15 distribution system was performed under live line conditions and had minimal
16 effect on customer service. At page 14, lines 7-12, Mr. Lanzalotta implies that the
17 planned outages associated with the upgrade of the Matamoras substation were
18 somehow avoidable. Mr. Lanzalotta should be aware that system conversion
19 work, that requires taking customer outages to "cut-over" to the new distribution
20 voltage, is unavoidable and is an industry-accepted practice. Planned outages
21 were necessary to complete the upgrade and modernization of this system. The
22 Company took proper measures to minimize the extent of such outages, and
23 followed appropriate procedures and steps to notify customers in advance of

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1 scheduled outages. Please refer to the rebuttal testimony of Company witness
2 James O'Brien for a detailed description of these procedures. Even though there
3 was some inconvenience to customers during the scheduled outages associated
4 with this system upgrade, it is undeniable that the completion of the new
5 Matamoras Substation, and the upgrade to a new, more reliable 13.2kV system,
6 provides substantially improved reliability to the customers that are now served
7 from the new Matamoras Substation (i.e., approximately 35% of all PCL&P
8 customers).

9 **Q. Please discuss the second factor.**

10 A. The second major factor contributing to customer hours of interruption in 2004-
11 05, were those due to tree contacts. PCL&P acknowledges that interruptions and
12 customers affected were significantly increased during this period due to tree
13 contacts. PCL&P was at the very end of its four-year trimming cycle for the
14 distribution lines that serve PCL&P during this timeframe. Significant vegetation
15 management was performed and the reliability performance with respect to tree
16 incidents has improved in 2006. In recognition of these effects, in the summer of
17 2006, PCL&P committed to improving its vegetation management cycle on its
18 PCL&P distribution system to a three-year program. Therefore, because of the
19 outage anomalies associated with the Matamoras Substation conversions, and in
20 recognition of the proposed improvements that will be gained by improvements to
21 the vegetation management program, the data from the 2004-2005 period should
22 not be used for trending analysis.

23 **Q. Do you have any other observations on Mr. Lanzalotta's analysis?**

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1 A. Yes I do. Notwithstanding the above objections to this analysis, Mr. Lanzalotta's
2 testimony is misleading because the six years (1994-1999) that were used as a
3 basis for this analysis are insufficient to determine a trend because of the volatility
4 of PCL&P's system performance. Inclusion of the 1981-1999 data in the analysis
5 will provide a more complete and objective view of the overall historical
6 reliability performance of the PCL&P system (Refer to Exhibit 1 for the complete
7 PCL&P reliability statistics from 1981 – 2005). During this period, the variability
8 of the interruption data is clearly evident. The mean SAIFI (i.e., System Average
9 Frequency Index, or the frequency of electric service outages) for that nineteen-
10 year period is 2.98, with a standard deviation of 1.69, or 57%. For the years 2000-
11 2003, SAIFI was below the mean twice, and was within one standard deviation
12 above the mean for the other two years. CAIDI (i.e., Customer Average
13 Interruption Duration Index, or the average customer restoration time for electric
14 service outages) and SAIDI (which is calculated by multiplying SAIFI times
15 CAIDI) are within one standard deviation for each of the four years. These
16 results do not indicate a substantial degradation. However, even this analysis may
17 not produce statistically valid results due to the relatively small number of
18 incidents, the variability in the number of customers affected by individual
19 incidents, and the type of incidents that have occurred. It must be noted that the
20 extreme variability in PCL&P's reporting statistics, particularly those that have
21 been reported with major events excluded, is due largely to the fact that its
22 electric delivery system is exceptionally small (i.e., during most of this reporting
23 period, PCL&P had two distribution circuits and approximately 4,400 customers).

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1 As such, all outages in excess of approximately 440 customers qualified as a
2 major event that is excludable from the reporting statistics that generate SAIFI.
3 Therefore, typical interruptions for a larger utility that would never qualify as a
4 major event, such as a tree contact or equipment failure that might trip an entire
5 distribution circuit, or even half of the customers on a circuit with a midpoint
6 recloser, do get excluded for PCL&P, as long as they meet the 10% criteria. This
7 only allows smaller outages, with the associated lower number of customers
8 affected, to count towards the reportable indices, which in turn results in SAIFI
9 indices that are considerably lower than those of a utility with a substantial
10 customer base. This effect of reflecting relatively low SAIFI numbers has the
11 inverse effect of reflecting higher CAIDI numbers, as the remaining outages that
12 do count towards the reportable statistics are smaller and with more localized
13 damage that requires longer time to restore. Additionally, because of PCL&P's
14 small size and customer base, the number of interruptions that are experienced
15 each year is extremely low as compared to many of the other Pennsylvania
16 utilities, both with and without major events.

17 **Q. Please discuss PCL&P's statistical volatility.**

18 **A.** The problem that exists for PCL&P is that of significant statistical volatility since
19 the standards are based on an extremely small number of incidents that can vary
20 widely year to year. This volatility in the statistics makes it difficult to put a tight
21 bracket on expected performance, without accounting for proper measures to
22 address this volatility. For example and referring to PCL&P's statistics without
23 major events, from 1994 through 2005 the average annual number of interruptions

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1 for PCL&P was 50 with the low being 32 and the high being 90. This equates to a
2 volatility of 36% below and 80% above the 12-year mean. Further adding to the
3 volatility is the number of customers affected by an interruption. From 1994-
4 2005, the average number of customers affected per incident was 47, with the low
5 being 24 and the high being 90. This equates to a volatility of 48% below to 92%
6 above the 12-year mean. Due to the combination of these factors during the period
7 1994 to 2005, the customers affected each year varied from 850 to 8,123, with
8 2,527 being the arithmetic mean. Thus the volatility ranged from 66% below the
9 mean to 221% above the mean. Since the number of customers affected each year
10 is directly proportional to SAIFI, SAIFI is directly affected by the volatility of the
11 number of interruptions and the number of customers affected by those
12 interruptions. Likewise for CAIDI, because of the small number of interruptions,
13 CAIDI also exhibits extreme volatility. From 1994-2005 the average annual
14 customer minutes was 448,179 with the high being 997,007 and the low being
15 176,719. This equates to a volatility of 61% below the mean and 122% above the
16 mean.

17 **Q. Has the Company's electric service reliability shown any indications of**
18 **improvement in 2006?**

19 **A.** Yes. Based on 12-month rolling data through November 2006, SAIFI was 1.77,
20 which is below the 2000-05 and 1981-99 means (i.e., 3.97 and 2.98 respectively);
21 CAIDI was 196 minutes which is within one standard deviation of the 2000-05
22 mean and above the 1981-99 mean (i.e., 162 and 111 respectively); and, SAIDI
23 was 347 minutes which is below the 2000-05 mean and within one standard

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1 deviation of the 1981-99 mean (i.e., 617 and 317 respectively). These values
2 directly contradict Mr. Lanzalotta's assertion, at page 8, line 23, that the
3 "reliability data reflects a substantial degradation in the Company's electric
4 service reliability". Customers' perception of reliability is driven predominately
5 by the frequency of service interruptions (as measured by SAIFI), as opposed to
6 the duration of outages (as measured by CAIDI). The Company's 2006 SAIFI
7 performance indicates better reliability than either the pre- and post-merger
8 average reliability performance. Additionally, the 2006 data includes a major
9 event that significantly impacted these statistics. On February 19, 2006 a tree fell
10 from outside of PCL&P's right-of-way, in a relatively inaccessible location, on to
11 PCL&P's facilities causing an outage. Without this incident, SAIFI would
12 improve to 1.19, CAIDI would improve to 128 minutes, and SAIDI would
13 improve to 153 minutes. Again, this demonstrates the type of variability that
14 exists for PCL&P's system performance, in that a single incident can have an
15 inordinate impact on each of the performance measurements. It also demonstrates
16 the inequity of including outages that are beyond the control of the utility in this
17 analysis. Additionally, through November 2006, PCL&P's reliability is better than
18 the rolling 12-month criteria set by the PAPUC. The rolling 12-month Frequency
19 (SAIFI) of 1.18 is better than the target of 1.31. The rolling 12-month Restoration
20 (CAIDI) of 108 minutes is significantly better than the target of 215 minutes. The
21 rolling 12-month Duration (SAIDI) of 127 minutes is significantly better than the
22 target of 282 minutes. Contrary to Mr. Lanzalotta's comments, this data supports

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1 the fact that PCL&P's reliability in 2006 is not degrading, but is improving and
2 exceeding the PAPUC's criteria.

3 **Q. Please describe the validity of comparing PCL&P's reliability data with that**
4 **of Sussex?**

5 **A. PCL&P does not believe that any meaningful comparisons can be made with the**
6 **Sussex electric system reliability data contained in Mr. Lanzalotta's testimony.**
7 **Sussex is not required by the New Jersey Board of Public Utilities to report its**
8 **data with any substantial regulatory oversight. Accordingly, any data that is**
9 **provided as part of interrogatories or testimony must be thoroughly evaluated as**
10 **to its definitions and completeness, to the extent that this can even be determined.**
11 **PCL&P has a sophisticated Outage Management System that captures each and**
12 **every electric service interruption, and all interruption data is rigorously reviewed**
13 **prior to its inclusion as part of the Company's reliability database. PCL&P cannot**
14 **be sure that Sussex reliability data is as strenuously accounted for and scrutinized**
15 **as those utilities that are subject to regulatory oversight and consequences. As**
16 **discussed above, Mr. Lanzalotta's Sussex interconnection proposal will result in**
17 **less reliable service for the customers in Pike County. To assume that any**
18 **reliability level that has been experienced by Sussex would be maintained, after**
19 **the addition of a 51 square mile area that would be located and fed from a single**
20 **radial line at the end of their distribution system, is both unrealistic and incorrect.**

21 **Q. On page 15, lines 18 – 24, Mr. Lanzalotta asserts that the annexation of the**
22 **PCL&P system onto the Sussex System will have an immediate impact on**

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1 **reducing the duration of electric service outages on the PCL&P system. Do**
2 **you agree with this assertion?**

3 A No, I do not. Mr. Lanzalotta has made this assertion based solely on an extremely
4 limited comparison and analysis of outage statistics, to which for reasons as stated
5 above, PCL&P lends little credence. Additionally, Mr. Lanzalotta has not
6 provided any other key and critical information that would be required to make
7 such comparisons, such as the number of resources that Sussex devotes in
8 responding to system outages, the location that they respond from, and how this
9 may differ for normal work hours, off schedule work hours (such as weeknights,
10 weekends and holidays), and for storm conditions, both expected and unexpected.
11 It must be noted that the nearest facility from which PCL&P staffs its crews from
12 is the Port Jervis facility, located just one quarter mile away from Matamoras.
13 During normal working hours of Monday through Friday 8:00AM - 4:30PM, the
14 Port Jervis facility is staffed with two crews. When additional projects are
15 scheduled in the area, staffing is increased to a range of three to five crews.
16 Currently our staffing in the facility is five crews due to capital improvement
17 work being done on both Line 7 and circuit 5-10-34, which are the two sources
18 serving the PCL&P load. This level is expected to remain in effect through June
19 2007, and possibly beyond. During other times of the day, or for weekends and
20 holidays, crews can be dispatched from Orange and Rockland's Middletown, New
21 York facilities, which are approximately 18 miles away from Pike County and is
22 quickly accessible to Pike County via Interstate highway Route 84. In addition, in
23 June 2004, Orange and Rockland modified and enhanced the Troubleshooter

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1 classification to include the Northern Division, which includes the area that
2 provides service to PCL&P. The troubleshooter classification included two-
3 person crewing who are scheduled on the 1600 to 2400 hour period during the
4 normal workweek, and on the Saturday 0800 to 1600 hour period, with out the
5 call out process required. This enhancement was implemented in September 2004
6 to help reduce response time to the PCL&P area and other areas served by the
7 division. Absent having been provided with any details regarding the Sussex
8 facilities and crew reporting locations, PCL&P was able to locate the main
9 headquarters for Sussex across from the Sussex airport on NJ local Route 639. It
10 appears that the most direct driving route, from this location to the nearest point
11 on the PCL&P system in Milford, Pennsylvania, is approximately 16 miles along
12 single lane roads. I would note that this distance is not substantially closer to
13 where PCL&P crews respond from during off-hour periods, and significantly
14 farther away from its Port Jervis facility during normal working hours. With the
15 additional information that I have provided above, combined with the lack of key
16 Sussex information and supportable statistics, one cannot assume that, under
17 Sussex, system restoration and customer hours of interruption will show
18 immediate improvement. In fact, it is just as likely that customer hours of
19 interruption may deteriorate, particularly when accounting for the significant
20 radial line exposure concerns inherent with the Sussex option.

21 Q. Does the nature of the PCL&P service territory affect the service reliability that
22 the Company's customer's experience?

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1 A. Most definitely. The type of outages that PCL&P customers experience and the
2 resultant hours of interruption, are directly related to geography, customer
3 density, vegetation density, system design, and other system and operating
4 specific parameters. The nature of the PCL&P service territory, where many
5 customers are fed from radial lines in heavily treed areas at the very end of the
6 Company's service territory, explains why, as discussed above, customers are
7 particularly susceptible to tree related interruptions and longer duration outages.
8 Given the more rural characteristics of PCL&P's service territory, it is simply
9 unrealistic for many of the Company's customers to expect that they will
10 experience the same levels of high service reliability as customers who reside in
11 predominately urban or suburban environments, where the electric delivery
12 infrastructure is considerably more developed with higher levels of redundancy
13 available. I would note further that the characteristics of the Company's service
14 territory, and their impact on service reliability, would remain regardless if
15 service were provided by PCL&P, Sussex, or another utility. I must conclude by
16 noting that PCL&P has changed, or is in the process of changing certain of its
17 system design, maintenance and operating parameters to improve system
18 performance and restoration. PCL&P is committed to improving service
19 reliability for its customers.

20 Q. Please discuss the outages experienced over the past few years by the
21 Municipal Authority of the Borough of Milford ("Municipal Authority"),
22 and the Delaware Valley School District ("DVS").

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1 A. Previously in this proceeding both the Municipal Authority and DVS provided
2 PCL&P with data regarding the service interruptions that they had experienced
3 during the period from August 2004 through February 2006. PCL&P analyzed
4 this data against its records and substantiated that there were nine of the listed
5 outages that affected service to the Municipal Authority and DVS. Of those
6 outages, three were from stormy weather, one was due to a non-Company
7 accident, and two were from the failure of the customer's underground
8 facilities/equipment that supply the school. Two incidents were due to tree
9 contacts, one of which was a tree from well outside of the ROW that fell into Line
10 7 and disrupted service to all of the customers served from Line 7. The remaining
11 incident was a pre-scheduled outage to relocate a pole. Therefore, with respect to
12 these nine outages, seven were due to extenuating circumstances or incidents over
13 which PCL&P has little control. Aside from tree contacts, which PCL&P has
14 addressed with the proposed improvements to its vegetation management
15 program, these outages are not indicative of recurring problems.

16 **Q. Do you have any observations regarding the service interruptions**
17 **experienced by Mr. Peter Kenny?**

18 A. During cross-examination on November 6, 2006, Mr. Kenny testified that he has
19 suffered from many service outages over the past few years. PCL&P performed a
20 review of the recent service interruptions experienced by Mr. Kenny. Mr.
21 Kenny's residence is located in Milford, Pennsylvania, near the end of a long
22 heavily treed road that is served by a step-down transformer and a long radial line
23 off of the radial portion of Line 7. The Company's analysis substantiated that

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

20 Q. Have you come to any conclusions regarding the service interruptions that
21 occurred in PCL&P's service territory?

22 A. Yes. The Company's analysis of outages that have occurred over the past six
23 years reveals that increases in the number of interruptions, the number of

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1 customers affected, and the customer-hours of interruption predominantly
2 occurred in 2004 and 2005. The reasons for this were primarily due to the
3 following:

- 4 • Pre-scheduled outages associated with the constructing and energizing the
5 Matamoros Substation.
- 6 • Tree contacts towards the end of the Company's four-year vegetation
7 management program. Significant vegetation management has been
8 completed, and improvements have been made regarding reliability
9 performance with respect to tree outages in 2006. Additional
10 improvements are expected as a result of improving the vegetation
11 management plan to a three-year program.
- 12 • An increase in non-Company accidents that resulted in outages. It is
13 expected that this increase is a statistical anomaly, could certainly be
14 related to growth and increasing customer density in Pike County, and is
15 not related to any deficiency in PCL&P's system or work practices.

16 As discussed earlier in my testimony, in analyzing the reliability of the PCL&P
17 system, it should be noted that the service area is rural, and is primarily a radial
18 system, resulting in reliability performance that is somewhat lower than more
19 urban locations that are serviced by loop systems and multiple sources. The
20 relatively small size of the service area and its topology, also contribute to
21 volatility in reliability performance. PCL&P operates and maintains this system
22 in a manner that is consistent with regulations and industry standards. The
23 Company makes necessary improvements to the system, and adjusts its practices

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1 when appropriate. The implementation of the Matamoros Substation and
2 improved vegetation management will contribute to improved system reliability.
3 As evidenced by Exhibit 2, PCL&P interruption data, year-to-date through
4 November, has improved as compared to the 2004 – 2005 statistics. The number
5 of customers affected and the customer hours of interruption are the lowest since
6 2001 through November of each year.

7 **Q. Does this conclude your rebuttal testimony?**

8 **A. Yes, it does.**

ORIGINAL

PCL&P STATEMENT NO. 3

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)

REBUTTAL TESTIMONY

OF

JOSEPH A. HOLTMAN

ON BEHALF OF

RESPONDENT

PIKE COUNTY LIGHT & POWER COMPANY

RECORDED
2006 DEC 11 10:27

DECEMBER 11, 2006

PIKE COUNTY LIGHT & POWER COMPANY
REBUTTAL TESTIMONY OF
JOSEPH A. HOLTMAN

1 Q. Please state your name, title, employer, and business address.

2 A. My name is Joseph A. Holtman. I am Director – Electricity Supply for
3 Consolidated Edison Company of New York, Inc. (“Con Edison”). My
4 office is located at 4 Irving Place, New York, New York.

5 Q. Please describe your responsibilities in that position.

6 A. On behalf of Con Edison, Orange and Rockland Utilities, Inc. (“O&R” or
7 “Orange and Rockland”), Rockland Electric Company (“RECO”) and Pike
8 County Light & Power Company (“PCL&P” or the “Company”), I am
9 responsible for day-to-day electricity supply operations, including the
10 scheduling of generation and load bids with the New York Independent
11 System Operator (“NYISO”), the PJM Interconnection, L.L.C. (“PJM”),
12 ISO New England, and Hydro-Quebec; development of overall electric
13 power procurement plans; development and implementation of electric
14 hedging programs; strategic development and participation in capacity and
15 transmission congestion contract auctions; management of contractual
16 rights with various non-utility generators; and the preparation of monthly
17 invoices in support of wholesale purchases and sales, including capacity,
18 energy and transmission congestion contracts. Electric service in the
19 service territories of PCL&P, Orange and Rockland, and RECO
20 (collectively the “System”) is provided as an integrated operation by
21 Orange and Rockland.

22 Q. Please describe your professional background.

PIKE COUNTY LIGHT & POWER COMPANY
REBUTTAL TESTIMONY OF
JOSEPH A. HOLTMAN

1 A. I rejoined Con Edison in March, 2002, in my current capacity. From
2 April, 2000, through March, 2002, I was employed by Mirant New York,
3 Inc. as Director-Regulatory Affairs with responsibility for New York
4 regulatory and NYISO matters. From July, 1999, through April, 2000, I
5 was Director- Corporate Planning for Con Edison, working primarily on
6 matters related to potential mergers and acquisitions. From 1996 through
7 July, 1999, I was Director- Energy Resources for O&R, with
8 responsibilities similar to my current position; I also had general
9 responsibility for the procurement of natural gas energy and capacity, and
10 associated regulatory and accounting matters. From March through July,
11 1997, I assumed the position of Acting President for NORSTAR Energy
12 Limited Partnership, a Houston, Texas-based retail gas marketing
13 enterprise, with general responsibility for day-to-day operations of the
14 firm. In 1995, I was named Director-Fuel Resources, with general
15 responsibility for procurement of natural gas for resale, and natural gas,
16 coal and oil for O&R's electric generation facilities. From 1991 through
17 1995, I was Manager-Fuel Resources Administration, with similar
18 responsibilities. From 1989 through 1991, I was a Program Administrator
19 in O&R's Demand-Side Management department. From 1985 through
20 1989, I was employed by O&R as an Economic Analyst, with
21 responsibility for forecasting, capital appropriations analysis, and various
22 other statistical studies.

23 I received a Bachelor of Arts degree in Physics (cum laude) from the State
24 University of New York College at Plattsburgh in December 1984, and a
25 Masters degree in Business Administration with a major in Financial
26 Management from Iona College's Hagan School of Business in July 1989.

PIKE COUNTY LIGHT & POWER COMPANY
REBUTTAL TESTIMONY OF
JOSEPH A. HOLTMAN

1 Q. Have you previously testified before the Pennsylvania Public Utility
2 Commission ("PAPUC")?

3 A. Yes, I have submitted testimony before the PAPUC in Dockets R-922516
4 and P-00011872.

5 Q. What is the purpose of your testimony in this proceeding?

6 A. I will discuss PCL&P's proposed default service supply plan, and respond
7 to certain statements contained in the direct testimony of Office of
8 Consumer Advocate ("OCA") witnesses Nancy Brockway, and Matthew
9 Kahal, as well as Office of Small Business Advocate ("OSBA") witness
10 Robert Knecht.

11 Q. Please discuss how PCL&P proposes to secure its default service supply
12 for the period commencing January 1, 2008?

13 A. PCL&P will be filing in the very near future a proposal with the PAPUC
14 to secure its default service supply for the period commencing January 1,
15 2008. Specifically, PCL&P will propose the following:

16 ■ Acquire financial hedges of energy and capacity purchases made
17 from NYISO's spot market for the Hudson Valley Zone (i.e., Zone
18 G). PCL&P is connected to the bulk power grid in the NYISO's
19 Hudson Valley Zone.

20 ■ Hedges to be acquired through a web-based, declining price
21 auction.

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- 1 ▪ Term of the hedges would be from January 1, 2008 through
2 December 31, 2010.
- 3 ▪ PCL&P would integrate its proposed auction with the hedging
4 procurement efforts of Orange and Rockland. The quantity of
5 energy and capacity hedged will be dependent on whether Direct
6 Energy Services, LLC ("Direct") will continue its aggregation
7 program in 2008.
- 8 ▪ PCL&P will confer with interested parties as to whether its hedges
9 should be layered in over a multi-year period.
- 10 ▪ If so, the quantity of energy and capacity hedged would be 100% of
11 PCL&P's requirements in 2008, 67% of its 2009 requirements, and
12 33% of its 2010 requirements, computed on an hourly basis and
13 financially settled monthly. Thereafter, at annual intervals,
14 PCL&P could obtain financial hedges for 33% of its requirements
15 for three-year terms, resulting in "laycred" hedges that reflect the
16 longer-term market price while protecting customers from short-
17 term market fluctuations.
- 18 ▪ The prospect of hedging 100% of 2008 requirements creates risk of
19 one-time unusual market conditions that will be monitored closely
20 at the time of the 2008 auction.

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▪ If hedges are not layered in, then PCL&P would seek to hedge 100% of its 2008-2010 requirements in the Fall of 2007.

Q. Why is PCL&P proposing to utilize financial hedges, rather than physical purchases to fix the prices of the energy and capacity required to meet its default service load?

A. The proposal assumes that PCL&P will continue to be electrically connected to the NYISO's Hudson Valley Zone through 2010, based on construction and regulatory/environmental approval lead times associated with any project to interconnect PCL&P with PJM, even if such project were to be agreed upon. There is no clear discount for fixed-price, load following physical energy purchases, similar to those acquired in New Jersey's Basic Generation Service auction. In fact, some prospective suppliers have indicated to PCL&P that given the Company's size, the physical energy scheduling and credit requirements for PCL&P would command an administrative premium over financial load following hedges since it is an additional administrative burden with which they must contend. Load following financial hedges will fix the energy and capacity prices sufficiently to lock in customer prices, while ensuring that PCL&P does not bear undue market price risks.

Q. Why has PCL&P proposed a three year term?

A. Natural gas is the primary fuel for electricity generation in southeastern New York State, the area to which PCL&P is connected. A review of

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1 historical natural gas prices over the last 15 years shows that customer
2 prices are more stable when hedged over longer periods, up to three years.
3 Beyond three years, little additional volatility reduction is achieved.
4 Shorter hedge periods, such as one year or less, could result in a situation
5 where the hedges are all acquired in a rising or falling market, which
6 would then magnify their impact on rates. For these reasons, PCL&P has
7 proposed a three year hedge term.

8 Q. Please discuss the type of auction that PCL&P has proposed.

9 A. A load following hedge is a customized product. It is not readily traded
10 like other standard hedge products such as "5x16s" and "around-the-
11 clock" hedges, which hedge the cost of a fixed volume of energy. To
12 ensure a competitive result when acquiring such a unique product, an
13 auction or request for proposals ("RFPs") are preferred formats.

14 Because electric energy is such a volatile product, hedge suppliers risk
15 market prices moving against them while they hold offer prices open to
16 hedge buyers such as PCL&P. The longer a price must be held, the greater
17 the risk and so the greater the risk premium they must charge the hedge
18 buyer. If the market is too volatile or the time from offer to
19 acceptance/rejection is too great, a hedge seller may decline to participate
20 in the RFP or auction. The three-day review period after the close of
21 PCL&P's last default service auction was a significant factor in the low
22 supplier participation. Electronic auctions are superior to traditional RFPs
23 since they foster a competitive offer process in a relatively short
24 timeframe. Offers can be selected or rejected within minutes of the close
25 of an auction, greatly reducing a hedge supplier's risk and therefore the

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1 risk premium paid by customers. In PCL&P's case, it is recognized that
2 PAPUC would like to approve hedge prices before they are accepted. If
3 PCL&P is to integrate its hedging efforts with those of Orange and
4 Rockland, PCL&P requires that three days before the auction, it would
5 submit to the PAPUC, (with copies to OCA and OSBA), a ceiling price.
6 This submission would be subject to strict confidentiality protections. The
7 PAPUC could then determine if it approves the ceiling price. Once a
8 ceiling price is approved, PCL&P would hold an electronic auction and
9 immediately make awards so long as prices are below the ceiling. This
10 methodology would minimize premiums that would be paid to hedge
11 providers and maximize supplier participation in the auction. Without
12 prior agreement on a ceiling price, an integrated auction with Orange &
13 Rockland is not possible. PCL&P would work with the PAPUC to
14 schedule the auction at a time convenient to the PAPUC. Representatives
15 of PAPUC, OCA and OSBA are welcome to view the auction in real time,
16 either in person or electronically.

17 Q. Please discuss the alternatives for implementing a three year hedge term.

18 A. There are two alternatives for implementing a three year hedge term. First,
19 PCL&P can secure hedges of energy and capacity purchases for a three
20 year term (i.e., January 1, 2008 though December 31, 2010).

21 Alternatively, PCL&P can layer hedges in over time, as is done in New
22 Jersey's Basic Generation Service auction. The first alternative is
23 administratively more convenient. Fixing the price of energy over a multi-
24 year period, based on a single snapshot in time, can lead to situations

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1 where the hedged price is much lower than market prices at time of
2 delivery (PCL&P's situation from 2003-2005) or much higher than market
3 prices at time of delivery (PCL&P's situation in 2006). By layering
4 hedges in over time, PCL&P may be better able to maintain the hedged
5 price closer to long-term market prices while still protecting consumers
6 from short-term market perturbations. To put such a structure in place, the
7 first 'tranche' or portion of hedges must set the stage for the three-year
8 tranches to follow annually. PCL&P proposes to discuss with interested
9 parties how to structure the hedge term. .

10 Q. Please comment on Mr. Knecht's recommendation (page 9, lines 10-12)
11 that PCL&P upgrade its algorithm for evaluating whether the risk
12 premium from the low-price wholesale bidder is reasonable.

13 A. As part of the process described above, in which PCL&P would submit an
14 auction ceiling price to the PAPUC, PCL&P would review its algorithm
15 and the data used to estimate an appropriate risk premium with the
16 PAPUC.

17 Q. Please comment on Mr. Knecht's suggestion (page 9, line 23 through page
18 10, line 6) that as a backstop proposal, the PAPUC may wish to consider
19 allowing PCL&P to procure power on the spot market and reconcile
20 variances between revenues and costs.

21 A. PCL&P concurs with Mr. Knecht's proposed contingency plan in the event
22 that its proposed auction is unsuccessful. PCL&P recognizes that due to

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1 its relatively small size, location, and the volume risk inherent in the
2 proposed default service structure, and despite its best efforts, insufficient
3 interest may be shown by hedge sellers to conduct a successful auction. In
4 the event that PCL&P is unable to conduct a successful competitive
5 auction (e.g., two or fewer bidders, prices exceeding the pre-determined
6 ceiling), it proposes that customers be charged monthly for the actual cost
7 of energy used to supply their default service requirements, as acquired on
8 the spot markets operated by the NYISO, and that that charge be
9 reconcilable on a current basis. Although the prices under such service are
10 volatile, they also tend to be lower over the long-term than hedged prices,
11 since hedges include risk premiums. Such a procedure would have the
12 benefit of keeping both PCL&P and its customers whole.

13 Q. Please comment on the Recommendation No. 1 contained in the *Report on*
14 *Competitive Market Conditions Regarding the Pike County Light & Power*
15 *Company* issued June 1, 2006 by the Commission's Law Bureau ("Law
16 Bureau Report").

17 A. This recommendation provides that the Commission should explore the
18 integration of PCL&P's energy procurement after 2007 with either its New
19 York or New Jersey affiliates (i.e., O&R and RECO). While, as noted in
20 the testimony of Mr. Knecht (page 8, lines 17-18), such an approach has
21 both logistical and jurisdictional issues, PCL&P is proposing to integrate
22 its proposed auction with the hedging procurement efforts of Orange and
23 Rockland. PCL&P should benefit from the economies of scale inherent in
24 such an integrated procurement. That said, given the vagaries of market

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1 conditions, PCL&P plainly can make no guaranties, or provide any iron
2 clad assurances regarding the results of such an integrated procurement.
3 PCL&P will be discussing with interested parties the mechanics for such
4 an integrated auction. As noted above, however, the most critical factor to
5 implementing a successful integrated auction is the PAPUC's agreement
6 to the ceiling price approach.

7 Q. Please discuss the possible impact of Direct Energy Services, LLC
8 ("Direct") on any auction.

9 A. The quantity of energy and capacity hedged by PCL&P will be dependant
10 on whether Direct continues its aggregation program in 2008. In addition,
11 potential bidders' perception of the auction may vary depending on
12 whether Direct's aggregation program will continue or not. Accordingly,
13 PCL&P requests that the PAPUC require Direct to inform parties by
14 September 1, 2007 as to whether it will continue its aggregation program
15 in 2008.

16 Q. Do you agree with Ms. Brockway's contention (page 28, lines 11-13) that
17 because it is part of the NYISO, rather than PJM, PCL&P is at a
18 disadvantage when it comes to meeting the requirements of the
19 Pennsylvania Alternative Energy Portfolio Standards Act?

20 A. No. The Pennsylvania Alternative Energy Portfolio Standards Act will
21 require PCL&P, in its role as an electric distribution company ("EDC") to
22 acquire alternative energy credits in quantities equal to a percentage of its
23 total retail sales of electricity (as measured in MWh) to all retail electric

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1 customers for that reporting period. PCL&P's obligation to acquire
2 alternative energy credits will be reduced to the extent that other electric
3 generation suppliers ("EGS") such as Direct are providing commodity
4 service to retail electric customers. Even if PCL&P serves all the retail
5 access customers in its service territory, due to the small size of its service
6 territory, the total number of alternative energy credits that PCL&P would
7 have to acquire would be minimal. PCL&P expects that a market for
8 alternative energy credits will develop and that PCL&P will be able to
9 purchase any needed alternative energy credits from such market. This is
10 exactly what has happened in New Jersey. PCL&P's New Jersey affiliate,
11 RECO, has been able to purchase alternative energy credits required to
12 serve its Central and Western Divisions' loads at reasonable prices.

13 Q. Does this complete your testimony?

14 A. Yes, it does.



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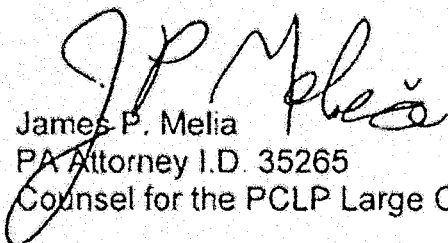
Re County of Pike, et al. v Pike County Light & Power Company
Docket Nos. C-20065942, et seq.

Dear Secretary McNulty.

Enclosed for filing please find an original and three copies of a Certificate of Service evidencing service of the PCLP Large Customer Group's responses to PCLP's Set V Interrogatories in this matter.

Copies of these responses have been served on the parties indicated on the enclosed Certificate of Service.

Very truly yours,


James P. Melia
PA Attorney I.D. 35265
Counsel for the PCLP Large Customer Group

JPM/cem
Enclosures

BTL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike, et al.

v.

Docket No. C-20065942, et seq.

Pike County Light & Power Company

CERTIFICATE OF SERVICE

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

Via First Class Mail

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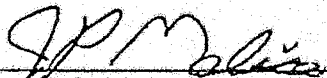
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Dated: December 19, 2006



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Re County of Pike, et al. v. Pike County Light & Power Company
Docket Nos. C-20065942, et seq.

Dear Secretary McNulty.

Enclosed for filing please find an original and three copies of the Response of the Large Customer Group to Motion to Strike of Pike County Light & Power Company in the above matter.

Parties have been served as per attached Certificate of Service.

Very truly yours,

James P. Melia
PA Attorney I.D. 35265
Counsel for the PCLP Large Customer Group

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cc: Service List (w/Enclosures)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike, et al.

v.

Docket No. C-20065942, et seq

Pike County Light & Power Company

ANSWER OF PCLP LARGE CUSTOMER GROUP TO
MOTION TO STRIKE THE TESTIMONY OF
OCA WITNESS NANCY BROCKWAY

I. INTRODUCTION

Pike County Light & Power Company ("PCLP" or "the Company") filed a Motion to Strike the testimony of OCA witness Nancy Brockway on December 7, 2006. PCLP alleges that the testimony is objectionable for a number of reasons including the following: (1) Ms. Brockway's qualifications as an expert, (2) relevancy and materiality of the testimony, (3) repetitious and duplicative nature of the testimony and (4) that the testimony constitutes improper hearsay. The PCLP Large Customer Group herein files its Answer in Opposition to the Motion to Strike ("Motion") and will demonstrate that the testimony is, in all respects, relevant, material, probative and fully admissible. The testimony, in all respects, fits within the traditional parameters of testimony offered in regulatory proceedings before state commissions. As such, the testimony of Ms. Brockway, introduced by the OCA, should be admitted subject to appropriate cross examination by the parties.

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II. THE LEGAL STANDARDS ADVANCED BY PCLP DO NOT CORRECTLY REFLECT THE STANDARDS APPLICABLE IN ADMINISTRATIVE PROCEEDINGS.

PCLP relies on the provisions of 52 Pa. Code § 5.401 which requires that, to be admissible, evidence must be relevant and material as well as not repetitious, cumulative or of limited probative value where outweighed by other factors. PCLP attempts to define Ms. Brockway's testimony as not being relevant and material basing its arguments on traditional "black letter" law which, upon closer examination, defines materiality and relevancy with regard to the stricter standards of rules of evidence applicable to civil trial proceedings. It is not subject to debate that the rules of evidence applicable to federal and civil courts should not be strictly construed in the case of administrative proceedings. The applicability of the rules of evidence have been recognized as being more flexible in their application to administrative proceedings given the need for efficient adjudication of issues that arise before administrative agencies. In his work Administrative Law Treatise, Volume No. II, § 103, Richard Peirce recognizes the traditional flexibility in applying rules of evidence in administrative proceedings where he notes that the Administrative Conference of the United States ("ASUC") recommended that administrative agencies and their hearing officers be given the discretion to weigh the admissibility of evidence utilizing the traditional standard that exclusion should only occur when the probative value is outweighed by other factors including potential for undue consumption of time. The ACUS Recommendations were subsequently adopted within the Administrative Procedure Act ("APA"). The APA also holds that agencies should not be required to use the federal rules of evidence but

should instead rely on the APA standard which gives hearing officers the discretion to weigh the evidence according to the foregoing standard.

It has been held in Pennsylvania Courts that hearing examiners enjoy wide latitude in governing the admissibility of evidence in administrative proceedings. Snyder v. State Ethics Commission, 686 A.2d 843 (1996). Under relaxed evidentiary rules in administrative proceedings, forms of hearsay may be admissible and may support findings of fact in certain circumstances. Guthrie v. W.C.A.B. (the Travelers' Club, Inc.), 854 A.2d 653 (2004). This flexible application of the rules of evidence, relating to administrative agencies, such as Department of Environmental Protection ("DEP"), give broad discretion in admitting or excluding evidence so that exclusion alone may not constitute a procedural defect. Leeward Construction, Inc. v. Commonwealth Department of Environmental Protection, 821 A.2d 145, appeal denied, 827 A.2d 431, 573 Pa. 706 (2003); News-Chronicle Company v. Pennsylvania Human Relations Commission, 672 A.2d 400 (1996).

The foregoing cases do not stand for the proposition that any type of evidence, no matter how unsupported or lacking foundation, may be admitted. Evidentiary standards in Commission proceedings normally apply with regard to such matters as laying the proper foundation, authentication of documents, and taking judicial notice of certain well-settled facts appearing in accepted publications and treatises. Hearsay evidence is, however, not subject to the same strict standards of civil courts because of the unique nature of regulatory proceedings. Of necessity, these regulatory proceedings do involve witnesses relying upon testimony provided by subordinates or referencing testimony given by other persons who are part of the parties' direct case.

The need for relaxation of strict rules of evidence on hearsay is that, absent this flexible standard, rate proceedings would never reach a logical conclusion as it would be necessary to present each individual for cross examination who had input into the preparation of the testimony. With regard to the standards of relevancy, Pennsylvania courts have held that administrative agencies are not bound by the technical rules of evidence in agency hearings. If the evidence is relevant to issues before the agency and of reasonable probative value, the agency may receive it. Murphy v. Commonwealth Department of Public Welfare, Whitehaven Center, 480 A.2d 382, 84 Pa. Commonwealth Ct. 23 (1984). The Commission has adopted the standard that all relevant evidence of reasonably probative value may be received. Re: Phila. Suburban Water Co., 49 Pa. PUC 354 (1975).

PCLP Large Customer Group contends that the foregoing standards should be applied in deciding the instant Motion and not necessarily the stricter standards relied upon by PCLP in its Motion.

III. THE TESTIMONY OFFERED BY MS. BROCKWAY IS BOTH RELEVANT AND MATERIAL TO THE ISSUES IN THIS PROCEEDING.

PCLP initially argues that Ms. Brockway, because she is an attorney and a former regulator, is not in a position to render expert testimony on the issues in this proceeding. However, Ms. Brockway's professional record indicates otherwise. As supported by the qualifications put forth by Ms. Brockway in her direct testimony, she has over 24 years of experience in the regulatory industry serving as Staff Counsel to public utility commissioners in Massachusetts, General Counsel to the Massachusetts Department of Public Utilities and as a Commissioner on the New Hampshire Public

Utilities Commission. For two periods of time (1991 – 1998 and 2003 – the present), Ms. Brockway has testified in approximately 40 proceedings in 11 states and Canadian provinces. Ms. Brockway's testifying experience extends across electric, gas, water and telecommunications arenas. The subject matters of her testimony are largely policy in nature and cover such broad areas as demand side management, rate setting for low-income customers, universal service in the telecommunications industry, water district rate design and cost of service, flexible ratemaking, low-income discount rates, rate rebalancing in the telecommunications industry and telephone service penetration. In later phases of her career, Ms. Brockway has testified in proceedings relating to electric and gas restructuring, economic development rates, proposed mergers and the impacts of same on ratepayers. Ms. Brockway's clients have largely been state consumer advocates, senior citizen groups, legal services organizations and labor unions. It is noteworthy that Ms. Brockway has prepared testimony for filing in all of the major electric restructuring cases in Pennsylvania during the year 1997. Ms. Brockway has provided approximately 11 pieces of prepared testimony to PCPL counsel during the discovery process.

Additionally, it is not uncommon for former public utility commissioners to enter into consulting services as expert witnesses on behalf of clients in rate proceedings. Former Pennsylvania Public Utility Commission Chairman John Quain has, since leaving government service, appeared as a witness in regulatory proceedings in a number of jurisdictions. Another former Wisconsin utility commissioner, Branko Terzic was formerly employed by AUS Consultants, a well-known utility consulting firm, and offered testimony in a number of jurisdictions. To say that Ms. Brockway is not an

"expert" because she only has a law degree and has spent time as a regulator ignores the unique exposure which a state utility commissioner has to the many issues which come before them and the unique policy perspective which state commissioners can bring to the regulatory arena. As such, PCLP's arguments that Ms. Brockway's testimony does not constitute expert testimony should be rejected.

Ms. Brockway's testimony is also material and relevant since the purpose of this testimony was to provide the Commission guidance, from a policy perspective, on the following issues:

1. The impacts on the community of Milford of the high electric rates and the poor service provided by PCLP.
2. The deteriorating relationship between PCLP and its customers.
3. A review of options for addressing PCLP's customers' complaints of high rates and poor service

The foregoing issues indeed are relevant and material to this proceeding. These issues were raised at the Commission-convened special hearing on February 27, 2006 held at Delaware Valley High School. It was also the purpose for which the Commission instituted its investigation into the PCLP rate situation that gave rise to the Commission issued-report which, among other things, identified these areas for further investigation.

Furthermore, there has been significant testimony given in this proceeding at the October 4, 2006 public input hearing and at the November 6, 2006 evidentiary hearing in Scranton addressing the impacts of both high rates and poor service. As part of its burden of proof, Pike County is required to demonstrate, by a preponderance of the evidence, that the allegations contained in this complaint are supported by the record.

As part of meeting that burden, the OCA has engaged a consultant with lengthy and significant experience in representing consumers (including low-income, senior citizens, etc.) in regulatory proceedings. Ms. Brockway's testimony is unique in that it brings together aspects of both the technical testimony offered by OCA witnesses Kahal and Lanzalotta as well as the public input testimony for purposes of arriving at her recommendations. Under the standards for relevancy and materiality cited previously, it is unquestioned that the testimony of Ms. Brockway is both relevant and material and should be introduced subject to cross examination.

IV. MS. BROCKWAY'S TESTIMONY IS NEITHER REPETITIOUS NOR CUMULATIVE.

PCLP makes the broad statement that Ms. Brockway's testimony is repetitious and cumulative and should not be admitted because it repeats testimony given by other OCA witnesses or by public input witnesses. Suffice it to say that the purpose of Ms. Brockway's testimony is not the same as the testimony offered by OCA or public input witnesses. OCA's technical witnesses were engaged to address technical issues relating to: (i) deteriorating service within the PCLP service territory and (ii) options for providing service via transmission from other sources. Public input testimony provided "first person" evidence of the impact of higher rates and poor service on the residential and small business community. Ms. Brockway's testimony is not repetitive in that she does not simply repeat the testimony but relies upon it as a foundation and basis for her policy testimony.

Reliance by witnesses on testimony presented by other witnesses is not uncommon in regulatory proceedings. In fact, it is a key "linch pin" in the presentation of

rate cases by public utilities. In most rate cases, testimony offered by various witnesses is interrelated and cross references to both testimony and exhibits provided by other witnesses routinely occur. Indeed, a public utility rate filing will often have, as a lead off witness, either the Chief Executive Officer or managers and directors of various departments who utilize information prepared by both their subordinates and cross reference information relayed by other witnesses. In such a context, this testimony, in no way, can be considered repetitive or cumulative even though it may "cover the same ground" because the testimony is being referenced for foundational purposes.

If Ms. Brockway had simply launched into a recitation of conclusions without any indication of what she had reviewed, listened to or analyzed, the testimony would surely be stricken as lacking proper foundation. Instead, Ms. Brockway laid out, in a methodical fashion, the basis on which her conclusions were reached including reliance on OCA witness analysis, public input testimony and a review of pleadings and documents filed thus far. On that basis, Ms. Brockway's testimony cannot be stricken as repetitious or cumulative but as probative and valuable to both the ALJ and the Commission in arriving at a decision in this proceeding.

PCLP alleges that the testimony reads like a brief and as such does not constitute testimony or evidence. An expert policy witness's reliance on prior Commission procedural activity in a case is not improper or uncommon in regulatory proceedings. Furthermore, Ms. Brockway's reliance on other cases is not for the purpose of advancing legal arguments but for purposes of demonstrating what other commissions have done in a practical, factual context in similar situations where the results of electric restructuring have led to unreasonably high rates for customers. As

such, Ms. Brockway's testimony is fully consistent with the types of testimony normally admitted in regulatory utility proceedings.

V. MS. BROCKWAY'S TESTIMONY IS NOT PREJUDICIAL NOR DOES IT LEAD TO CONFUSION, WASTE AND DELAY.

Perhaps the weakest argument raised by PCLP is that Ms. Brockway's testimony should be excluded because it has the potential for prejudice, confusion, waste and delay. Once again, PCLP relies on the stricter rules of evidence applicable to civil trial proceedings and ignores the more liberal and flexible approach to admission of testimony in administrative proceedings. The foregoing standard is appropriate in certain circumstances. Those circumstances do not exist in this proceeding. Ms. Brockway's testimony is indeed probative because it brings together both the technical findings of Mr. Lanzalotta and Mr. Kahal as well as the testimony offered by numerous residential and business customers at the public input hearing. Ms. Brockway's long experience as a regulatory consultant fully qualifies her to assess the validity of findings of both the OCA witnesses and the customer viewpoints expressed at the public input process. Ms. Brockway's testimony does not, in large measure, repeat or cover the same ground as was presented by other witnesses but uses that evidence selectively to weave her overall policy conclusions. Ms. Brockway's citations to the record of the public input hearing were foundational in nature and certainly do not confuse the record but rather amplifies it. It would appear, by this Motion, that PCLP would prefer that the critical nature of the testimony, presented at the public input hearing, not be highlighted but rather discounted and ignored.

VI. MS. BROCKWAY'S TESTIMONY DOES NOT CONSTITUTE HEARSAY.

Suffice it to say that Ms. Brockway's testimony does not constitute hearsay because Ms. Brockway is relying upon testimony given by other sworn witnesses at the public input hearing and on OCA witnesses who themselves will be sworn and subject to cross examination. As Ms. Brockway's testimony is not hearsay, this particular basis for the Motion is without merit. Even if Ms. Brockway's testimony is considered hearsay, it is admissible for the reasons stated above.

VII. RESPONSE TO MOTION TO STRIKE OF SPECIFIC PORTIONS OF MS. BROCKWAY'S TESTIMONY.

PCLP Large Customer Group will respond sequentially to each of the sections of Ms Brockway's testimony that are subject to the Motion. Where necessary, reference will be made back to the prior arguments raised earlier in this pleading.

P. 2, lines 20-22. RESPONSE:

Witness testimony with regard to "economic disadvantage" is directly based on her review of OCA witness testimony, discovery responses of PCLP and attendance at public input hearing. Witness Brockway does not need to be an economist in order to render the foregoing testimony. Cumulative expertise as a former regulator and her prior testimonial experience supports admission of this testimony.

P. 2, lines 22-24. RESPONSE:

The witness's prior experience as a state regulator and a witness in other proceedings in which system rate design and power marketing were involved qualifies her to offer the testimony herein.

P. 2, lines 26-28. RESPONSE:

Mr. Brockway's reference to Ms. Kahal's testimony is foundational in nature. It is not hearsay since Mr. Kahal will testify. It is not repetitious as it forms the basis for her other policy recommendations.

P. 3, lines 1-3. RESPONSE:

The testimony is appropriate for the same reasons stated previously in the prior response.

P. 3, lines 3-9. RESPONSE:

Ms. Brockway's testimony is appropriate based on her presence at the public input hearing wherein all witnesses were available for cross examination. References to absence of company offices, lack of public confidence in PCLP and impact of the rate increases is all proper policy testimony. The public input testimony is thus foundational to the observation she makes regarding the impact of these rate increases on the PCLP service area.

P. 3, lines 16-17. RESPONSE:

Witness testimony not hearsay as other OCA witnesses are available for cross examination. The witness is permitted to draw upon other OCA witness testimony and her own independent discussions with Sussex Rural Electric and general knowledge of surrounding utilities to make the stated conclusion.

P. 3, lines 17-19. RESPONSE:

This observation is also admissible recognizing the cost impacts resulting from an interconnection scenario which is appropriately included within her policy testimony.

P. 3, line 20 to p. 4, line 6. RESPONSE:

Witness Brockway's testimony is proper and within her area of expertise as an experienced witness and former regulator. Further, references to the testimonies of OCA witnesses Kolling and Kahal is proper where those witnesses are available for cross examination. Further, the testimony is not prejudicial and repetitive as it forms a foundation for her policy conclusions contained in the testimony.

P. 4, line 7. RESPONSE:

Same response as previously noted in prior response.

P. 4, lines 15-21. RESPONSE:

Once again, this testimony constitutes appropriate foundational references to OCA witnesses and Large Customer Group ("LCG") witness Forbes all of whom have or will be cross examined. Also appropriate are references to the transcript of the February 27, 2006 Commission hearing and pleadings filed by Pike County. Witness Brockway does not need any additional expertise to rely on the foregoing written testimony, transcripts or oral discussions. She is laying out the appropriate foundation for the policy decisions which she renders in her testimony.

P. 4, line 22 to p. 5, lines 1-6. RESPONSE:

Witness Brockway is referencing the foundation for her policy recommendations regarding the appropriateness of the sale of PCLP facilities to Sussex Rural Electric. Witness Kolling will be available for cross examination. Further, witness Brockway's testimony on these issues would be fully excluded if she did not give the foundation for her conclusions.

P. 5, line 7-17. RESPONSE:

Ms Brockway is fully qualified to render the statements contained herein based on her prior many years of experience as an expert witness and her prior experience as a state commissioner. A former state commissioner is qualified to address the issue of customer attitudes. Further, customer attitudes regarding price increases and poor service do not differ significantly from one jurisdiction to another.

P. 5, lines 19 to p. 6, line 11. RESPONSE:

Witness testimony is fully consistent with the purposes for which it is presented to demonstrate among other things the relationship between PCLP and its customers based on long years of poor quality coupled with extremely high rate increases. This is the background analysis which forms the basis for her testimony that the relationship between PCLP and its customers is irretrievably broken. It is also appropriate for the witness to rely on the Commission Staff Report and to consider the various options laid out by that Report in light of what was revealed at the hearing. As stated previously, Ms Brockway has ample expertise to render this testimony and it would be inappropriate for her not to provide the basis for her policy recommendations.

P. 7, lines 12-21. RESPONSE:

This witness testimony is not prejudicial, repetitive or prejudicial. First, it is not hearsay because all of these witnesses were available to be cross examined. Second, it is not repetitive but merely summarizes the attitudes expressed by residents at the public input hearing and serves as a proper and necessary foundation for her policy recommendations and conclusions.

P. 7, lines 22 to p. 10, line 5. RESPONSE:

This testimony recounts, in a chronological timeframe, the procedural steps that underlay the filing of the Pike County complaint and the initiation of this proceeding. It was necessary for Ms. Brockway to review prior PCLP rate filings and rate orders dating back to 1998, including the restructuring settlement and POLR rate order, as well as the details surrounding the financial swap auction in order for her to come to the policy conclusions which she reaches. If the witness had simply referenced these proceedings by name without analyzing how they related to her conclusions, her testimony would make no sense and would be excludable for lack of foundation.

P. 10, lines 19-21. RESPONSE:

This is proper reliance on public input testimony to demonstrate her conclusions regarding the poor relationship between PCLP and its customers.

P. 10, line 23 to p. 11, line 2. RESPONSE:

This constitutes part of the procedural history in this matter which is long and involved and which the witness was required to review to formulate her expert testimony and policy conclusions.

P. 11, lines 4-15. RESPONSE:

The response to this part of the Motion to Strike is identical to the response given previously.

P. 12, lines 8-9. RESPONSE:

The witness is entitled to present the foundation on which her policy conclusions are based with reference to the impact of high rate increases on small business owners. These public witnesses were available for cross examination so it is not hearsay.

P. 12, lines 14-24. RESPONSE:

Witness Brockway is fully entitled to render an opinion with regard to rate shock based on her prior experience as a utility rate regulator. It should be noted that the witness was also a regulator during periods in the 1980's when "rate shock" was a major issue before most state commissions.

P. 13, lines 1-24 to p. 14, line 2. RESPONSE:

The witness is entitled to present the foundation for her conclusions regarding the detrimental impact on the PCLP service area in the Milford community. As a former regulator and expert witness advising low-income customers and state consumer advocates, the witness should be required to be familiar with public input and complainant testimony whether in public hearings or filed on a documentary basis. She certainly has adequate experience, based on her former testimony, to address the issue of the rate increase on low-income residential customers. Also, all public input testimony was subject to cross examination.

P. 14, line 7-15. RESPONSE:

Ms. Brockway does not need to be an economist in order to discuss the impact of significant rate increases on the major industry of the Milford area which is tourism. As a former regulator as well as an expert witness who testifies to the impact of rate increases on customers, she is fully competent to testify as to the economic impacts of this rate increase. She also had the opportunity to discuss these issues with other OCA witnesses and to hear testimony directly from residential customers.

P. 16, lines 15-19. RESPONSE:

As explained previously, witness Brockway is entitled to rely on the testimony of OCA witnesses as a basis for the conclusions that she draws. Her former role as a regulator would qualify her adequately to testify with regard to Pike's generation rates and the impact of the auction on customers.

P. 16, line 23 to p. 17, line 8. RESPONSE:

The witness is entitled to rely upon public input testimony which was subject to cross examination in order to bolster her policy conclusions regarding the impact of higher rates on PCLP customers. It is not repetitive for the witness to reference testimony that she has reviewed and thus forms the foundation of her policy conclusions. All of this testimony was subject to cross examination.

P. 17, line 11 to p. 18, line 3. RESPONSE:

The response to the Motion to Strike on this testimony is identical to the response given in the previous response.

P. 18, line 12. RESPONSE:

This testimony is based on her attendance at the public input hearing and review of the testimony from that hearing. The witness is fully qualified to render testimony with regard to reliability and such testimony is not hearsay.

P. 18, line 18 to p. 19, line 2. RESPONSE:

Once again, this testimony references the content of customer surveys to which the witness, as a former regulator and expert witness, is entitled to testify. One of the witness's main subjects of testimony has been the impact of higher rates on customers especially low-income customers. She has also testified with regard to service related

issues. She is entitled to provide this testimony to contradict information contained in PCLP data responses which indicate a low level of customer complaints.

P. 19, lines 6-11. RESPONSE:

This testimony is an appropriate foundation based on her attendance at the public input hearing and review of transcripts. It supports one of her conclusions with regard to utility customer relations. Customers were available for cross examination at the public input hearing.

P. 19, lines 17-22. RESPONSE:

This testimony is appropriate as foundational testimony based on a review of a prior Commission decision which has some precedential effect. She is referencing the case, not for the legal basis on which the decision was rendered, but for the factual underpinnings of the decision which bear some relevance to this case. It is also offered as a foundational basis for her policy conclusions.

P. 19, line 26 to p. 20, line 22. RESPONSE:

The witness is referencing her reliance on the transcript of the February 27, 2006 fact finding hearing and the October 4, 2006 public input hearing with regard to the impact of higher rates and poor service on the customer base. This is proper foundational testimony which forms the basis for her policy conclusions. If she had not referenced this testimony in some limited detail, her conclusions would have been strikable based on lack of foundation. It is also important to note that this testimony does not qualify as hearsay because the witnesses at the October 4, 2006 hearing were available for cross examination.

P. 21, lines 1-9. RESPONSE:

The response to this portion of the Motion to Strike is identical to the response given in the immediately previous response.

P. 21, line 15 to p. 22, line 2. RESPONSE:

The response to this portion of the Motion to Strike is identical to the response given in the two prior responses. It is also significant that Ms. Brockway testifies to the extraordinarily large number of customers who have testified as a percentage of the total customer base. She analogizes this large number to a similar number for PPL Electric Utilities, a much larger utility. The impact of this testimony is simply to underscore the level of dissatisfaction among PCLP customers.

P. 22, lines 6-12. RESPONSE:

The response to this portion of the Motion to Strike incorporates the response given in the responses to Motion to Strike, p. 19, line 26 to p. 20, line 22.

P. 22, lines 15-23. RESPONSE:

The response to this portion of the Motion to Strike incorporates the response given in the responses to Motion to Strike, p. 19, line 26 to p. 20, line 22.

P. 23, lines 1-11. RESPONSE:

The response to this portion of the Motion to Strike incorporates in its entirety the response given in the responses to Motion to Strike, p. 19, line 26 to p. 20, line 22.

P. 23, line 19 to p. 24, line 26. RESPONSE:

Witness Brockway's testimony with regard to individual customer comments at the public input hearing is in the nature of foundation for the policy recommendations she makes with regard to the declining relationship between PCLP and its customers. It

is entirely appropriate to highlight some of this testimony in order to underscore the level of concern raised by the customers. Because of the poignant nature of some of this testimony, it was important for this issue to be aired as part of Ms. Brockway's policy recommendations. Also, it should be noted that PCLP has not, in any way, rebutted any of the allegations made in this testimony in its direct case.

P. 24, lines 29-31. RESPONSE:

The response to this portion of the Motion to Strike is identical to the response in the immediately prior section.

P. 24, lines 35-38. RESPONSE:

The witness merely recites one of the Commission's recommendations as contained in its Staff Report. The witness is competent to testify on this matter based on her prior regulatory experience and the fact that she has reviewed all of the relevant documents in this proceeding. It is not repetitive to the extent that it is utilized to provide foundation for her policy conclusions.

P. 25, lines 4-7. RESPONSE:

All of these witnesses are available for cross examination. Witness Brockway is competent to testify on these expert analyses as foundations for her policy recommendations.

P. 25, lines 13-20. RESPONSE:

The immediately prior response is incorporated herein by reference.

P. 25, line 22 to p. 26, line 14. RESPONSE:

The testimony is not hearsay as OCA witnesses will be available for cross examination. It is not repetitive in that it is merely relying on OCA witness testimony to

support policy statements. Further, witness Brockway is entitled to rely on the Law Bureau Report in support of her policy recommendations. The witness has adequate expertise to give this testimony and for her to not have identified the basis for her policy recommendations would have opened the testimony to a Motion to Strike.

P. 26, line 24 to p. 27, line 3. RESPONSE:

The response to this portion of the Motion is identical to the immediately prior response.

P. 27, lines 7-12. RESPONSE:

The Large Customer Group incorporates in its entirety the prior response as its response to Motion to Strike, p. 25, line 22 to p. 26, line 14.

P. 27, line 14 to p. 28, line 2. RESPONSE:

The testimony is not hearsay as all other OCA and LCG witnesses were or will be available for cross examination. Witness Brockway is entitled to reference the information in this portion of the testimony as foundation for her policy conclusions. A witness's prior experience as a regulator and expert witness is sufficient to render her competent to testify on the subject matter.

P. 28, lines 6-24. RESPONSE:

The response to this portion of the Motion to Strike is identical to the immediately prior response and is incorporated by reference.

P. 29, line 13 to p. 30, line 29. RESPONSE:

This portion of the testimony provides a recitation of the fact pattern in the prior Commission case involving the Big Run Telephone Company. Ms. Brockway's description of the case is incorporated as part of the basis for her policy

recommendations that PCLP should consider selling the system to Sussex Rural Electric. The witness is a regulatory attorney as well as a former state commission regulator and an experienced witness. The witness is competent to testify to prior legal precedent which forms the basis for the policy recommendations she makes in her testimony as a basis for establishing a parallel with the situations existing in the PCLP service area.

P. 31, lines 1-24; p. 32, lines 1-24; p. 33, lines 1-22; p. 34, lines 1-24. RESPONSE:

The testimony contained in these four pages of testimony by Ms. Brockway formed part of the foundation for her policy recommendations regarding the potential sale of PCLP facilities to Sussex Rural Electric. The witness as a regulatory attorney, former state utility commissioner and expert witness is entitled to provide testimony which references regulatory decisions which would provide precedent for this case. Ms. Brockway's policy testimony requires references to other examples in regulatory decisions. Further, the Commission should be open to receive as much evidence as necessary in order to arrive at a correct decision in this matter. It is correct that these cases will be cited in OCA and LCG briefs but they will be cited in much greater detail with greater discussion of the legal application of these decisions.

P. 35, lines 14-26. RESPONSE:

The testimony given by the witness must be put in its proper policy context. She is laying out the various scenarios if the completion of the sale to Sussex Rural Electric takes place at the end of the Direct Energy Aggregation Contract. Based on her review of the OCA witness testimony, the public input testimony and the testimony from the February 2006 fact finding hearing, as well as her discussions with Sussex Rural

Electric directly, it is proper for the witness to provide the Commission with the parameters available to the customers should the Sussex option be pursued or not pursued. This goes to the very crux of the issue which the Commission directed be examined in the Staff Report. It is especially true with regard to the "customer fatigue" issue which is a very real factor in this proceeding.

P. 36, lines 3-8. RESPONSE:

The witness is entitled to make a recommendation based upon the amount of and relevance of the information reviewed. As a policy witness with significant experience as regulatory attorney, utility regulator and expert witness, especially with regard to rate issues impacting low-income customers, the witness is fully entitled to render the conclusions she reaches. She will be available for cross examination. The conclusions can be given the weight to which the testimony deserves. It should also be noted that PCLP has received all prior pieces of testimony prepared by Ms. Brockway in other proceedings. To the extent that there appears to be deficiencies in the witness's expertise, they can be explored properly on cross examination.

VIII. CONCLUSION

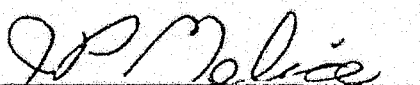
This Motion to Strike represents an attempt by PCLP to remove from the record in this proceeding very valuable policy testimony which will be important and critical to the Commission in addressing the issues facing the PCLP service area. The testimony which Ms. Brockway offers is fully and thoroughly grounded in testimony of other OCA witnesses, review and analysis of prior pleadings in the case, review and analysis of transcripts in the case and direct exposure to the PCLP system through visits to the area. Ms. Brockway is being presented as a policy witness and the testimony which

she is rendering is not as empirical or analytically detailed as is the testimony offered by OCA witnesses Kahal and Lanzalotta. Ms. Brockway has a long history of testifying on these very issues through her appearance in approximately 40 proceedings in 11 states and Canadian providences. To strike all or any portion of this testimony would deprive the Commission of necessary and important information which they will need to address this critical ratemaking situation. The LCG requests that the ALJ consider the less strict standards regarding the rules of evidence for purposes of admitting as much of this testimony as is deemed appropriate. It should also be noted that the witness's expertise can be appropriately tested during cross examination in these proceedings.

WHEREFORE, for all of the foregoing reasons, the PCLP Large Customer Group respectfully requests that the Motion to Strike filed by PCLP be denied.

Respectfully submitted,

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Counsel for the PCLP Large
Customer Group

Dated: December 20, 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike, et al

v

Pike County Light & Power Company

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Docket No. C-20065942, et seq.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served true and correct copies 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 participant).

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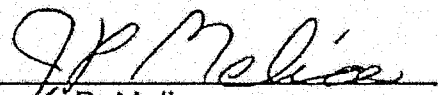
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Dated: December 20, 2006

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DOCUMENT FOLDER

December 21, 2006

BY HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

Re: **County of Pike v. Pike County Light & Power Company**
Docket Nos.: C-20065942

Dear Mr. McNulty:

Enclosed for filing please find a Certificate of Service evidencing that the Objections of Pike County Light & Power Company ("PCL&P") to OCA Interrogatories - Set X was served upon all parties of record this day.

Please call if you have any questions.

Sincerely,



Edward G. Lanza
Counsel for PCL&P

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

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BALTIMORE CHESTERBROOK HARRISBURG NEWARK PHILADELPHIA PRINCETON WASHINGTON WILMINGTON

A DELAWARE LIMITED LIABILITY PARTNERSHIP

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

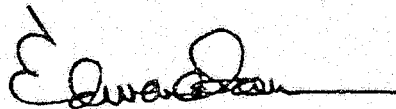
I hereby certify that I have this day served a true copy of the foregoing document upon on the participants, listed below, in accordance with the requirements of Section 1.54 of the PUC's Regulations, 52 Pa. Code § 1.54 (relating to service by a participant).

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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 Office of Consumer Advocate's Interrogatories Set I and III, 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:

Dated this 21st day of December 2006.

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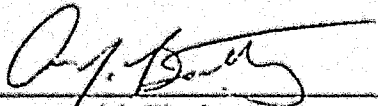
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COMMONWEALTH OF PENNSYLVANIA



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December 22, 2006

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Harrisburg, PA 17105-3265

ORIGINAL

RE: County of Pike
v.
Pike County Light & Power Company
Docket No. ~~C-200065942, et al.~~
C-20065942

Dear Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the Answer of the Office Of Consumer Advocate to the Pike County Light & Power Company's Motion to Strike the Testimony of OCA Witness Nancy Brockway, in the above-referenced proceeding.

Copies have been served on the parties of record as indicated on the enclosed Certificate of Service.

Sincerely,

Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625

**DOCUMENT
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Enclosures

cc: Honorable Ember S. Jandebour
Certificate of Service

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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

ORIGINAL

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE TO
THE PIKE COUNTY LIGHT & POWER COMPANY'S
MOTION TO STRIKE THE TESTIMONY OF
OCA WITNESS NANCY BROCKWAY

Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission's (Commission) rules regarding Motions, 52 Pa. Code § 5.103, the Office of Consumer Advocate (OCA) provides the following Answer to the Pike County Light & Power Company (PCL&P or Company) Motion to Strike OCA Witness Nancy Brockway's Filed Testimony, OCA Statement

3. For the reasons set forth below, the Company's Motion should be denied.

1. INTRODUCTION

On December 7, 2006, PCL&P filed a Motion to Strike the Testimony of Nancy Brockway. PCL&P's primary argument is that OCA witness Brockway is not qualified to offer expert testimony in this proceeding. Motion at 2. The Company's Motion begins:

[PCL&P] hereby moves to strike the direct testimony of Nancy Brockway in the above-captioned proceeding. For the reasons expressed below, that testimony is objectionable because Ms. Brockway has no special credentials that would qualify her as an expert.

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Motion at 1. The Company asks for OCA witness Brockway's testimony, which addresses regulatory policy matters related to the circumstances in Pike County, to be stricken because, PCL&P claims, a former Public Utility Commissioner, with extensive experience in the utility field, cannot possess "a pretension to special knowledge" of the multitude of issues involved in the utility industry. Motion at 3. From this claim that Ms. Brockway is not an expert witness, the Company proceeds to argue that her testimony is not relevant or material (Motion at 3-4)¹, is prejudicial and a waste of time (Motion at 6)², and is improper hearsay (Motion at 6)³. The Company also argues that the testimony should be stricken because it is repetitious and cumulative. Motion at 5.

The Company's argument that Ms. Brockway is not an expert in the area of utility regulation and public policy is totally without merit. Ms. Brockway has been recognized by the Pennsylvania Public Utility Commission as an expert on numerous occasions. In addition, Ms. Brockway has testified as an expert before the state utility commissions of New Jersey, Ohio, Massachusetts, Texas, Delaware, New Hampshire, Kentucky, Rhode Island and Maine. Exhibit NB-1, attached to Ms. Brockway's testimony, provides a list of states in which Ms. Brockway has provided expert testimony.

Ms. Brockway detailed her vast work experience in the utility field in her testimony, as follows:

I have been working in the field of utility rates, service and regulation since the mid-1970's. Between 1983 and 1991, I served successively on the staff of two public utility commissioners,

¹ The Company argues that experts, not lawyers, testify and that Ms. Brockway has no expertise, and therefore her testimony is not relevant.

² Here, the Company argues that Ms. Brockway is offering "inexpert speculation" and therefore adding confusing, prejudicial testimony to the record.

³ The Company claims that Ms. Brockway is offering hearsay, which should not be allowed because she is not an expert.

Maine and Massachusetts. I was General Counsel of the Massachusetts Department of Public Utilities from 1989 to 1991. I was appointed to the New Hampshire Public Utilities Commission in 1998, and served five years as a Commissioner, during the introduction of retail and wholesale competition in the area. I had significant responsibilities within the National Association of Regulatory Utility Commissioners (NARUC), the New England Conference of Public Utility Commissioners, and regional and national organizations concerned with the development of retail and wholesale electricity markets.

I have also spent over ten years as a consultant on energy and utility matters, representing consumers, low-income customers, utility commissions, consumer advocates, a union and a utility, on a wide variety of matters concerned with rates, restructuring, customer service, merger policy, and reliability. I have presented testimony in 15 jurisdictions, on 39 occasions.

Before becoming a regulator and then consultant, I represented low-income, student and elderly consumers for nine years in a variety of legal services settings.

In my 30 plus years of experience, I have attended countless public hearings, and participated in hundreds of utility regulatory proceedings.

OCA St. 3 at 1-2. The OCA submits that Ms. Brockway is highly qualified to present testimony regarding the regulatory policy options faced by this Commission, and to provide her expert opinion as to what outcomes will bring the most viable relief to PCL&P's customers.

The gravamen of PCL&P's argument is that Ms. Brockway's 23 years of experience in the field of utility regulation, including over 12 years as an expert witness on customer service and rate issues, and 5 years as a Commissioner of a Public Utility Commission, does not provide sufficient experience to render expert opinion on policy matters related to regulatory issues. As detailed herein, Ms. Brockway is eminently qualified. The Company also argues that such expert testimony is not relevant or material. Taken to its logical conclusion,

PCL&P's position would render policy testimony obsolete.⁴ This reasoning would limit testimony in Commission proceedings to only the most technical, factual testimony. As the Commission and ALJ are aware, expert testimony in Commission proceedings covers a wide array of topics beyond facts, including policy options that may be available to the Commission in various circumstances.

The basis of such expert policy testimony is an understanding of how the "facts on the ground" impact different stakeholders in the industry and how policies can be implemented to achieve a certain result. There is nothing improper about such testimony. Expert policy testimony in no way usurps the Commission's ultimate decision making authority but provides information and expert opinion to the Commission about the available options and the potential impacts of various outcomes.

PCL&P mistakenly equates the submission of expert policy testimony with "lecturing" the Pennsylvania Commission on how it does its job. Motion at 4. There is no basis to make this incredible leap. Far from being lectured, the Commission benefits greatly by having a full and complete record that reflects policy options, as well as economic, financial and engineering issues evaluated and explained by experts, such as Ms. Brockway, who have a unique vantage point on utility issues. Indeed, the submission of policy testimony is commonplace in practice before the Commission and to suggest that the Commission is incapable of reaching its own decision because of policy testimony is simply incorrect.

⁴ PCL&P argues that it is inappropriate for expert witnesses to testify as to the ultimate result from this proceeding, i.e., provide policy recommendations. However, the Pennsylvania Rules of Evidence, Rule 704, and caselaw interpreting that rule, clearly allow expert witnesses to provide their opinion on the ultimate result. See Commonwealth v. Daniels, 480 Pa. 340, 390 A.2d 172 (1978). For example, the practice of utility chief executives to provide a summary piece of testimony explaining why that utility should receive its full request (an "ultimate" result) is commonplace in Pennsylvania utility practice.

Importantly, OCA witness Brockway's testimony addresses relevant and material issues regarding the relationship between PCL&P customers and PCL&P. Ms. Brockway's testimony explores the options that have been available to Public Utility Commissions when faced with similar circumstances to those existing in PCL&P's service territory. Ms. Brockway assesses the merit of the options that are currently available to resolve the issues faced by PCL&P's customers. Based on these considerations, Ms. Brockway offers her recommendation regarding the best policy options. Additionally, contrary to the Company's claims, Ms. Brockway's testimony is not repetitious, prejudicial, or a waste of time. While Ms. Brockway discusses testimony, facts, and other commission decisions upon which she relies in forming her opinions, such testimony establishes the proper foundation for Ms. Brockway's opinions, conclusions and recommendations. There is nothing repetitious, prejudicial, or wasteful about setting forth the foundation of the testimony. Indeed, it would be far more wasteful to omit such foundation and trigger extensive discovery or cross-examination about the basis of the testimony.

The OCA submits that Ms. Brockway is an expert witness, qualified to offer the relevant and material testimony contained in OCA Statement 3 in this proceeding. Ms. Brockway's testimony provides the thorough background and foundational information necessary to give her recommendations proper context. Ms. Brockway's testimony is proper in all respects and should be admitted into the record.

II. MS. BROCKWAY MEETS THE STANDARD FOR QUALIFICATION AS AN EXPERT WITNESS BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The primary argument advanced by PCL&P is that Ms. Brockway is not an expert. The Company cites the case of Miller v. Brass Rail Tavern, 541 Pa. 474 (Pa. 1995)(Miller), as support for the standard that is to be applied to the admission of Ms.

Brockway's testimony. The well-established standard applied in Miller for the qualification of an expert in Pennsylvania's courts is that a person qualifies as an expert witness if, through education, occupation or practical experience, the witness has a reasonable pretension to specialized knowledge on the matter at issue. Miller, 541 Pa. 474 at 480.

Ms. Brockway clearly meets the Miller standard for classification as an expert witness. Ms. Brockway served as a Commissioner on the New Hampshire Public Service Commission for five years, during which time she gained specific expertise in analyzing economic and engineering data presented to the Commission and incorporating that data into policy decisions. OCA witness Brockway also served on the staff of two public utility commissions in both Maine and Massachusetts providing review of technical information and advice. Ms. Brockway served as General Counsel of the Massachusetts Department of Public Utilities from 1989 to 1991. In addition to her work on state utility commissions, Ms. Brockway has extensive experience as a consultant testifying on behalf of low-income customers, utility commissions, consumer advocates, a union, and a utility, on rate, restructuring, customer service, reliability, and merger issues. Ms. Brockway has a broad knowledge of reasonable, and unreasonable, utility service. Ms. Brockway has come to her conclusions, as presented in OCA Statement 3, based on her specialized knowledge of the utility industry.

As can be seen, based on Miller, Ms. Brockway is clearly qualified to testify on the issues. It should be noted, however, that as an administrative body, the Pennsylvania Public Utility Commission has applied an even broader standard for permitting expert testimony. The Commission has laid out the standard for the admission of expert testimony as follows:

In the context of an administrative hearing, and especially where hearings are conducted by examiners rather than by the Commissioners themselves, the better practice is to admit the disputed testimony so as to permit the full Commission to assess

its significance. Although the PUC is not bound by the Administrative Agency Law, the requirement set forth at Section 32 provides a guideline for all quasi-judicial bodies:

“Agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonable probative value may be received. Reasonable examination and cross-examination shall be permitted.”

Pennsylvania courts have held that the P.U.C., as an administrative body, should apply the more permissive standard.

RE: Philadelphia Suburban Water Company, 49 Pa. PUC 354, 359 (July 23, 1975)(Philadelphia Suburban)(Citations omitted).⁵

The Commission, as an administrative body, has adopted the standard that all relevant evidence of reasonable probative value may be received. The Commission has not adopted the stricter standards for expert witnesses applied in Pennsylvania's courts. Philadelphia Suburban, 49 Pa. PUC at 357-359. This distinction exists because the Commission is an administrative, not judicial, body. In Philadelphia Suburban, the Commission repeated its position that, “The exclusionary rules were designed for guiding admission or exclusion of evidence, not for weighing its reliability, and were designed for juries, not for administrators.” Philadelphia Suburban, 49 Pa. PUC at 359.

In Philadelphia Suburban, the presiding ALJ had denied the admission of an expert's testimony “due to his lack of direct personal experience” in the subject on which he testified. The Commission overruled the ALJ on appeal, finding that, although the witness may have lacked practical experience on the specific issue at hand, his overall experience and education provided a “firm basis on which to address the subject.” Philadelphia Suburban, 49 Pa. PUC at 359. When the Commission's standard for the admission of expert evidence is applied, it becomes clear that Ms. Brockway's testimony should be admitted into the record. As

⁵ A copy of the Philadelphia Suburban decision is attached to this Answer as Appendix A.

the Commission stated in Philadelphia Suburban concerning the admissibility of expert witnesses. any challenge to Ms. Brockway's testimony in this proceeding:

[i]s a matter to be brought out on cross-examination and would go to the weight rather than the admissibility of the testimony. The Commission has rarely, if ever, been overruled by the courts for admitting too much evidence.

Philadelphia Suburban 49 Pa. PUC 354 at 359. Given Ms. Brockway's extensive experience in utility matters, the OCA submits that the Company's primary complaint goes to the weight given to the testimony, not to the admissibility.

Ms. Brockway's extensive experience in the field of utility regulation, highlighted by her experience as a utility commissioner, certainly meets the standard for qualifying as an expert and admitting her testimony into the record.

Ms. Brockway's work experiences render her an expert on utility regulation issues. Her testimony helps bring context to the OCA's presentation in an effort to provide the Commission with as full a record as possible for it to make its decision.

III. MS. BROCKWAY'S TESTIMONY IS ADMISSIBLE UNDER THE COMMISSION'S REGULATIONS

In its Motion, the Company has quoted almost all of Ms. Brockway's direct testimony and challenged each of these portions of her testimony. Most of the Company's challenges center around Ms. Brockway's status as an expert, and the relevancy of non-expert testimony. The Company also argues that these selections from Ms. Brockway's testimony constitute hearsay, are repetitious, prejudicial, speculative, or some combination of these claims, in violation of the standards governing the admissibility of evidence. Motion at 5-6. The OCA submits that none of these claims holds merit.

As the Company notes, the standard for admissibility of evidence in Commission proceedings is as follows:

- (a) Relevant and material evidence is admissible subject to objections on other grounds.
- (b) Evidence will be excluded if:
 - (1) It is repetitious or cumulative.
 - (2) Its probative value is outweighed by:
 - (i) The danger of unfair prejudice.
 - (ii) Confusion of the issues.
 - (iii) Considerations of undue delay or waste of time.

52 Pa. Code § 5.401.

The Company claims that Ms. Brockway's testimony does not meet the Commission's standard for the admissibility of evidence. With regard to the question of the relevance and materiality of the testimony, Ms. Brockway's testimony provides guidance on the key issues of this proceeding, namely, the impact of the high rates and poor service, and the options that should be considered by the Commission in such a circumstance. The testimony integrates the technical testimony provided by the OCA with public input testimony and relevant facts affecting PCL&P customers. Through this analysis, Ms. Brockway testifies to the current poor state of service, rates and customer relations, and provides a recommendation to resolve these issues. The OCA submits that Ms. Brockway's testimony is directly relevant and material to the issues raised by these complaints.

Furthermore, Ms. Brockway's testimony is not repetitious, cumulative, or wasteful. Ms. Brockway's testimony lays out the background conditions that lead her to make her policy recommendations in this proceeding. The Company faults Ms. Brockway for thoroughly laying the foundation of her opinions and recommendations in her testimony. There is nothing repetitive, prejudicial, or wasteful about setting forth the facts and testimony that are

the basis of witnesses' opinions, conclusions and recommendations. If Ms. Brockway did not provide this information, the Company would likely have engaged in extensive discovery or cross-examination to find out the basis of the testimony -- a far more time-consuming process. The portions of Ms. Brockway's testimony that the Company identifies as being repetitious are simply proper foundational testimony.

As detailed point by point below, the testimony is not repetitious or cumulative. Nor is it prejudicial, confusing, or a waste of time. It is hard to see how the ALJ and Commission will be prejudiced by the portions of Ms. Brockway's testimony that support her recommendations. Instead, such background provides a better understanding of the factors supporting Ms. Brockway's recommendations, thereby providing a more complete record.

Ms. Brockway's testimony provides the context for the OCA's case, and "advances the inquiry" into the possible policy options and implications available for the Commission to pursue. It is admissible evidence, to be afforded the weight that the Commission finds appropriate.

IV. MS. BROCKWAY'S TESTIMONY DOES NOT CONTAIN INADMISSIBLE HEARSAY.

As a final argument, the Company claims that Ms. Brockway's testimony should not be admitted because it is "improper hearsay." Motion at 6. As the Company recognizes, however, hearsay testimony is permitted to show the basis of an expert's opinion. Further, there is no absolute bar against hearsay testimony in an administrative proceeding. In addition, statements recited in Ms. Brockway's testimony concerning the views of Pike customers about their utility, and their hopes for change, are primarily offered to show the attitudes of the customers that were utilized to inform Ms. Brockway's expert opinion. Finally, to the extent that

the testimony from public input hearings and of other witnesses is sworn, on-the-record testimony, such statements cannot even arguably be referred to as hearsay.

V. ITEMIZED RESPONSE TO PCL&P MOTION

The Company has moved to strike all of OCA Statement 3. Motion at 1, 7. In making this Motion, the Company itemized its objections to the testimony. Motion at 7-26. The OCA submits that, in its entirety, Ms. Brockway's testimony is relevant and admissible expert policy testimony. Ms. Brockway's testimony helps provide a complete context for the case being brought by the County and supported by the OCA. The testimony does not violate the Commission's standards for admissibility. Rather it is "relevant evidence of reasonable probative value" that provides a more complete record for the ALJ and Commission to base their decisions. The OCA further submits the following response to the Company's specific allegations.

Relevant Sections: Page 2, lines 20-22, 22-24, 26-28; Page 3, lines 1-3, 3-9.

Company Objection: Lack of expertise, repetitious, prejudicial, hearsay.

OCA Response: In these sections, Ms. Brockway summarizes her conclusions regarding the unique problems inherent with the high rates of PCL&P, the extraordinary nature of the rate increase, the service quality issues, and the impact on customers and the community. Ms. Brockway's expertise in utility regulation makes such analysis relevant, reasonable and proper. With regard to the Company's hearsay objections, PCL&P has acknowledged that hearsay is allowable where an expert is testifying as to the foundational basis of their opinion. Motion at 6. Moreover, to the extent the testimony relied upon is sworn, on-the-record testimony, that cannot reasonably be considered hearsay. In these sections, Ms.

Brockway is summarizing her expert opinion and laying the proper foundation for her testimony, and is therefore not repetitious nor prejudicial.

Relevant Sections: Page 3, lines 16-17, 17-19; Page 3, line 20 to Page 4, line 6, line 7, lines 15-21, line 22 to Page 5 line 6, Page 5 lines 7 to 17.

Company Objection: Inexpert speculation, lack of foundation, repetitious, prejudicial, hearsay

OCA Response: In these sections of her testimony, Ms. Brockway establishes the foundation for her recommendations regarding a potential sale to Sussex Rural Electric Cooperative. Ms. Brockway testifies as to the sources of the information upon which she makes her recommendations. Ms. Brockway details her research regarding the issues in this proceeding, including the personal contacts made in Pike County with customers and other potential stakeholders. Ms. Brockway's testimony provides insight into the basis upon which she is making her recommendations, helping provide a more complete record. Rather than being repetitious and prejudicial, these sections of testimony explain the basis for Ms. Brockway's expert opinions.

Relevant Sections: Page 5, line 19 to Page 6, line 11.

Company Objection: Inexpert speculation, claims testimony is a brief.

OCA Response. In this section of testimony, Ms. Brockway simply provides the organization of her testimony and a summary of her positions. Ms. Brockway in no way "concedes that her testimony...is merely 'a brief.'" Motion at 11. This portion of Ms. Brockway's testimony helps clarify for the reader the organization of the testimony and is entirely appropriate.

Relevant Sections: Page 7, lines 12 to 21, line 22 to Page 11, line 5; Page 10, lines 19-21, line 23 to Page 11 line 2, Page 11 lines 4-15; Page 12, lines 8-9.

Company Objection: Lack of expertise, repetitious, prejudicial, hearsay, claims testimony is a brief.

OCA Response: In these sections of the testimony, Ms. Brockway sets forth the history that has led to the current situation, including the rate history of PCL&P. The Company's primary claim regarding these sections is that they are merely "brief." Motion 11-13. However, these provisions are relevant to Ms. Brockway's expert recommendations in that they help establish the basis of PCL&P's rates and the response of PCL&P's ratepayers to their changing circumstances. Ms. Brockway's assessment of the current situation is dependent on an analysis of the actions taken by these customers based on their history with the Company. Ms. Brockway's testimony provides a complete background of these events and such thoroughness does not turn her testimony into a legal brief. Ms. Brockway's testimony here provides an important review of factual events that help lay the foundation upon which her recommendations rest.

Relevant Sections: Page 12, lines 14-24; Page 13, line 1 to Page 14 line 2.

Company Objection: Lack of expertise, repetitious, hearsay.

OCA Response: Here, Ms. Brockway defines the term "rate shock" as she understands that term based on her extensive experience in the utility field, including her experiences as a utility commissioner. Ms. Brockway then examines the impact of rate shock on the Pike County community. Ms. Brockway's experience as a regulator dealing with the impacts of rate increases and rate shock provides the basis upon which her testimony on these issues is formed. Ms. Brockway has observed the local community and is well-qualified to offer her

expert opinion on the impact that PCL&P's rates and service have had on the community based on her extensive experience. Her testimony provides additional foundation for her expert opinion. Her review of sworn, on-the-record public input testimony is not hearsay.

Relevant Sections: Page 14, lines 7-15; Page 16, lines 15-19; Page 16, line 23 to Page 17 line 8.

Company Objection: Lack of expertise, repetitious, prejudicial, hearsay.

OCA Response: In these sections, Ms. Brockway describes her research into the Pike County economy and the foundation of the facts from the testimony that lead her to make her recommendations. Ms. Brockway's experience in the field of utility regulation provides her with the specialized knowledge to testify as to the economic impact on ratepayers and the local economy. These sections of Ms. Brockway's testimony reflect direct experience, as explained on lines three through six on page 17, where she testifies "...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." This is the testimony of a state regulator with vast experience in the field, and is not repetitious, prejudicial, or hearsay.

Relevant Sections: Page 17, line 11 to Page 18 line 3; Page 18 lines 12-16, line 18 to Page 19, line 2; Page 19, lines 6-11, lines 17-22, line 26 to Page 20, line 22; Page 21, lines 1-9, line 15 to Page 22, line 2; Page 22, lines 6-12, lines 15-23; Page 23, lines 1-11, line 19 to Page 24, line 26, Page 24, lines 29-31, lines 35-38; Page 25, lines 4-7, 13-20, line 22 to Page 26, line 14; Page 26, line 24 to Page 27, line 3; Page 27, lines 7-12, line 14 to Page 28, line 2; Page 28, lines 6-24.

Company Objection: Lack of expertise, repetitious, prejudicial, waste of resources, hearsay.

OCA Response: Throughout these sections of her testimony, Ms. Brockway continues to thoroughly explain the basis upon which she makes her recommendations and expresses her expert opinion on the situation that PCL&P's customers are currently facing. The conclusions she draws with regard to the relationship between PCL&P and its customers are drawn from a review of the existing situation, as Ms. Brockway has explained through her foundational testimony, and her experience as a regulator and other relevant experience. These portions of Ms. Brockway's testimony are neither improper hearsay, nor are they wasteful of the Commission's resources. The OCA submits that all of the Company's arguments in this regard fail once it is recognized that Ms. Brockway qualifies as an expert in this proceeding. Moreover, Ms. Brockway's testimony fully develops her recommendations and helps provide a complete record in this proceeding consistent with the Commission's rules regarding the admissibility of evidence. The Commission is not denied the opportunity to make any determination but it is provided with proper evidence of the options before it.

Relevant Sections. Page 29, line 13 to Page 35 line 8.

Company Objection: Lack of expertise, repetitious, prejudicial, waste of resources, hearsay.

OCA Response: In this portion of testimony, Ms. Brockway identifies how the Pennsylvania Commission, and other commissions, have handled situations where utility customers faced difficult circumstances with their provider. This is relevant, foundational information, relied upon by Ms. Brockway in order to provide her recommendations. These sections of Ms. Brockway's testimony support her recommendation that a transfer to Sussex Rural Electric Cooperative is a reasonable option to address the problems facing Pike customers, and help provide a more complete record upon which to render a decision in this proceeding.

Relevant Section: Page 35, line 14-26.

Company Objection: Lack of expertise, repetitious, prejudicial.

OCA Response: The Company asserts that, from its perspective, this is one of the most problematic excerpts contained in OCA Statement 3. Motion at 26. The Company goes so far as to claim that Ms. Brockway's testimony regarding the harm caused by the current rate shock, and the impact that numerous PUC proceedings and investigations have had on customers, "smacks of pop psychology." Motion at 26. To the contrary, Ms. Brockway has direct experience with customers relating to the over-budgeting of nuclear plants (and the rising energy costs of the late 70's), customer reaction to marginal cost pricing at the Department of Public Utilities in Massachusetts, experience testifying on low-income affordability issues, and five years as a Commissioner in a state that was introducing retail competition. Ms. Brockway has had extensive experience observing the reactions of consumers in a number of states to changes in their electricity bills, in a number of contexts, with a number of reasons, and with a number of effects. This is not "pop psychology," but rather the understanding of an expert in the utility field brought of study, observation and experience. It is the proper subject of testimony in this proceeding, to be afforded the weight that the Commission deems appropriate.

Relevant Section: Page 36, lines 3-8.

Company Objection: Lack of expertise.

OCA Response: Here, Ms. Brockway offers her recommendation that PCL&P enter into good faith negotiations for the sale of the utility to Sussex Rural Electric Cooperative. The OCA submits that Ms. Brockway has provided extensive background testimony regarding this subject, is qualified as an expert in the field to make this

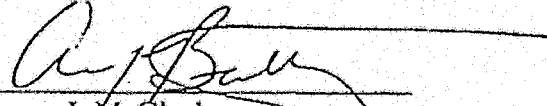
recommendation (as discussed above), and the witness' testimony should be allowed into the record.

VI. CONCLUSION

The OCA submits that Ms. Brockway's testimony is admissible under the standards governing the acceptance of evidence in an administrative hearing before the Commission. It is common practice to allow the admission of policy testimony in order to provide a full and complete record upon which the Commission can base its decision. Ms. Brockway has been recognized as an expert in the utility field based on her extensive work in areas of rates, customer service, restructuring, merger policy, and reliability. Clearly, Ms. Brockway's experiences provide "a pretension to special knowledge" of the issues that she has testified to in this proceeding.

WHEREFORE, for the reasons set forth above, the OCA respectfully submits that the Motion of Pike County Light & Power Company to strike OCA Statement 3 should be denied.

Respectfully Submitted,



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December 22, 2006

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APPENDIX A

should not require formalities to be met to the letter if it has adequate written notice of a protestant's intentions. Such was the case here

Although the Commission is normally reluctant to overrule a hearing examiner and grant interlocutory relief unless there is a clear error of law or an abuse of discretion by the hearing examiner, it will grant such relief when evidence has been excluded and the testimony may be relevant and necessary for the completion of the record. *Application of Lawrence H. Geller*, 45 Pa. P.U.C. 265 (1971). THEREFORE,

IT IS ORDERED:

1. That the interim appeal by French and Pickering Creeks Conservation Trust be granted.
2. That the Hearing Examiner be overruled and the French and Pickering Creeks Conservation Trust be allowed to participate as a protestant at a rehearing to be scheduled.
3. That all parties of record be given notice of this order by secretarial letter

RE PHILADELPHIA SUBURBAN WATER COMPANY

APPLICATION DOCKET No. 99126

Witnesses, § 1 -- Qualification of experts

An expert witness is a person possessed of enough knowledge and skill in the subject to enable him to testify with more expertise than a layman.

Witnesses, § 3 -- Expert testimony -- Admission into evidence

If a witness has a "reasonable pretention to specialized knowledge" in a prima facie case where expertise has been made out, his testimony should be admitted into evidence, leaving to the fact finder the responsibility of determining the weight to be given to that testimony.

Evidence, § 6i -- Admissibility

It is clear that the courts would lean more toward the admission of incompetent evidence, with its weight to be decided by the commission, than toward the exclusion of evidence that may be competent.

Appeal and review, § 28 — Review of hearing examiner's ruling — Time limitations

Rules of practice and procedure impose no time limitation on taking an interlocutory appeal from a hearing examiner's evidentiary ruling.

Morgan, Lewis and Bockius by Allen W. Stewart for Philadelphia Suburban Water Company.

Cadmus and Patten Association by David W. Wood, Jr. for Charlestown Civic Association and Eleanor Barger.

Dichert, Price and Rhoads by John J. Musewicz for Charlestown Civic Association and Eleanor Barger.

BY THE COMMISSION, July 23, 1975:

Philadelphia Suburban Water Co. filed an application with the Public Utility Commission on February 7, 1975, for a finding to build a 5 million gallon distribution reservoir in Charlestown Township, Pennsylvania. Notice of a March 18, 1975, hearing was published in the Daily Local News on March 3, 1975 and March 10, 1975.

On March 18, 1975, the initial hearing was held. No evidence was taken at the hearing. Ms. Eleanor Barger and Mr. Samuel Morris were present. The examiner explained to those present the procedure for becoming a protestant. The hearing was continued to allow protestants to file and prepare their case.

At the rescheduled hearing on April 21, 1975, the petitioners, who are the protestants in the above captioned matter, presented Dr. Frederick B. Higgins, Jr., and moved that he be allowed to testify as an expert. The offer of proof disclosed that the witness was to testify about alternate locations, their relative costs on a long-term basis, and their desirability from an engineering standpoint.

On direct examination (Tr. 97-102), Dr. Higgins testified that he holds a Bachelor's Degree in Civil Engineering, a Master's Degree in Science and Sanitary Engineering, and a PhD in Sanitary Engineering from the Georgia Institute of Technology in Atlanta, Georgia, where he specialized in Environmental Engineering, including study on the subjects of water supply, water disposal, and solid waste. Afterwards he worked for the United States Army Environmental Hygiene Agency as a consultant in

environmental engineering for a private firm; and as an Assistant Professor of Civil Engineering at Drexel University. Dr. Higgins testified that he has served as a consultant to a Shell Chemical Plant in Texas working on cost analysis at various sites. Factors in his analysis included land cost, availability of water supply, cost of transmission of water, and routes of transmission. Presently he is the chairman of the Civil Engineering Construction and Technology Department and the Environmental Engineering Department at Temple University. He has a professional engineering license in Pennsylvania and New Jersey and he is a member of the American Society of Civil Engineering, the Air Pollution Control Association, and the American Association for the Advancement of Science.

On cross-examination (Tr. 102-113) Dr. Higgins testified that he had never supervised or assisted in the actual construction or siting of a water works plant. He also testified that this was the first time he had tried to look at the engineering aspects of a water distribution reservoir for a public utility.

At the conclusion of Dr. Higgins' testimony the examiner expressed his high regard for Dr. Higgins' academic qualifications, but ruled against allowing Dr. Higgins to testify as an expert due to his lack of direct practical experience in the construction of water tanks.

On May 27, 1975, the protestant filed a petition to overrule the examiner and to reopen the record so as to allow Dr. Higgins to testify. Applicant filed an answer on June 11, 1975, asserting that the examiner was correct in his ruling and that an interlocutory appeal should be denied. Petitioner filed a supplemental brief on June 16, 1975.

It is the opinion of the Commission that the petitioner's claim has merit, that the hearing examiner should be overruled, a rehearing scheduled, and Dr. Higgins allowed to testify.

Two lines of cases have developed in Pennsylvania concerning the background required of a witness in order to be qualified as an expert. The first set of cases, following the reasoning in *Struthers v. Railroad Co.*, 174 Pa. 291 (1896), defines an expert witness as a person possessed of enough knowledge and skill in the subject to enable him to testify with more expertise than a layman. This test generally has been applied in those situations where a witness, although trained professionally, lacks any knowledge of the particular circumstances or conditions involved in the case in question. See *Struthers, supra* (court disqualified witness qualified in real estate appraisal but lacking familiarity with local real estate conditions or values); *Steele v. Sheppard*, 411 Pa. 481 (1936) (refusal to

allow contractor to testify on cost of replacing theater seats and carpets, since he lacked personal experience with either item); *Brown v. Castle Shannon Borough*, 318 Pa. 363 (1935) (contractor with experience repairing building deemed competent to testify about causation of damage but incompetent to testify about amount of damage, since he was unfamiliar with local land values); *Houston v. Cannon Bowl*, 433 Pa. 383 (1971) (expert may only testify to cause of bowling alley injury based on his personal observations or on facts already admitted into evidence via other witnesses); *Globe Indemnity Co. v. Highland Tank and Mfg. Co.*, 345 F. Supp. 1290 (E.D. Pa. 1972), *Aff'd*, 478 F. 2d 1398 (3rd Cir. 1973) (engineer and industrial hygienist disqualified because the former lacked personal training and experience concerning storage tanks in an industrial setting and the latter had no experience in safety design).

The second line of cases holds that if the witness has a "reasonable pretention to specialized knowledge," and a prima facie case for expertise has been made out, his testimony should be admitted into evidence, leaving to the fact finder the responsibility of determining the weight to be given to that testimony.

" [I]f it appears that the witnesses offer had any claim to the character of experts, the Court will not reverse on the ground that their experience was not sufficiently special." *Delaware and Chesapeake Steam Towboat Co. v. Starr*, 69 Pa. 36 (1871).

See also, *Moodie v. Westinghouse Elec. Co.*, 367 Pa. 493 (1951) (engineer with 50 years experience with blowers allowed to testify even though he lacked any experience with the blower in question); *Griffith v. Clearfield Trucking Rentals, Inc.*, 427 Pa. 30 (1967) (consultant on truck accidents allowed to testify about cause of accident although he did not observe the wreckage); *Ohio Associated Telephone Co. v. Geiger*, 3 F. Supp. 997 (S.D. Ohio, 1933) (engineer from Ohio PUC allowed to testify as expert at a rate challenge even though he lacked knowledge of the specific phone company and never had built a telephone plant; the court held that general expertise in public utility rate proceedings was enough to admit the witness' testimony, and that lack of familiarity with the phone company went to the weight, not the competency, of the testimony).

In the context of an administrative hearing, and especially where hearings are conducted by examiners rather than by the Commissioners themselves, the better practice is to admit the disputed testimony so as to permit the full Commission to assess its significance. Although the PUC is not bound by the Administrative Agency Law, Act of June 4, 1945, P.L. 1388, 71 P.S. § 1710, *et seq.*, the requirement set forth at Section 32 provides a guideline for all quasi-judicial bodies:

"Agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonable probative value may be received. Reasonable examination and cross-examination shall be permitted."

Pennsylvania courts have held that the P.U.C., as an administrative body, should apply the more permissive standard. The case of *In re Shenandoah Suburban Bus Lines, Inc.*, 158 Pa. Super. 638 (1946), Aff'd per curiam, 355 Pa. 521 (1947), was an appeal from a Commission order suspending a certificate of convenience because the carrier had not adequately served the public. In holding that the Commission order be reversed on the grounds that it was not based on sufficient evidence, the court also remarked that the Commission is an administrative body and, as such, is not limited to the strict rules of evidence. Essential rules by which rights are asserted or defended should be preserved.

The issue arose again in *Merz White Way Town v. Pa. P.U.C.*, 204 Pa. Super. 43, 201 A. 2d. 446 (1964). The court again decided that the Commission did not have to adhere to the strict rules of evidence. The case involved an appeal from the Commission's issuance of a certificate of convenience. In affirming the Commission, the court held that if testimony is admissible and relevant, its weight is for the Commission to decide. The presence of incompetent evidence or the exclusion of admissible evidence does not require reversal unless there was a clear error of law so as to violate due process. In both *Shenandoah* and *Merz*, the courts showed their concern that there be sufficient evidence in the record on which the Commission could base its orders. It is clear that the courts would lean more toward the admission of incompetent evidence, with its weight to be decided by the Commission, than toward the exclusion of evidence that may be competent.

The Commission itself in the past has followed an open standard of receiving evidence at its hearings. In *Application of Lawrence H. Geller*, 44 Pa. P.U.C. 612 (1970), an interlocutory appeal to the Commission was taken from the decision of the hearing examiner to allow cab drivers to testify as experts on the need of taxi service. The Commission, using language which stressed the different application of evidentiary rules in a trial court as opposed to an administrative proceeding, found no impropriety in allowing into evidence, over objections of applicant's counsel, the testimony of the drivers, recognizing that both parties could argue the procedural questions to the Commission after the record was closed.

In *Application of Philadelphia Electric Company*, 44 Pa. P.U.C. 585 (1970), the Commission denied a request for interlocutory relief when a hearing

examiner denied a request for a subpoena duces tecum and subpoena ad testificandum. The Commission however did order that the subpoena ad testificandum would be later granted in due course. In doing so the Commission repeated its policy of receiving evidence in doubtful cases:

“The exclusionary rules were designed for guiding admission or exclusion of evidence, not for weighing its reliability, and were designed for juries, not for administrators.”

The Commission, at page 587, cited with approval the dicta in *Samuel H. Moss, Inc. v. F.T.C.*, 148 F. 2d. 378, 380 (2d Cir.), cert. denied 325 U. S. 734, 68 S. Ct. 44, 90 L. Ed. 438 (1945):

“Even in criminal trials to a jury it is better nine times out of ten, to admit, than to exclude evidence and in such proceedings as these the only conceivable interest that can suffer by admitting any evidence is the time lost, which is seldom as much as that inevitably lost by idle bickering about irrelevancy or incompetency.”

In the present case the witness was an engineer with a professional license to practice in Pennsylvania. In addition, his academic background and extensive experience provide him with a firm basis on which to address the subject of the location of the proposed distribution reservoir. His lack of practical experience may cast doubt on the value of his testimony on cost and construction factors, but this is a matter to be brought out on cross-examination and would go to the weight rather than the admissibility of the testimony. The Commission has rarely, if ever, been overruled by the courts for admitting too much evidence.

The applicant contends that the petitioner waited too long to file for relief and that the delay shows that the petitioner is employing delaying tactics. The argument has little merit. The witness was at the April 21, 1975, hearing prepared to testify. Even after the hearing examiner made his ruling the petitioner made a motion that the testimony be taken so as to preserve the record and save time if the examiner were overruled. The examiner denied the motion (Tr. 111, 112).

Applicant further contends that even if the petitioner is not employing a delaying tactic his petition for relief came too late since it was filed more than 30 days after the hearing in question, citing *Department of Environmental Resources v. Wolford*, 329 A. 2d. 304 (Commonwealth Ct., 1974) which restricted the time period for an appeal to 10 days. The *Wolford* case, however, is not on point. It involved an appeal from an order of the Environmental Hearing Board, which the court found to be untimely under

its construction of the General Rules of Administrative Practice and Procedure and the Rules of Practice for the Environmental Board. In this case the Administrative Agency Law does not apply to the P.U.C. (71 P.S. § 1710.51) and the P.U.C. Rules of Practice and Procedure impose no time limitation on taking an interlocutory appeal from a hearing examiner's evidentiary ruling.

Had the Commission issued a final order, the matter would be governed by Section 1101 of the Public Utility Code (66 P.S. § 1431), in conjunction with Rules 54, 55 and 56 of the Rules of Practice and Procedure before the Public Utility Commission, governing the procedures for reopening and rehearing by the Commission. Since another hearing on this application was held on May 30, 1975, three days after the filing of the petition, the record had not been closed and the petition cannot be considered untimely. At the May 30, 1975, hearing, further hearings were suspended pending resolution of appeals to the Commission.

Applicant further contends that the Commission has discouraged interlocutory relief and should not grant it lightly. It is true that in *Geller*, supra, that the Commission said that interlocutory relief should not be granted unless the Examiner's ruling is clear error affecting substantial rights or an abuse of discretion. However, in a later opinion, *Application of Lawrence H. Geller*, 45 Pa. P.U.C. 265 (1971), the Commission overruled the ruling of a hearing examiner and granted interlocutory relief to allow witnesses to testify. The Commission said that even though it normally was reluctant to grant such relief, when evidence has been excluded and the testimony may be relevant the record should be completed and arguments can be made after the completion of the record.

IT IS ORDERED.

1. That the petition of Eleanor Barger and Charlestown Association for a reopening of record and allowance of testimony of Dr. Frederick B. Higgins, Jr., be granted.
2. That a rehearing be scheduled and the testimony of Dr. Higgins taken.
3. That all parties of record be given notice of this order by Secretarial letter.

CERTIFICATE OF SERVICE

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 Answer of the Office Of Consumer Advocate to the Pike County Light & Power Company's Motion to Strike the Testimony of OCA Witness Nancy Brockway, 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:

Dated this 22nd day of December 2006.

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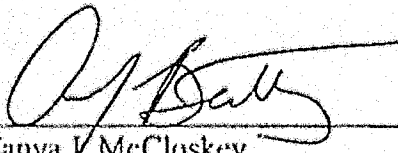
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PA PUC
County of Pike SECRETARY'S BUREAU

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 Office of Consumer Advocate's Interrogatories Set II, 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:

Dated this 22nd day of December 2006.

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Counsel for: *Direct Energy*

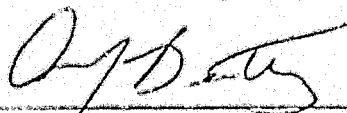
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County of Pike :
v. : Docket No. C-20065942, et al.
Pike County Light & Power Company :

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate Supplemental Response to Pike County Light & Power Company's Interrogatory Set I, number 22, 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:

Dated this 29th day of December 2006.

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Counsel for: *Direct Energy*

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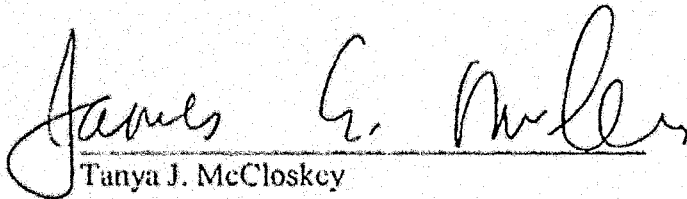
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January 5, 2007

BY HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION

Re: County of Pike, et al. v. Pike County Light & Power Company
Docket Nos.: C-20065942, et al. (consolidated)

Dear Mr. McNulty:

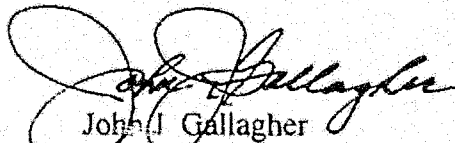
Enclosed for filing please find an original and three (3) copies of the Motion of Pike County Light & Power Company to Compel Discovery Responses and for Sanctions in the above-referenced matter.

All parties have been served as evidenced by the attached Certificate of Service.

Please call if you have any questions.

Sincerely,

**DOCUMENT
FOLDER**


John J. Gallagher
Counsel for PCL&P

cc. Parties on Certificate of Service
Hon. Ember S. Jandebour, ALJ
John L. Carley, Esq.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike, et al.	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2006 ⁵⁹ 542, et al.
	:	
Pike County Light & Power Company	:	
	:	
Respondent	:	

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MOTION OF
PIKE COUNTY LIGHT & POWER
TO COMPEL DISCOVERY RESPONSES
AND FOR SANCTIONS

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PUBLIC UTILITY COMMISSION
ELECTRIC DIVISION

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I. INTRODUCTION

Pursuant to Sections 5.342, 5.371 and 5.372 of the Public Utility Commission's Rules of Practice and Procedure, 52 Pa. Code §§ 5.342, 5.371 and 5.372, Pike County Light & Power Company ("PCL&P") moves to compel full responses to its Interrogatories, Set I, Questions 22 and 24. Further, PCL&P respectfully requests that the Commission impose sanctions on the Office of Consumer Advocate and its witness Mr. Robert Kolling for their failure to fully respond to the referenced interrogatories. In support of its Motion to Compel and for Sanctions, PCL&P sets forth the following.

II. BACKGROUND

On November 17, 2006, PCL&P served upon the OCA the Company's Interrogatories and Request for Documents, Set I ("Set I").¹ Set I sought, among other

¹ A copy of PCL&P's Interrogatories, Set I is attached herewith as Exhibit A.

things, information and documentation relating to claims advanced by OCA witness Robert Kolling in testimony filed by the OCA on November 17, 2006 as OCA Statement No. 4.² More specifically, Question 22 of Set I sought "copies of any and all documents in the possession of Sussex relating to the possible acquisition of PCL&P."³ See, Exhibit A. Question 24 of Set I sought copies of "any cost estimates relating to a possible acquisition of PCL&P." *Id.* The OCA did not file objections to Set I nor did it request a Protective Order from the Commission.

On December 21, 2006, the OCA submitted partial answers to Set I. In responses to Questions 22 and 24 sponsored by Mr. Kolling, the OCA stated that the information and documents requested by PCL&P was "confidential."⁴ On December 21, 2006, when it served partial responses to Set I, the OCA failed and refused to produce analyses and cost estimates in the possession of Sussex which are directly responsive to Questions 22 and 24 of Set I.

Counsel for the OCA and the Company discussed the OCA's failure to fully respond to Questions 22 and 24 of Set I. These discussions resulted in the OCA producing a redacted version of what appears to be an analysis of a possible acquisition of PCL&P by Sussex.⁵ The redacted documents omit what PCL&P believes is important and relevant information. More importantly, the redacted documents have been edited to conceal data that are responsive to Questions 22 and 24 and are essential to PCL&P's ability to properly prepare to defend itself and present its case to the Commission in this

² A copy of OCA Statement No. 4 is attached as Exhibit B.

³ Sussex refers to the Sussex Rural Cooperative, an entity put forth by the OCA and Mr. Kolling as a willing and able potential buyer of PCL&P.

⁴ A copy of the OCA's Responses to Questions 22 and 24 of Set I is attached as Exhibit C.

⁵ A copy of correspondence dated December 22, 2006 enclosing a Supplemental Response to Set I, No. 22 is attached as Exhibit D. Actually, the referenced letter was sent by e-mail on the afternoon of December 29, 2006.

matter. The parties have discussed further production of responses to the subject interrogatories, but no agreement has been reached and no further progress on the issue is expected.

III. MOTION TO COMPEL

Section 5.342 of the Commission's Rules of Practice and Procedure provide for the filing of motions to compel:

(g) *Motion to compel.* Within 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.

(1) The party against whom the motion to compel is directed shall file an answer within 5 days of service of the motion absent good cause or, in the alternative, respond orally at the hearing if a timely hearing has been scheduled within the same 5-day period.

(2) The presiding officer will rule on the motion as soon as practicable. The motion should be decided within 15 days of its presentation, unless the motion presents complex or novel issues. If it does have complex or novel issues, the presiding officer will, upon notice to the parties, rule in no more than 20 days of its presentation.

52 Pa. Code § 5.342.

In this case, the OCA did not file objections to PCL&P's interrogatories, and it did not seek a Protective Order. Instead, it chose to withhold documents in the possession of Sussex which are responsive to Questions 22 and 24 of Set I. At first, the OCA responded to the relevant questions by claiming that the documents are "confidential." Discussions between counsel later revealed that the basis for the claim of confidentiality is that Sussex does not want to reveal what it deems to be its negotiation position because it believes it may one day negotiate a sale of PCL&P with the

Company's parent. This claim of confidentiality is without a sound basis in fact or reason.

The OCA's claim of confidentiality should be rejected because Sussex has known for some time that Consolidated Edison ("ConEd"), PCL&P's parent company, has no interest whatsoever in negotiating a sale of PCL&P with Sussex. In his testimony, Mr. Kolling declares his interest in PCL&P, but fails to mention that ConEd rebuffed his invitation to discuss the acquisition of PCL&P.⁶ By letter dated March 23, 2006, ConEd made it clear to Mr. Kolling that a sale of PCL&P was not even under consideration.⁷ Consequently, if ConEd has no interest in discussing a sale of PCL&P, OCA's concern that producing documents responsive to Set I would violate Sussex's confidentiality is unfounded. Disclosing cost estimates and analyses of a possible purchase of PCL&P does not lead to the disclosure of a confidential negotiating position because there are no negotiations, either now or in the future.

Furthermore, the passage of time has rendered any analysis or cost estimate outdated and irrelevant to current and future circumstances. The documents that OCA is refusing to produce in full were presented to the Sussex Board of Directors almost a year ago, on January 31, 2006.⁸ By now, the data that have been redacted and excised from the January 31, 2006 analysis are stale and have little bearing on the present state of PCL&P and/or Sussex. Any concern that the OCA's compliance with the Company's document requests may somehow reveal confidential information is mitigated (if not eliminated) by the fact that the data were produced nearly a year ago. This is especially true considering that there is no present intention by ConEd to negotiate a sale of

⁶ See generally, OCA Statement No. 4

⁷ A copy of the March 23, 2006 letter from ConEd to Mr. Kolling is attached as Exhibit E

⁸ See Exhibit D.

PCL&P, and that there would be negotiations only in the unlikely event that the Commission accepts the Complainants' untenable position and orders the forced sale of the Company. It goes without saying that the Company would not accept such a result, and a final resolution of the legal controversy that would ensue would not come quickly. In reality, by the time Sussex has the opportunity to use of its analysis in negotiations, the data will be useless.

The redacted document that the OCA produced as part of its Supplemental Response of December 29, 2006 is so heavily edited as to render the document worthless. When OCA finally decided to supplement its response to Question 22, six weeks following service of Set I, it produced a document that blacks out and conceals figures and data that may very well be relevant and responsive. PCL&P cannot be expected to prepare its case when such critical information is being withheld by the OCA and Mr. Kolling.

More importantly, the OCA's concealment of the information sought severely prejudices and handicaps PCL&P as it attempts to counter the claims made by the OCA and other Complainants that Sussex's acquisition of PCL&P should be approved by the Commission because it is beneficial to customers. For instance, OCA witness Nancy Brockway supports the forced sale of PCL&P to Sussex and presents this option as "far and away the best way to solve consumers' problems."⁹ Ms. Brockway claims that "Sussex has expressed its willingness to buy Pike *at a reasonable cost*, and has approached Con Edison to discuss such a transaction."¹⁰ There is no way for PCL&P to

⁹ See, OCA Statement No. 3 at 28 (relevant excerpts attached as Exhibit F)

¹⁰ *Id.* at 27 (emphasis added). Also, OCA witness Matthew Kahal describes the forced sale of PCL&P to Sussex as a "feasible solution" while acknowledging the Company has no interest in considering such a sale. See, OCA Statement No. 1 at 23 (relevant excerpts attached as Exhibit G). Mr. Kahal goes as far as

test this "reasonable cost" claim without seeing the cost estimates that the OCA maintains are "confidential." Apparently, Ms. Brockway has reviewed these cost estimates and arrived at her conclusion, but PCL&P is being denied the opportunity to do the same.

Lastly, as will be discussed below, it will be impossible for the presiding officer and the Commission to decide whether forcing ConEd to sell PCL&P to Sussex is advisable if the OCA is allowed to cover up cost data and keep the estimates off the record in this proceeding. For these reasons, the OCA and Mr. Kolling must be compelled to produce a full response to Questions 22 and 24 of Set I.

IV. MOTION FOR SANCTIONS

Sections 5.371 and 5.372 of the Commission's Rules of Practice of Procedure provide for sanctions where a party fails to file sufficient answers to discovery requests:

(a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

(1) A party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

...

(b) A motion for sanctions may be answered within 5 days of service or, in the alternative, the motion may be answered orally at a hearing if a timely hearing has been scheduled within the same 5-day period.

(c) The presiding officer will rule on the motion as soon as practicable. The motion should be decided within 20 days of its presentation.

(d) A failure to act described in subsection (a) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order.

to say that there are no disadvantages to the forced sale of PCL&P to Sussex and that such a transaction "would appear to resolve all issues in this case." *Id.* at 28.

...

52 Pa. Code § 5.371.

(a) The presiding officer, when acting under § 5.371 (relating to sanctions—general) may make one of the following:

...

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony.

(3) An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient party or individual advising the disobedience.

(4) An order with regard to the failure to make discovery as is just.

...

52 Pa. Code § 5.372.

The refusal by OCA to respond to Set I in full is sanctionable under the Commission's Rules of Practice and Procedure. In this case, PCL&P made a request for information and documents to which the OCA did not object. The OCA failed to file objections to the subject interrogatories and failed to request a Protective Order as prescribed by the Commission's rules. After first making a questionable claim of confidentiality, the OCA belatedly produced a document redacted in such a way as to make the data in it useless and valueless. This failure by the OCA and Sussex to produce information necessary for the Company to prepare and present its case is highly prejudicial to PCL&P and must not be countenanced by the Commission.

The OCA and the Complainants in this case make claims with regard to the cost effectiveness and beneficial nature of a forced sale, but they deprive the Company of the information necessary to properly confront these allegations. The OCA is subverting the

Commission's discovery process and prejudicing PCL&P by refusing to provide full answers to the questions propounded by the Company. This behavior is deserving of the types of sanctions provided for in the Commission's rules.

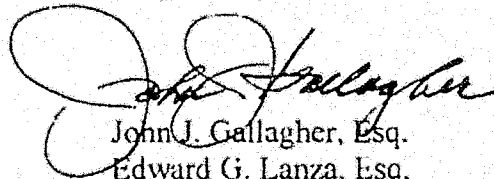
Moreover, the Complainants and the OCA are asking the Commission to order the forced sale of PCL&P to Sussex, but they are hiding the information the Commission needs to make such a determination. The OCA expects the Commission to agree with Ms. Brockway and Mr. Kahal that the proposed forced sale is cost-effective and a feasible solution, but the agency argues that the cost estimates associated with the putative acquisition are for their eyes only. The Commission will have no basis upon which to consider the merits of a forced sale, and it will not have the benefit of the Company's position on any cost estimates because the OCA refuses to produce the relevant data.

Based on the above, the presiding officer should use her powers and discretion under Sections 5.371-372 to: (1) order the OCA to produce an unredacted version of the document provided in the Supplemental Response to Set I, Question 22, or (2) strike and otherwise exclude from the record in this matter any allegation, testimony or evidence with regard to the cost-effectiveness or benefit of forcing the sale of PCL&P, or (3) forbid the OCA and Mr. Kolling from presenting any evidence at the hearings in this matter with regard to the forced sale of PCL&P to Sussex or any other potential buyer, or (4) preclude the OCA from making any argument orally or in brief form with regard to the benefits of a forced sale of PCL&P, and (5) order such other relief and the Commission may deem just and appropriate.

V. CONCLUSION

Based on the foregoing, Pike County Light & Power Company respectfully requests that the presiding officer issue an order compelling the Office of Consumer Advocate and its witness Mr. Robert Kolling to fully respond to its Interrogatories. In the alternative, PCL&P requests that the presiding officer impose sanctions as requested herein and grant such other relief as may be appropriate.

Respectfully submitted,



John J. Gallagher, Esq.
Edward G. Lanza, Esq.
Bruce V. Miller, Esq.
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John L. Carley
Assistant General Counsel
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4 Irving Place
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Phone: (212) 460-2097
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carleyj@coned.com

Counsel for PCL&P

Date: January 5, 2007

129653.2

November 17, 2006

BY REGULAR AND ELECTRONIC MAIL

Irwin A. Popowsky, Esq.
Aron Beatty, Esq.
James Mullins, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923

**Re: County of Pike, et al. v. Pike County Light & Power Company
Docket Nos.: C-20065942, et al.**

Dear Counselors:

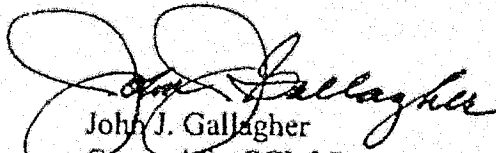
Enclosed please find two (2) copies of Pike County Light & Power Company's Interrogatories and Request for Documents, Set I, in the above-referenced matter.

Kindly provide responses to the attached Interrogatories and Request for Documents at your earliest convenience, and no later than twenty (20) days from the date of this letter.

A copy of these Interrogatories and Requests for Documents has been served on all active parties in this proceeding as evidenced by the attached Certificate of Service.

If you have any questions regarding the above, do not hesitate to contact me.

Sincerely,


John J. Gallagher
Counsel for PCL&P

cc: Parties on Certificate of Service

These Interrogatories and Document Requests are continuing, and any information secured subsequent to the filing of your answers, which would have been includable in the answers had it been known or available, is to be supplied by supplemental answer.

DEFINITIONS

"Communication" shall mean a face-to-face or telephone conversation, or an exchange via electronic means, including but not limited to, fax, e-mail, voice mail, instant message, etc.

"Document" shall mean any original written, typewritten, handwritten, printed or recorded material as well as all tapes, non-duplicate copies and transcripts, and e-mails now or at any time in your possession, custody or control. Without limitation of the term "control" as used in the preceding sentence, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person, or public or private entity which has actual possession thereof. If a document was, but is no longer in your possession or subject to your control, state what disposition was made of it, by whom and the date or dates, or approximate date or dates, on which such disposition was made, and why.

"Identify" or "describe," when referring to a document as defined above, shall mean that the party shall set forth the author or originator, addressee(s), or recipient(s), date, title or subject matter, its present custodian and the last known address and job description of each such custodian. In identifying or describing a person or business entity, you are directed to provide that person or business entity's full name, state of incorporation, principal place of business, shareholders, officers, limited partners, general partners, date of partnership agreement, last known address and phone number.

"OCA" shall mean the Pennsylvania Office of Consumer Advocate.

"Person" or "persons" shall mean natural individual or any corporation, firm, partnership, proprietorship, association, entity, joint venture, or other business or governmental organization.

"PCL&P" shall mean Pike County Light & Power Company.

"PUC" shall mean the Pennsylvania Public Utility Commission ("Commission").

"Sussex" shall mean Sussex Rural Electric Cooperative.

INSTRUCTIONS

In answering these Interrogatories and Document Requests, the OCA and/or Mr. Kolling shall furnish all information available at the time of answering. Unless otherwise specified, the relevant time period on all Interrogatories and Document Requests shall be five (5) years prior to the date of the request.

If you do not answer an Interrogatory or Document Request in whole or in part because of a claim of privilege, set forth the privilege claimed, identify the facts upon which you rely to support the claim of privilege, and identify all documents for which such privilege is claimed.

When a natural person is required to be identified, state his name, business and/or residence address.

"Or" shall be construed either conjunctively or disjunctively to bring within the scope of these Interrogatories and Document Requests any information which might otherwise be construed outside their scope.

The singular includes the plural, and vice versa, the masculine includes the feminine and neuter genders. The past tense includes the present tense where the meaning is not distorted by a change of time.

In answering these Interrogatories and Document Requests, the OCA and/or Mr. Kolling should furnish all information which is available to them, including that which has been obtained

by and that which is now in the possession of their attorneys, agents, or other representatives, and not merely the information he/she knows or is in his/her personal knowledge.

If you are unable to answer any of the following Interrogatories or Document Requests fully and completely after exercising due diligence to secure the information necessary to make full and complete answers, so state, and, in addition, answer each such Interrogatory or Document Request to the fullest extent possible, specifying your knowledge, and your inability to answer the remainder, and state whatever information or knowledge you may have concerning the unanswered portions thereof.

**INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS,
SET I**

1. Please provide a detailed description of the Sussex Rural Electric Cooperative ("Sussex"), including, number of customers served, the description of service territory, numbers of commercial, residential, public and industrial customers.
2. Please provide the following with regard to Sussex for the last 5 years:
 - a. Annual Reports
 - b. Bylaws
 - c. Membership Lists
 - d. Tariffs, Rules, Regulations and/or Rate Schedules
 - e. Balance Sheets
 - f. Income Statements
 - g. Lists of Directors and Officers
3. Please provide information describing Sussex's relationship to the Pennsylvania Rural Electric Association.
4. How many members does Sussex have?
5. Provide the growth in customers over the last five years and the estimated growth rates, per year, for the next five years.
6. Provide the annual amounts that Sussex has spent on purchased power in the last five years?
7. Does Sussex own, or have the right to the capacity from, any generating facilities? If so, provide a detailed description of the plant and the arrangements by which Sussex obtains the power.
8. Where has Sussex purchased power in the last five years? Please provide a detailed breakdown of any and all sources of purchased power by year, volume of purchase and amount of purchase for each of the last five years.
9. Provide a detailed description of the load forecasts and capacity (or power purchase) additions for the next five years.
10. Please provide any and all heating and cooling degree day data available for the last five years.
11. Provide copies of any and all contracts for power purchases.

12. How many power outages has Sussex experienced in the last five years? Please provide a detailed description of any and all power outages by year, date, duration, cause and number of members affected.
13. Please provide rate schedules for electric service for the last five years. Provide a detailed description of any and all rates and charges by service type, fixed charges, usage charges and all fees.
14. Provide a detailed calculation of an average monthly bill for the following:
 - a. a typical residential heating customer;
 - b. a typical residential non-heating customer;
 - c. a typical commercial customer;
 - d. a typical industrial customer;
 - e. a typical public customer.
15. By whom is Sussex regulated? Please provide a list of any and all regulators who oversee Sussex's operations and what areas of the cooperative's operation each regulator oversees.
16. Does Sussex maintain its own in-house construction and/or maintenance personnel? If yes, then please provide the number of employees and their job description.
17. Provide the number of qualified linemen employed by Sussex.
18. Provide the location of all work and maintenance facilities of Sussex.
19. Provide a detailed electrical map of Sussex, including locations of all substations, major circuits, transmission and distribution lines, voltage of circuits, etc.
20. Provide all service standards for providing both electrical and customer service applicable to Sussex. If Sussex is not subject to service standards, provide all information about the service provided by Sussex including:
 - a. Maximum telephone answering time
 - b. Maximum allowable time on hold,
 - c. New service initiation time,
 - d. Numbers of estimated bills
 - e. Allowable voltage fluctuation,
 - f. Maximum free service distance
21. Has Sussex studied or otherwise considered the possibility of acquiring PCL&P? If so, what steps has Sussex taken in its study and/or considerations of such an acquisition?
22. Please provide copies of any and all documents in the possession of Sussex relating to the possible acquisition of PCL&P.

23. Has Sussex discussed the possibility of acquiring PCL&P with anyone? If so, please provide a description of any and all discussions relating to the possible acquisition of PCL&P detailing the name of the persons involved in the discussion, the date of such discussions and the substance of any and all such discussions.
24. Has Sussex developed any cost estimates relating to a possible acquisition of PCL&P? If so, please provide a copy of any and all such estimates or other cost calculations.
25. Has Sussex developed any plan relating to the financing of a possible acquisition of PCL&P? If so, please provide a copy of any and all such financing plans.
26. Has Sussex studied or otherwise considered the possibility of interconnecting with PCL&P? If so, what steps has Sussex taken in its study and/or consideration of such an interconnection?
27. Please provide copies of any and all documents in the possession of Sussex relating to the possible interconnection to PCL&P.
28. Has Sussex discussed the possibility of interconnecting to PCL&P with anyone? If so, please provide a description of any and all discussions relating to the possible interconnection with PCL&P detailing the name of the persons involved in the discussion, the date of such discussions and the substance of any and all such discussions.
29. Has Sussex developed any cost estimates relating to a possible interconnection with PCL&P? If so, please provide a copy of any and all such estimates or other cost calculations.
30. Has Sussex developed any plan relating to the financing of a possible interconnection with PCL&P? If so, please provide a copy of any and all such financing plans.

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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Kirkpatrick & Lockhart Nicholson
Graham LLP
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Harrisburg, PA 17101-1507
717-231-5842

Daniel Clearfield, Esquire
Deanne O'Dell, Esquire
Wolf Block Schorr and Solis-Cohen LLP
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P.O. Box 865
Harrisburg, PA 17108-0865
717-237-7173

Irwin A. Popowsky, Esquire
Tanya J. McCloskey, Esquire
Office of Consumer Advocate
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William R. Lloyd, Jr., Esquire
Daniel Asmus, Esquire
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
717-783-2525

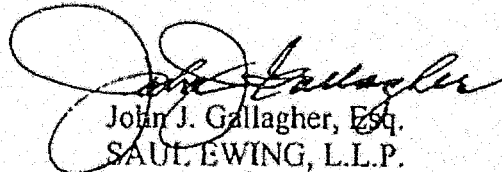
Joseph Fretta
223 Broad Street
Milford, PA 18337
570-296-3012

John W. Dalton, Jr.
207 Pond Drive
Matamoras, PA 18336
570-591-4445

Peter P. Kenny
120 Elena Lane
Milford, PA 18337
570-409-8206

Robert M. Kolling
Sussex Rural Electric Cooperative
64 County Route 639
P.O. Box 346
Sussex, NJ 07461

Respectfully submitted,



John J. Gallagher, Esq.
SAUL EWING, L.L.P.
2 North 2nd Street, 7th Floor
Harrisburg, PA 17101
(717) 257-7509
(717) 257-7591

Counsel for PCL&P

Date: November 17, 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike

v.

Pike County Light & Power Company

:
:
:
:
:
:

Docket No. C-20065942, et al.

DIRECT TESTIMONY
OF
ROBERT KOLLING
ON BEHALF OF THE
OFFICE OF CONSUMER ADVOCATE

NOVEMBER 17, 2006

1 Q. Please state your name, business address, and your job responsibilities at Sussex
2 Coop.

3
4 A. Robert Kolling, 346 Route 64, Sussex, NJ, title: President/CEO.

5 Q. Please describe the Sussex Coop.

6 A. Sussex Rural Electric Cooperative is a locally owned and managed, tax exempt electric
7 utility which was incorporated in the State of New Jersey in 1937. Under those Articles of
8 Incorporation, Sussex Rural Electric is owned by the members it serves. Each member is
9 granted a membership certificate for a fee of \$5.00. It is the only member-owned electric
10 cooperative in the State of New Jersey.

11 The primary objective of the Cooperative is to provide reliable electrical service to our
12 members at the lowest possible cost. Our service territory represents the northwestern portion of
13 Sussex County with 11,806 consumers, and a small portion of Orange County in New York
14 State, serving 158 consumers.

15 In accordance with the Cooperative's bylaws, an Annual meeting is held each year,
16 where the members elect three of the nine members of its Board of Directors for a three-year
17 term.

18 Sussex Rural Electric's tax exempt status was granted by the IRS and requires that 85
19 percent of our revenue must come from the sale of electricity and that any margin generated from
20 this activity be refunded to the members in the form of Capital Credits, the retirement of which is
21 determined by the Board of Directors.

22 Q. Is Sussex interested in acquiring Pike County Light & Service Company?

23 A. Yes.

24

1 Q. Please describe the location of Sussex in relation to Pike County Light & Power
2 Company's service territory.
3

4 A. The Sussex office is 15 miles from downtown Milford which is equal to the same
5 distance we travel to provide service to our Black Creek Area in Vernon, NJ.

6 Q. Please describe the physical interconnections and other additions that would be
7 necessary for Sussex to take over the PCL&P service territory.
8

9 A. We would tie into an existing 34.5 KV line in New Jersey 1.1 miles from the Milford
10 Bridge on State Route 206. This interconnection would tie Pike County to the PJM Grid.

11 Q. Do you believe that the interconnection of Sussex with PCL&P is technically feasible
12 and economically viable?
13

14 A. Yes, this tie is needed to give the consumers of Pike County a main feed that would help
15 reliability and tie them to the PJM grid.

16 Q. Please describe the relationship of Sussex to the PREA and to Allegheny Electric
17 Cooperative, Inc.
18

19 A. PREA is our statewide association that provides its members with a number of services;
20 from a safety department, legislative and public affairs, education for our members and staff, to a
21 monthly newsletter Allegheny is our G&T (Generation & Transmission) provider. They work
22 with Sussex to provide cost based power to its members and secure the wheeling of that power to
23 all its members. Sussex is a member of both cooperatives and has a seat on each board. We are
24 the owners of PREA and Allegheny Electric.

25 Q. Is Allegheny Electric Cooperative, Inc. a member of PJM?

26 A. Yes.

27 Q. Does Sussex receive generation through the PJM Interconnection?

28 A. Yes.

29

1 Q. Please describe how Sussex acquires generation for its members and identify the
2 current components of the Sussex generation portfolio.

3
4 A. Sussex acquires our generation from Allegheny Electric. Allegheny's current portfolio is
5 70% ownership in a nuclear power plant and a hydro-electric generation plant (Susquehanna &
6 Raystown Lake) and 30% market price.

7 Q. Please set forth the current wholesale cost that Sussex pays for generation.

8 A. Average Price for Sussex in 2006 has been \$0.5759 per KWH from Allegheny Electric.

9 Q. Please set forth the current distribution, transmission, generation and total retail
10 price that Sussex charges to its members.

11
12 A. Our current cost to our residential members, which is 92% of our total connected meters,
13 is a monthly facility charge of \$8.96 and a cost of \$0.1046 per KWH to our members. In New
14 Jersey these rates are subject to sales tax and brings the total cost to \$9.59 for the facility charge
15 and \$0.1117 per KWH.

16 Q. What benefits do you believe Sussex's acquisition of Pike brings to Pike's
17 ratepayers?

18
19 A. Rate stability, Reliable service, involvement in the community, and the flexibility to
20 provide choices to the different revenue and rate classes.

21 Q. Please describe Sussex's advanced metering and load management programs.

22 A. Sussex is 100% AMR (automatic meter reading) to its members and will integrate the
23 same system in Pike County over the first three years. AMR gives our members a way to track
24 their daily usage and helps us locate and determine outages. We also have a load management
25 system in which we can send a signal to a device that turns the member's electric hot water tank
26 off. This helps us control our peak electric demand. We also have an ETS (Electric Thermal
27 Storage) rate to our members that choose to install this type of equipment for heating their
28 homes. We have the member install a second meter on the house and all KWH usage for this

1 service is sold to our members at a cost of \$0.58757 per KWH. This is off peak and our cost per
2 KWII reflects them not contributing to our system peak.

3 Q. Assuming that Sussex can commence service in PCL&P on January 1, 2008, can you
4 estimate what rates you would charge to PCL&P customers for the year 2008 and
5 what rates you would charge after 2008?
6

7 A. Many factors will decide what rates the consumers of Pike County may have to pay, but I
8 do see a 20% reduction in their current rates with rate parity to the Sussex membership in five
9 years.

10 Q. Is Pike's ownership of a small gas distribution operation in Matamoras,
11 Pennsylvania an impediment to Sussex's acquisition of the Company?
12

13 A. No.

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (In PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

December 21, 2006

VIA HAND DELIVERY

John J. Gallagher, Esquire
Ed Lanza, Esquire
Saul Ewing LLP
Penn National Insurance Tower
2 North Second Street, 7th Floor
Harrisburg, PA 17101

RE: County of Pike
v.
Pike County Light & Power Company
Docket No. C-200065942, et al.

Dear Mr. Lanza:

Enclosed please find the Office of Consumer Advocate's responses to Pike County Light and Power Company Interrogatories Sets I and III, with accompanying witness verification, in the above-referenced proceeding.

Also enclosed is a copy of the Certificate of Service for these responses, which has been filed with Secretary McNulty of the Pennsylvania Public Utility Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Aron J. Beatty".

Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625

Enclosures

cc: All parties of record

00092004 DOC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike

v.

Pike County Light & Power Company

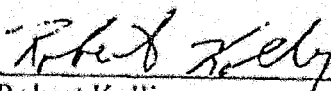
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Docket No. C-20065942, *et al.*

VERIFICATION

I Robert Kolling, hereby state that I am the witness responsible for responding to the Pike County Light & Power Company Interrogatories Set I, and that the facts above set forth are true and correct to the best of my knowledge, information and belief in the listed interrogatory responses. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Signature:


Robert Kolling

Consultant Address: 346 Route 64
Sussex, NJ, 07461

DATED: December 20, 2006

Email: rkolling@sussexrec.com
Phone: 614-397-4526
Fax:

00091831.DOC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike

v.

Pike County Light & Power Company

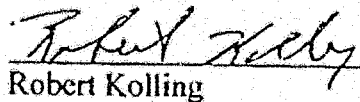
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Docket No. C-20065942, *et al.*

VERIFICATION

I Robert Kolling, hereby state that I am the witness responsible for responding to the Pike County Light & Power Company Interrogatories Set III, and that the facts above set forth are true and correct to the best of my knowledge, information and belief in the listed interrogatory responses. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Signature:


Robert Kolling

Consultant Address: 346 Route 64
Sussex, NJ, 07461

DATED: December 20, 2006

Email: rkolling@sussexrec.com
Phone: 614-397-4526
Fax:

00091841 DOC

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Interrogatories Set I and III, 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:

Dated this 21st day of December 2006.

SERVICE BY E-MAIL and FIRST CLASS MAIL

John J. Gallagher, Esquire
Edward J. Lanza, Esquire
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(VIA HAND DELIVERY)

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Counsel For: *Samall Properties, Inc., Three Lane Utility Corporation, County of Pike, and Richard Snyder*

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Counsel for: *Direct Energy*

SERVICE BY FIRST CLASS MAIL

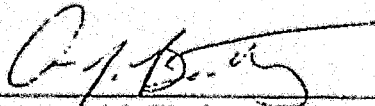
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Matamoras, PA 18336

Dana Gobin
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Matamoras, PA 18336

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Milford, PA 18337

Community Building Projects
Sean O. Strub
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00090030 DOC

County of Pike

v.

Pike County Light & Power Company
Docket No. C-20065942, et al

Office of Consumer Advocate Responses
to Pike County Light & Power Company
Interrogatories Set I

1. Please provide a detailed description of the Sussex Rural Electric Cooperative ("Sussex"), including, number of customers served, the description of service territory, numbers of commercial, residential, public and industrial customers.

RESPONSE:

Sussex is a locally owned and managed, tax exempt electric utility incorporated in the State of New Jersey in 1937. Sussex is a member-owned electric cooperative. Sussex serves approximately 11,790 consumers.

Sussex serves approximately 10846 residential, 876 general service, and 68 large power customers (over 1000kVa).

Sussex's service territory is a primarily rural, residential service territory averaging 17 customers per mile of service.

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

Office of Consumer Advocate Responses
to Pike County Light & Power Company
Interrogatories Set 1

2. Please provide the following with regard to Sussex for the last 5 years:
- a. Annual Reports
 - b. Bylaws
 - c. Membership Lists
 - d. Tariffs, Rules, Regulations and/or Rate Schedules
 - e. Balance Sheets
 - f. Income Statements
 - g. Lists of Directors and Officers

RESPONSE:

Enclosed are the Annual Reports for 2001 through 2005. Also enclosed are the current bylaws, with amendments through June 13, 2003, as well as prior bylaws with amendments through June 2002. Also attached are the current rate schedules and a summary sheet of rates from 2000 through 2006. Balance sheets, income statements, and lists of directors and officers are each contained in the Annual Reports. The total number of members is 10,790, broken down into three districts. A list of our individual members will not be provided without their permission.

Responsible Witness: Robert Kolling

County of Pike

v.

Pike County Light & Power Company
Docket No. C-20065942, et al

Office of Consumer Advocate Responses
to Pike County Light & Power Company
Interrogatories Set 1

- 3 Please provide information describing Sussex's relationship to the Pennsylvania Rural Electric Association.

RESPONSE:

Sussex is a full member of the PREA. One of Sussex's directors is a member of the PREA Board of Directors.

Responsible Witness: Robert Kolling

County of Pike

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4. How many members does Sussex have?

RESPONSE:

Sussex has 10,790 members.

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5. Provide the growth in customers over the last five years and the estimated growth rates, per year, for the next five years.

RESPONSE:

Historical data is listed on the attached document. Growth rates are projected in the attached study labeled "Power Requirements Study, 2005-2014"

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- 6 Provide the annual amounts that Sussex has spent on purchased power in the last five years?

RESPONSE:

See Attachment I to OCA set I, No. 5.

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7. Does Sussex own, or have the right to the capacity from, any generating facilities? If so, provide a detailed description of the plant and the arrangements by which Sussex obtains the power.

RESPONSE:

No Sussex receives its power through the Allegheny Energy Cooperative. A copy of the Allegheny Annual Report identifying their power purchases is attached to OCA Set IV, no. 5.

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- 8 Where has Sussex purchased power in the last five years? Please provide a detailed breakdown of any and all sources of purchased power by year, volume of purchase and amount of purchase for each of the last five years.

RESPONSE:

All power is purchased through Allegheny Energy. See response to OCA set I, No. 7, above.

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9. Provide a detailed description of the load forecasts and capacity (or power purchase) additions for the next five years.

RESPONSE:

See Attachment 2 to OCA Set I, No. 5.

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Office of Consumer Advocate Responses
to Pike County Light & Power Company
Interrogatories Set I

10. Please provide any and all heating and cooling degree day data available for the last five years.

RESPONSE:

See attached charts, which show historical heating degree days. There is no historical record of cooling degree days.

Responsible Witness: Robert Kolling

County of Pike

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Interrogatories Set I

11. Provide copies of any and all contracts for power purchases.

RESPONSE:

A copy of the Member Agreement between Allegheny Electric Cooperative, Inc., and Sussex, is attached.

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Pike County Light & Power Company
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Interrogatories Set I

12. How many power outages has Sussex experienced in the last five years? Please provide a detailed description of any and all power outages by year, date, duration, cause and number of members affected.

RESPONSE:

A complete set of outage data for the years 2001 through 2006 is attached.

Responsible Witness: Robert Kolling

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Office of Consumer Advocate Responses
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Interrogatories Set I

13. Please provide rate schedules for electric service for the last five years. Provide a detailed description of any and all rates and charges by service type, fixed charges, usage charges and all fees.

RESPONSE:

A list of rate schedules is attached to Set I, No. 2.

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14. Provide a detailed calculation of an average monthly bill for the following:
- a. a typical residential heating customer;
 - b. a typical residential non-heating customer;
 - c. a typical commercial customer;
 - d. a typical industrial customer;
 - e. a typical public customer.

RESPONSE:

Sussex does not maintain calculations for "typical" customers. The attached chart shows average rates based on the total kwh sold divided by the total number of customers in various customer classes.

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15. By whom is Sussex regulated? Please provide a list of any and all regulators who oversee Sussex's operations and what areas of the cooperative's operation each regulator oversees.

RESPONSE:

As a member owned coop, Sussex's rates and services are not regulated by a state regulatory agency. Sussex's territorial boundaries are established by the New Jersey Board of Public Utilities. Sussex is also regulated by state and federal environmental agencies.

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to Pike County Light & Power Company
Interrogatories Set I

16. Does Sussex maintain its own in-house construction and/or maintenance personnel? If yes, then please provide the number of employees and their job description.

RESPONSE:

Yes. A list of employees and job titles is included in the annual reports attached to OCA Set I, No. 2.

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Office of Consumer Advocate Responses
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17. Provide the number of qualified linemen employed by Sussex.

RESPONSE:

A list of qualified linemen is included in the annual reports attached to OCA Set I, No. 2. There are 13 qualified linemen employed by Sussex. In addition to the linemen identified in the Annual Report, the Supervisor of Operations and the Supervisor, Purchasing & Contractors are both qualified linemen who provide field assistance when needed.

Also, a cooperative agreement among the PREA coop's provides for additional emergency assistance when needed.

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18. Provide the location of all work and maintenance facilities of Sussex.

RESPONSE:

Sussex operates work and maintenance facilities at its headquarters at 64 Route 639, Sussex, NJ, and at the Picatinny Army base in Rockaway, NJ.

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19. Provide a detailed electrical map of Sussex, including locations of all substations, major circuits, transmission and distribution lines, voltage of circuits, etc.

RESPONSE:

A large, detailed map is being provided to PCL&P. A second copy of the map is available for inspection at the OCA's office. A less detailed map of Sussex is attached to this response.

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Office of Consumer Advocate Responses
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Interrogatories Set I

20. Provide all service standards for providing both electrical and customer service applicable to Sussex. If Sussex is not subject to service standards, provide all information about the service provided by Sussex including:
- a. Maximum telephone answering time
 - b. Maximum allowable time on hold,
 - c. New service initiation time,
 - d. Numbers of estimated bills
 - e. Allowable voltage fluctuation,
 - f. Maximum free service distance

RESPONSE:

As a customer owned company Sussex is not governed by any external standards. A list of customer complaints is set forth in attachment to Set III, No. 5. A summary of 2005 and 2006 call metrics from Cooperative Response Center, Inc., is attached to this response.

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Office of Consumer Advocate Responses
to Pike County Light & Power Company
Interrogatories Set I

21. Has Sussex studied or otherwise considered the possibility of acquiring PCL&P? If so, what steps has Sussex taken in its study and/or considerations of such an acquisition?

RESPONSE:

Yes, Sussex has begun an evaluation of the acquisition of PCL&P's service territory. Sussex has written two letters requesting information and met with representatives of ConEd and O&R in New York. Sussex made a series of data requests to ConEd and also requested ConEd to enter into a confidentiality agreement. ConEd did not respond to the data requests and did not enter into a confidentiality agreement. Copies of the Sussex letters, and ConEd's response, are attached.

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Office of Consumer Advocate Responses
to Pike County Light & Power Company
Interrogatories Set I

22. Please provide copies of any and all documents in the possession of Sussex relating to the possible acquisition of PCL&P.

RESPONSE:

See response to OCA Set I, No. 21. To the extent that Sussex has analyzed the possibility of acquiring PCL&P, those analyses are confidential and would be utilized for good faith negotiations with ConEd.

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to Pike County Light & Power Company
Interrogatories Set I

23. Has Sussex discussed the possibility of acquiring PCL&P with anyone? If so, please provide a description of any and all discussions relating to the possible acquisition of PCL&P detailing the name of the persons involved in the discussion, the date of such discussions and the substance of any and all such discussions.

RESPONSE:

Yes. Sussex has discussed the possibility of acquiring PCL&P briefly with Robert Høglund of ConEd and Jim Tarpey of O&R on August 24, 2006 at the O&R Spring Valley operating center. Sussex has also met with PaPUC Commissioner Bill Shane and his staff in early 2006. Sussex has also discussed acquisition of PCL&P generally with representatives of Allegheny Electric Cooperative, Pike County officials and the Office of Consumer Advocate at various meetings and public hearings. These discussions all involved the potential general benefits to Pike customers of Sussex acquiring PCL&P.

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Office of Consumer Advocate Responses
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24. Has Sussex developed any cost estimates relating to a possible acquisition of PCL&P? If so, please provide a copy of any and all such estimates or other cost calculations.

RESPONSE:

See response to OCA Set I, No. 22.

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Office of Consumer Advocate Responses
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25. Has Sussex developed any plan relating to the financing of a possible acquisition of PCL&P? If so, please provide a copy of any and all such financing plans.

RESPONSE:

Sussex has not developed a specific plan for financing acquisition of PCL&P. However we have discussed this issue with our banker, the Rural Utility Services Cooperative Finance Corporation. Attached is a summary of the due diligence required for acquisition, which we would undertake if ConEd enters good faith negotiations.

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Office of Consumer Advocate Responses
to Pike County Light & Power Company
Interrogatories Set I

26. Has Sussex studied or otherwise considered the possibility of interconnecting with PCL&P? If so, what steps has Sussex taken in its study and/or consideration of such an interconnection?

RESPONSE:

Yes. As part of the acquisition, Sussex has considered connecting the PCL&P service territory to PJM via a 34.5 kv line owned by Jersey Central Power & Light, located near the Holiday Lake substation. That line is a radial line off of the JCP&L Newton to Vernon main line to which Sussex currently has two inter-connections. Sussex would connect a 34.5 kv line across the Delaware river to Milford facilities, approximately 2.4 total miles.

Sussex has not done a comprehensive study of this interconnection because ConEd has thus far declined to enter into good faith negotiations to sell PCL&P.

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Office of Consumer Advocate Responses
to Pike County Light & Power Company
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27. Please provide copies of any and all documents in the possession of Sussex relating to the possible interconnection to PCL&P.

RESPONSE:

See response to OCA Set I, No. 26.

Responsible Witness: Robert Kolling

County of Pike

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Pike County Light & Power Company
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Office of Consumer Advocate Responses
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Interrogatories Set I

28. Has Sussex discussed the possibility of interconnecting to PCL&P with anyone? If so, please provide a description of any and all discussions relating to the possible interconnection with PCL&P detailing the name of the persons involved in the discussion, the date of such discussions and the substance of any and all such discussions.

RESPONSE:

See response to OCA Set I, No. 23.

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Interrogatories Set I

29. Has Sussex developed any cost estimates relating to a possible interconnection with PCL&P? If so, please provide a copy of any and all such estimates or other cost calculations.

RESPONSE:

Sussex developed a rough estimate based on historic costs per mile of adding 34.5 kv line of slightly more than \$100,000 per mile. In the absence of good faith negotiations with ConEd, Sussex has not developed a more detailed estimate.

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Office of Consumer Advocate Responses
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Interrogatories Set I

30. Has Sussex developed any plan relating to the financing of a possible interconnection with PCL&P? If so, please provide a copy of any and all such financing plans.

RESPONSE:

In the absence of good faith negotiations with ConEd, Sussex has not developed a detailed financial plan. But see the response and attachment to OCA Set I, No. 25 regarding due diligence.

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OFFICE OF CONSUMER ADVOCATE

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Consumer Advocate

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December 22, 2006

John J. Gallagher, Esquire
Ed Lanza, Esquire
Saul Ewing LLP
Penn National Insurance Tower
2 North Second Street, 7th Floor
Harrisburg, PA 17101

RE: County of Pike
v.
Pike County Light & Power Company
Docket No. C-200065942, et al.

Dear Mr. Lanza:

Enclosed please find the Office of Consumer Advocate's Supplemental Response to Pike County Light and Power Company Interrogatory Set I, No. 22, in the above-referenced proceeding.

Also enclosed is a copy of the Certificate of Service for this response, which has been filed with Secretary McNulty of the Pennsylvania Public Utility Commission.

Sincerely,

A handwritten signature in cursive script that reads "James A. Mullins".

James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066

Enclosures
cc: All parties of record

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Office of Consumer Advocate REVISED Responses
to Pike County Light & Power Company
Interrogatories Set I

22. Please provide copies of any and all documents in the possession of Sussex relating to the possible acquisition of PCL&P.

RESPONSE:

See response to OCA Set I, No. 21. To the extent that Sussex has analyzed the possibility of acquiring PCL&P, those analyses are confidential and would be utilized for good faith negotiations with ConEd.

SUPPLEMENTAL RESPONSE (December 29, 2006)

Attached is a confidential document captioned "Analysis of Project Northeastern Corner", which was prepared by Christenberry Collett Investment Bankers for Sussex. This document addresses a possible acquisition of PCL&P by Sussex. However, those portions of the document which, if disclosed, would impair Sussex's ability to effectively negotiate a purchase of PCL&P have been redacted.

Sponsoring Witness: Robert Kolling

Analysis of Project Northeastern Corner



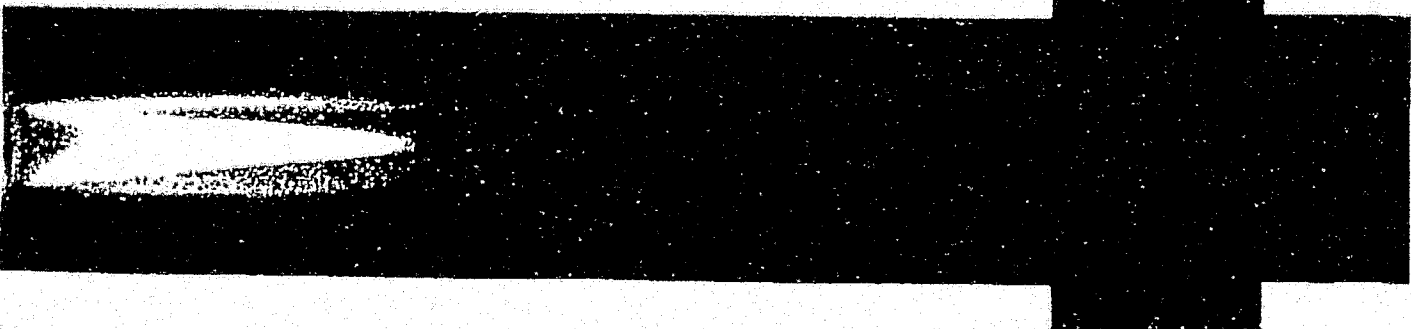
Sussex Rural
Electric Cooperative

Board of Directors Meeting
January 31, 2006

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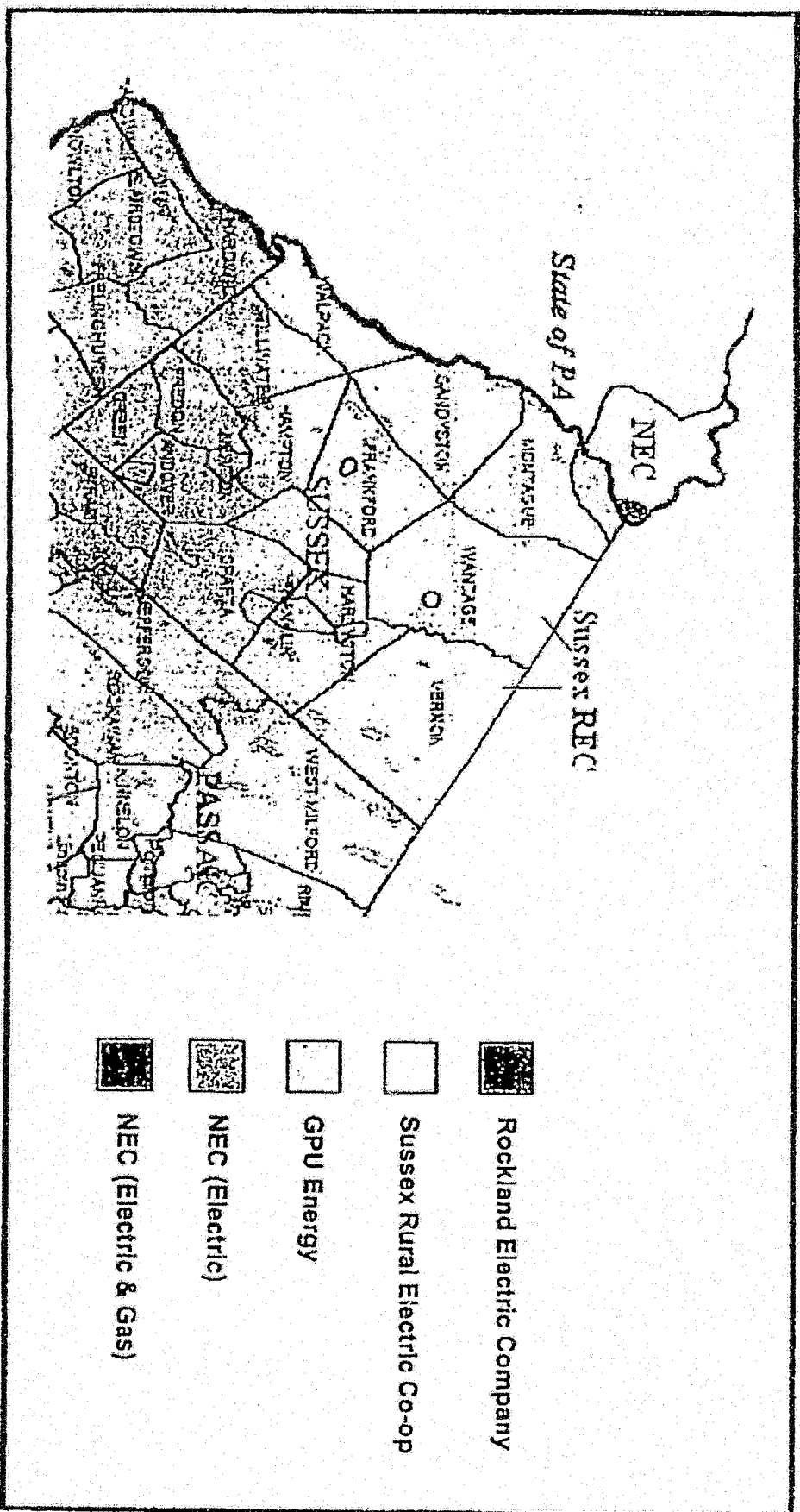
- Transaction Overview
- Pro Forma NEC Financial Results
- Valuation Analysis
- Pro Forma Consolidated Sussex & NEC Financial Results
- Conclusion & Action Plan

Transaction Overview



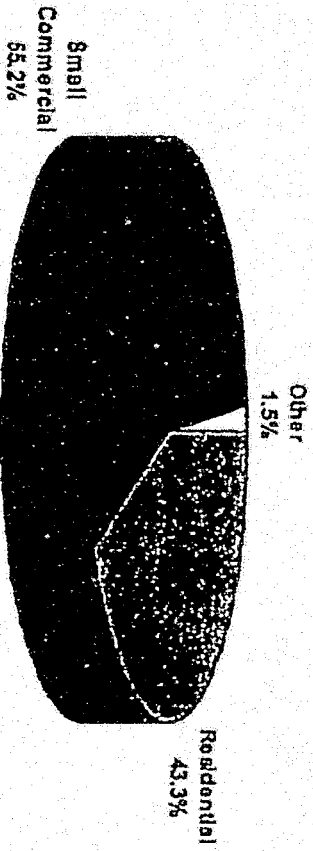
Transaction Overview

- Project Northeastern Corner ("NEC") distributes electricity to approximately 4,477 customers and natural gas to approximately 1,148 customers in northeastern Pennsylvania.

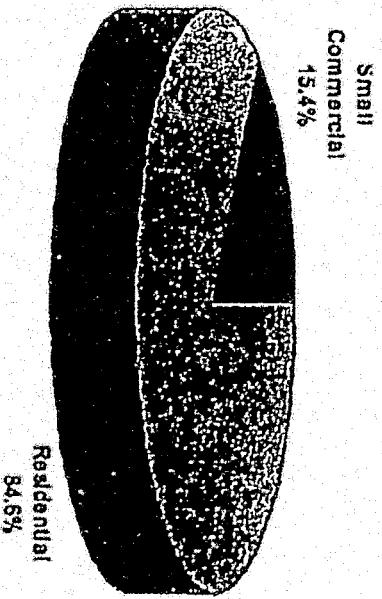


Transaction Overview

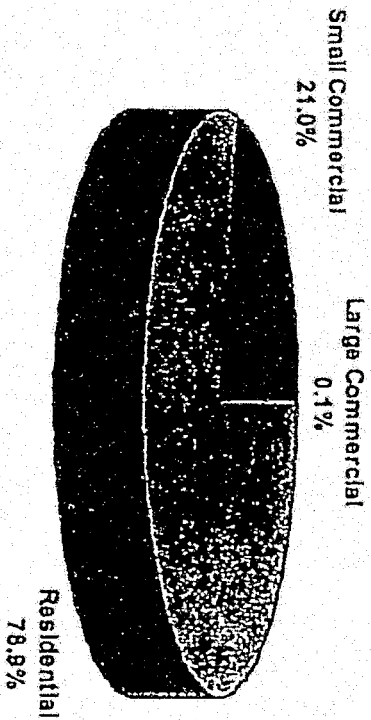
Electric Revenue of \$6.7M
FY 2004



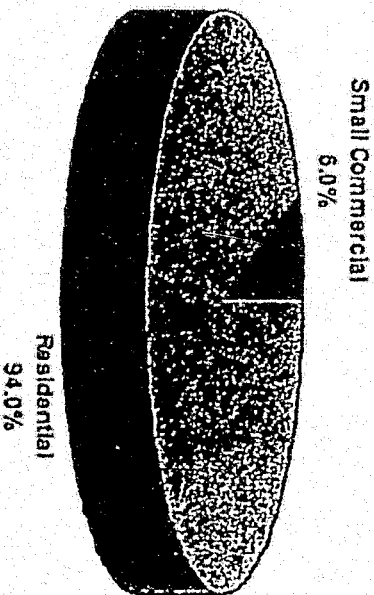
Gas Revenue of \$1.3M
FY 2004



Electric Customers - 4,467
FY 2004

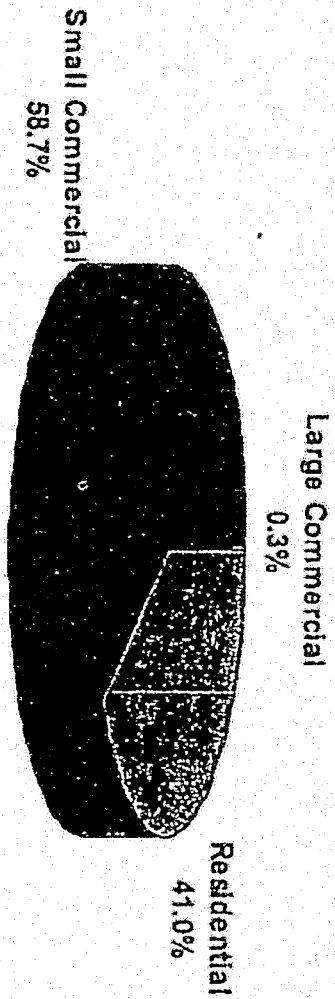


Gas Customers - 1,141
FY 2004

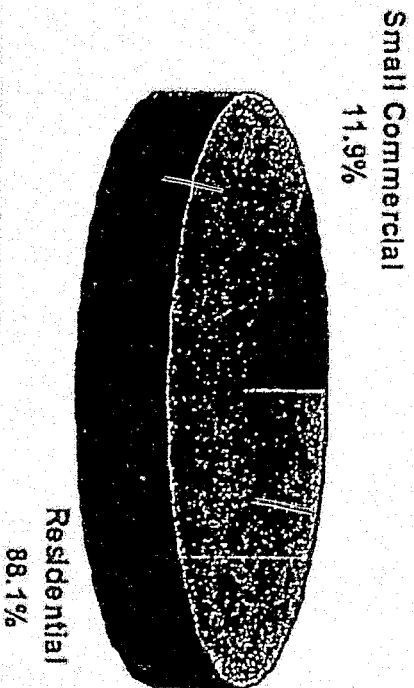


Transaction Overview

MWh Sales of 67,096
FY 2004



MMBTU Sales of 144,685
FY 2004



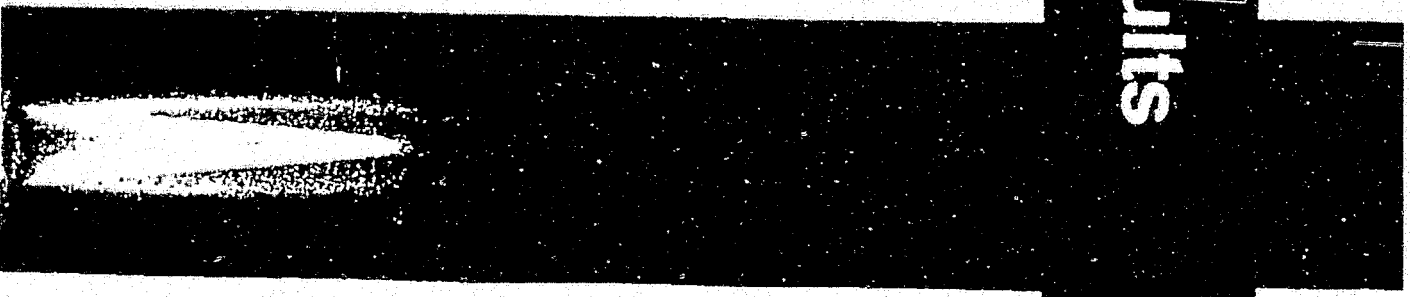
Transaction Overview

- Project NEC has estimated net utility plant of \$9.0 million consisting primarily of electric distribution assets.

Pro Forma Net Book Value of Utility Assets at 31-Dec-05

	Electric Distribution	Gas Distribution	General & Other	CWIP	Total
Gross utility plant in service	\$ 10,386,239	\$ 1,221,732	\$ 2,675	\$ 638,766	\$ 12,249,412
Accumulated depreciation	(2,842,386)	(375,799)	-	-	(3,218,185)
Net utility plant	\$ 7,543,853	\$ 845,933	\$ 2,675	\$ 638,766	\$ 9,031,227

Pro Forma Project NEC Financial Results



Pro Forma Project NEC Financial Results

- CCCO reviewed a limited amount of information to develop preliminary financial forecast for Project NEC including:
 - Annual PUC filings
 - FERC filings
 - PUC rate filings

- CCCO, with input from Sussex management, made specific assumptions in developing the financial forecast for Project NEC including:
 - Average electric and gas load growth of 1.7% and 0.9%, respectively
 - Target ROE of [REDACTED] %
 - No base rate increase required for projection term
 - Gas adjustment clause to flow commodity cost through to customers
 - Potential O&M synergies
 - Cut customer accounts and A&G direct salary expense 20% in year 1 and 35% in year 2
 - Upfront capital expenditures of \$125,000
 - Subject to further due diligence

Pro Forma Project NEC Financial Results

On a stand-alone basis, Project NEC would generate \$10.1 million of revenue and \$ million of earnings before interest taxes and depreciation ("EBITDA") in 2006, the first full year of operations, assuming a million purchase price. EBITDA is calculated by subtracting operating expenses, taxes other than income and other operating expenses from revenue.

Pro Forma Project NEC Financial Results

	2006 - E	2007 - E	2008 - E	2009 - E	2010 - E	2011 - E	2012 - E	2013 - E	2014 - E	2015 - E
Electric revenue	\$ 7,987,249	\$ 8,118,877	\$ 8,064,828	\$ 7,833,984	\$ 7,879,377	\$ 7,987,014	\$ 8,282,147	\$ 8,525,168	\$ 8,800,228	\$ 9,088,689
Gas revenue	\$ 2,181,223	\$ 1,944,778	\$ 1,799,042	\$ 1,687,428	\$ 1,602,948	\$ 1,554,861	\$ 1,586,120	\$ 1,618,095	\$ 1,650,804	\$ 1,684,264
Gross margin										
Gross margin %										
EBITDA										

Pro Forma Project NEC Financial Results

The stand-alone Project NEC balance sheet at a \$ [redacted] million purchase price generates goodwill of \$ [redacted] million.

Pro Forma Project NEC Balance Sheet

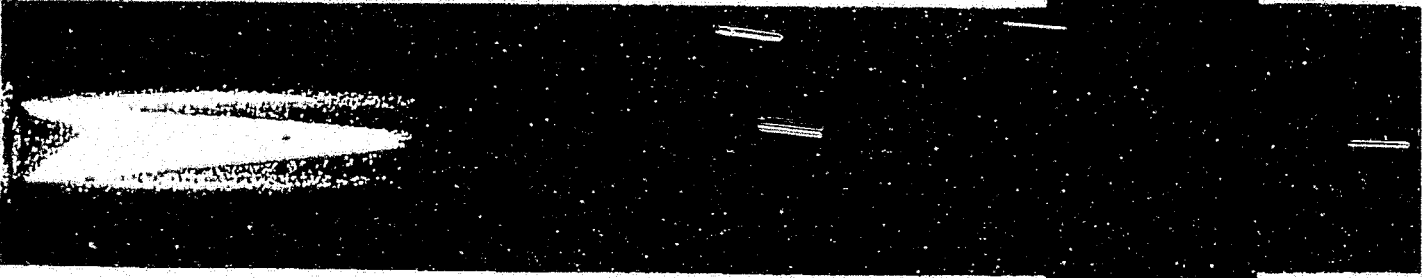
	2006 - E	2007 - E	2008 - E	2009 - E	2010 - E	2011 - E	2012 - E	2013 - E	2014 - E	2015 - E
Assets										
Plant in service	\$ 12,099,048	\$ 12,388,088	\$ 12,702,082	\$ 13,017,204	\$ 13,341,801	\$ 13,878,135	\$ 14,020,500	\$ 14,375,198	\$ 14,740,532	\$ 15,118,829
GWIP	838,768	838,766	838,766	838,766	838,766	838,768	838,766	838,786	838,768	838,766
Accumulated depreciation	(3,428,453)	(3,687,965)	(3,849,513)	(4,211,842)	(4,474,895)	(4,739,817)	(5,008,952)	(5,276,847)	(5,550,051)	(5,827,118)
Net electric plant in service	8,311,359	9,346,899	9,391,315	9,444,328	9,505,672	9,575,085	9,652,314	9,797,115	9,829,247	9,928,479
Investment assoc orgs - other										
Plant acquisition adjustment										
Total LT Investments										
Cash & special deposits										
Accounts receivable - net										
Inventories										
Other current and accrued assets										
Total current assets										
Deferred debts										
Total assets										
Liabilities & equity										
Total stockholders equity										
Total LT debt										
Accounts payable										
Line of credit / notes payable										
Current portion - LT debt										
Other current liabilities										
Total current liabilities										
Total non-current liabilities										
Total liabilities & equity										
Equity to assets %										

Pro Forma Project NEC Financial Results

The following financing assumptions have been made relative to Project NEC's capital structure:

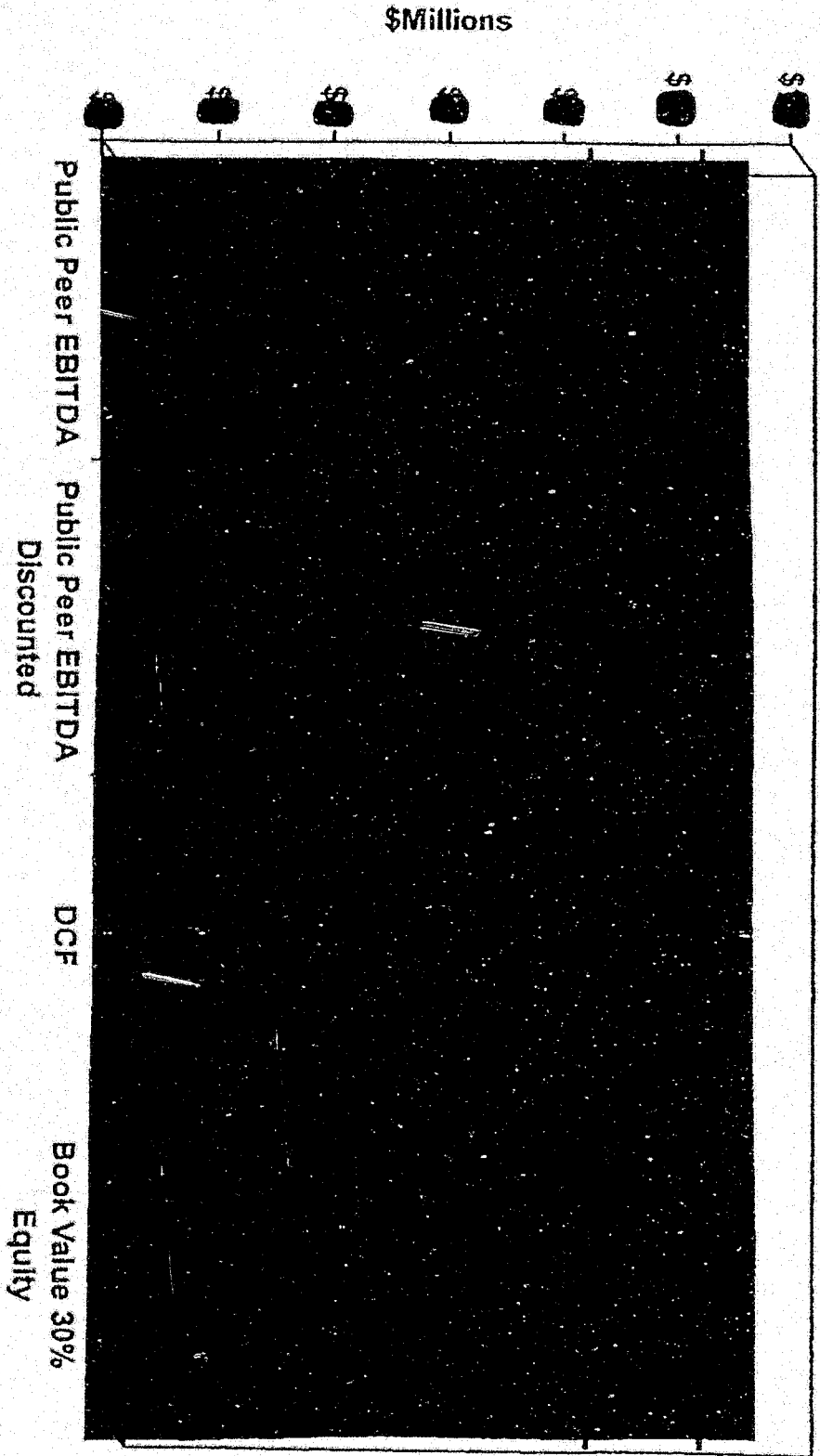
- Borrow a total of \$ [REDACTED] million
 - \$ [REDACTED] million to finance the transaction
 - \$ [REDACTED] million to purchase Loan Capital Term Certificates (LCTCs)
 - \$ [REDACTED] million to finance estimated transition & transaction cost
- 30 year term
- Level debt service payments
- Traunche over CFC yield curve

Valuation Analysis



Valuation Analysis

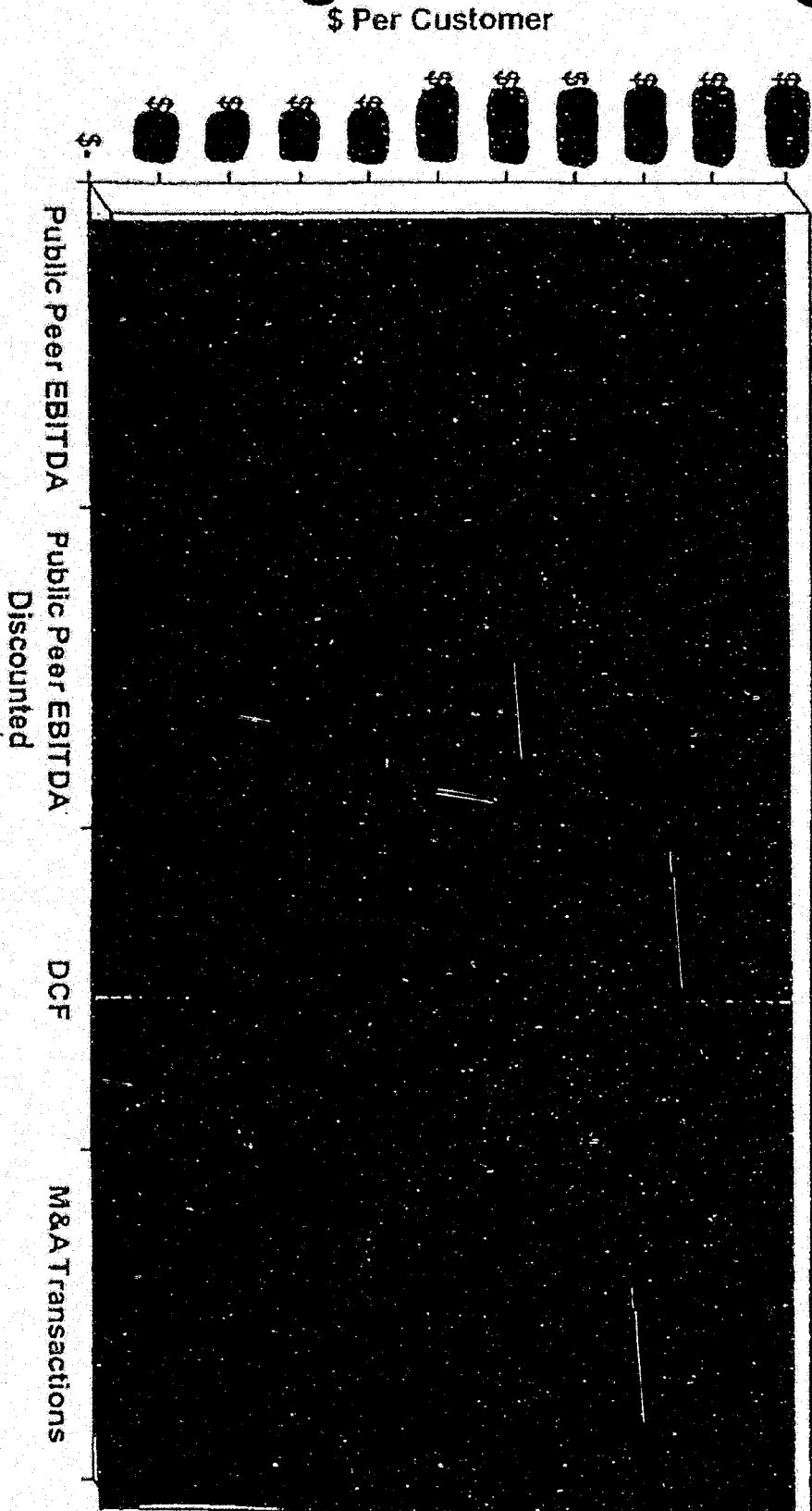
- CCCO estimates the Enterprise Valuation range for Project NEC to be \$ [redacted] million to \$ [redacted] million. The public peer group comparable values have been discounted 15% for size relative to the public peer group developed.



Valuation Range
\$ [redacted] M - \$ [redacted] M

Valuation Analysis

- The Enterprise Values per customer based on an average of 5,608 customers in 2004 are depicted below.



\$7 at a M Value

\$5 at a M Value

Pro Forma Consolidated Sussex & Project NEC Financial Results



Pro Forma Consolidated Sussex & NEC Financial Results

On a consolidated basis, Sussex and Project NEC would generate \$27.7 million of revenue and \$ million of EBITDA in 2006, the first full year of operations.

Pro Forma Combined Sussex and Project NEC Financial Results

	2006 - E	2007 - E	2008 - E	2009 - E	2010 - E	2011 - E	2012 - E	2013 - E	2014 - E	2015 - E
Revenue	\$ 27,877,178	\$ 27,902,088	\$ 29,452,502	\$ 27,527,354	\$ 27,589,012	\$ 27,877,498	\$ 29,892,482	\$ 29,741,012	\$ 30,244,696	\$ 31,188,102
Gross margin										
Gross margin %										
EBITDA										

Pro Forma Consolidated Sussex & NEC Financial Results

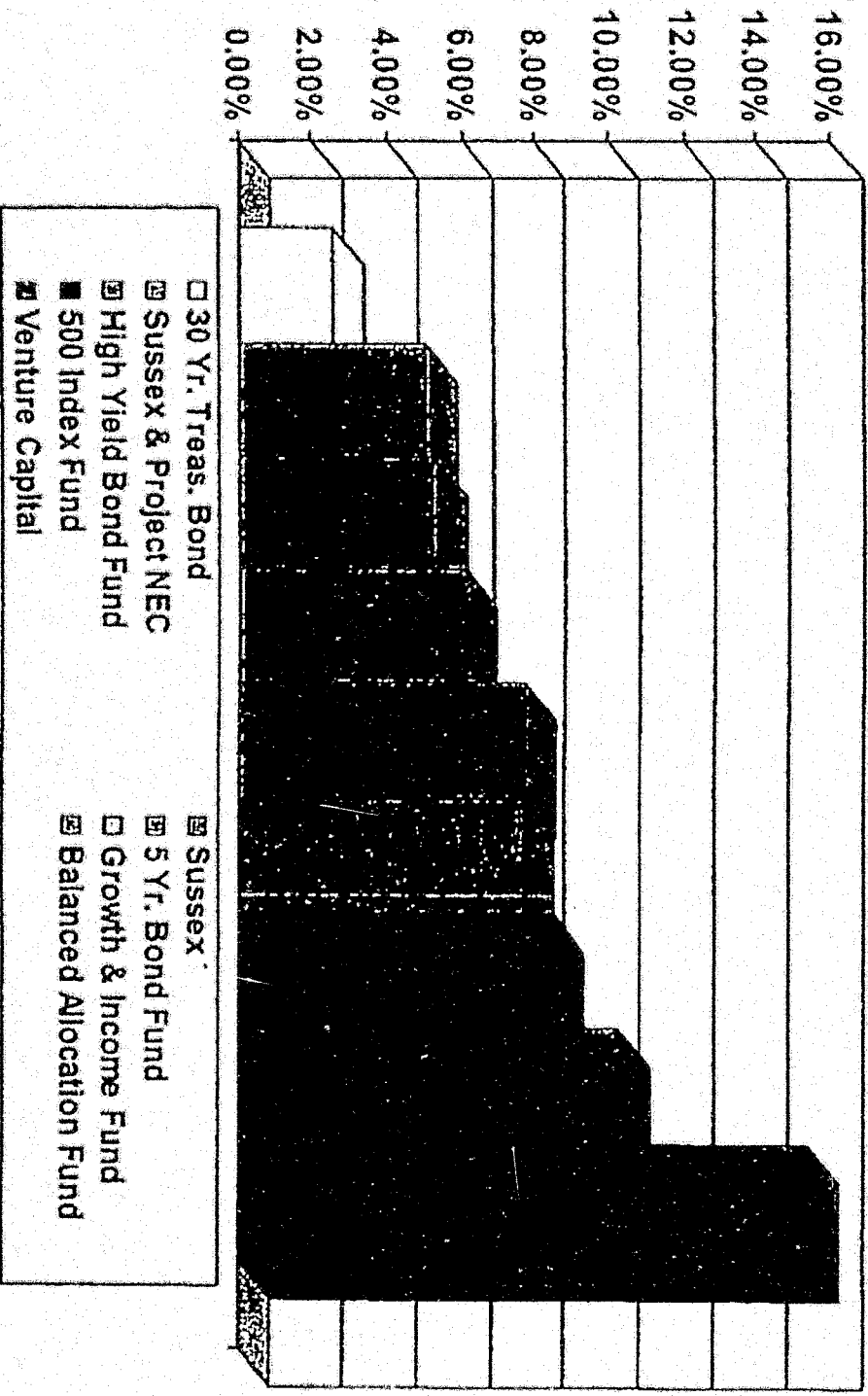
On a consolidated basis, Sussex's assets grow from \$ [redacted] million to \$ [redacted] million and the ratio of equity to assets grows from [redacted] % to [redacted] % in 2015.

Pro Forma Combined Sussex and Project NEC Balance Sheet

	2006 - E	2007 - E	2008 - E	2009 - E	2010 - E	2011 - E	2012 - E	2013 - E	2014 - E	2015 - E
Assets										
Plant in service	\$ 52,703,708	\$ 53,815,853	\$ 54,958,882	\$ 56,126,171	\$ 57,330,319	\$ 58,564,143	\$ 59,830,484	\$ 61,130,205	\$ 62,464,193	\$ 63,833,358
CWIP	2,038,080	2,038,080	2,038,080	2,038,080	2,038,080	2,038,080	2,038,080	2,038,080	2,038,080	2,038,080
Accumulated depreciation	(20,078,870)	(21,314,588)	(22,576,838)	(23,868,911)	(25,186,007)	(26,535,366)	(27,916,248)	(29,328,932)	(30,777,718)	(32,278,917)
Net electric plant/in service	34,682,918	34,539,345	34,418,126	34,298,340	34,182,391	34,066,856	33,952,316	33,838,353	33,724,555	33,591,521
Investment assoc orgs - other										
Plant acquisition adjustment										
Total LT investments										
Cash & special deposits										
Accounts receivable - net										
Inventories										
Other current and accrued assets										
Total current assets										
Deferred debts										
Total assets										
Liabilities & equity										
Total stockholders equity										
Total LT debt										
Accounts payable										
Line of credit / notes payable										
Current portion - LT debt										
Other current liabilities										
Total current liabilities										
Total non-current liabilities										
Total liabilities & equity										
Equity to assets %										

Return on Assets Analysis

□ The return on assets ("ROA") on an unleveraged basis for a diverse range of investment opportunities indicates the consolidated Sussex median ROA post-acquisition at a \$100 million purchase price is not as attractive as other investment opportunities from a capital markets perspective, but Sussex's ROA improves with Project NEC.



Conclusion & Action Plan



Conclusion & Action Plan

Business Risk

- Condition of systems
- Ability to generate cash flow within existing rate structure
- Integration of operations & back office support
- Hiring key employees

Transaction Risk

- Seller desire to sell
- Regulatory approvals
- Financing capability

Benefits

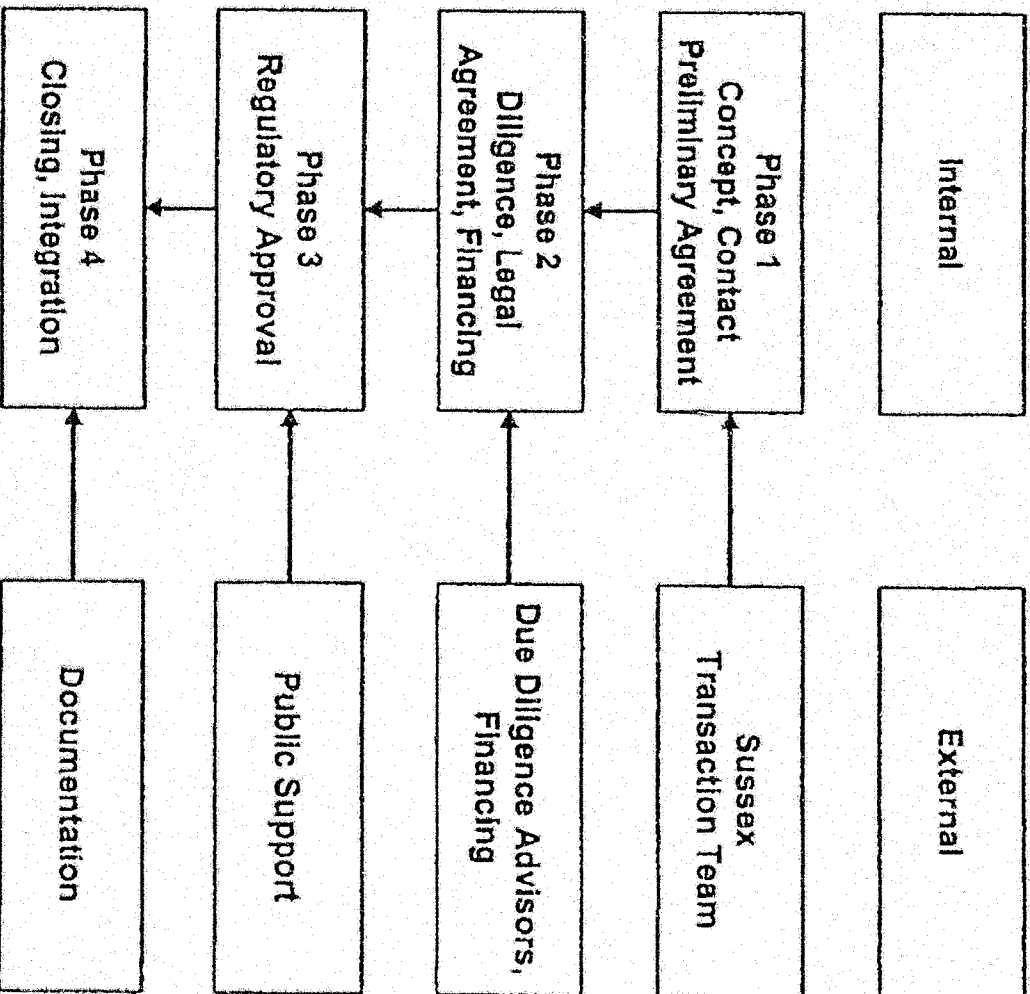
- Benefit existing Sussex members
- Leverage Sussex's existing support services
 - Key Accounts
 - Safety Coordinator
 - Marketing & Communications
 - Finance & Accounting
 - Human Resources
 - Information Technology
 - SREC Resources
 - Other Services
- Expand geographic footprint

Conclusion & Action Plan

- Sussex Board Meeting January 31st
- Establish dialogue with NEC parent company to outline a potential transaction
- Gather additional and more complete information to refine analysis
- Meet with CFC to review transaction
- Identify optimal corporate and transaction structure and negotiate contract terms
- Regulatory review process
- Keep Sussex Board informed of process

Transaction Considerations

- Structure
- Financing
- Negotiation
- Transaction Team
- Due Diligence
- Integration
- Communications
- Regulatory Approval
- Closing



Estimated Transaction Timeline

Stages	Phase 1			Phase 2		Phase 3			Phase 4
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
Transaction									
Initial contact									
Preliminary agreement									
Due diligence									
Negotiate definitive									
Regulatory									
Application									
Information requests									
Intervener negotiations									
Commission approval									
Closing									
Financing documents									
Closing schedules									
Recordation									

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate Supplemental Response to Pike County Light & Power Company's Interrogatory Set 1, number 22, 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.

Dated this 29th day of December 2006.

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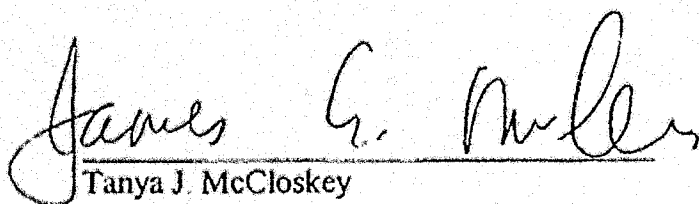
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Hyman Schoenblum
Vice President
Corporate Planning

4 Irving Place
New York NY 10003
212 460 3145

March 23, 2006

Mr. Robert Kolling
President/CEO
Sussex Rural Electric Cooperative
64 County Route 639
P.O. Box 346
Sussex, NJ 07461

Dear Mr. Kolling:

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.

If you believe there is a basis or reason for a meeting respecting the subject matter of your letter, please let us know.

Very truly yours,

TJP:jr

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DIRECT TESTIMONY
OF

NANCY BROCKWAY

ON BEHALF OF THE

OFFICE OF CONSUMER ADVOCATE

NBrockway & Associates
10 Allen Street
Boston, MA 02131
www.nbrockway.com

NOVEMBER 17, 2006

1 expressed by customers. It is possible to pursue alternatives and renewables as part of the
2 implementation of other recommendations, but it would not work to rely solely on this
3 particular option.

4 **Q. Please discuss the options that have the most promise for relieving the concerns of**
5 **Pike customers.**

6
7 **A.** Staff recommendations 2 (interconnection with PJM) and 3 (sale to another Pennsylvania
8 EDC or to a rural cooperative) hold out the greatest promise for mitigating the Pike
9 problem. In particular, a sale of Pike to the Sussex Rural Electric Cooperative will both
10 accomplish the interconnection with PJM (Recommendation 2) and the sale to another
11 utility (Recommendation 3), and in so doing, lower rates, improve service quality, and
12 restore Pike consumer confidence.

13 **Q. Please explain your reasoning in support of the concept of a sale to Sussex.**

14 **A.** All the OCA witnesses (and a good many of the consumer witnesses) agree that the only
15 systematic way to reduce the current high prices and to keep prices from staying at
16 exorbitant rates in the future is for Pike to be interconnected with PJM. As Mr.
17 Lanzalotta explains, it is much more costly for Pike to interconnect with PJM through
18 Met Ed or PPL than through Sussex. In addition, as Mr. Kahal explains, Sussex has
19 access to lower cost power through its contract with Allegheny Electric Cooperative.
20 Sussex has expressed its willingness to buy Pike at a reasonable cost, and has approached
21 Con Edison to discuss such a transaction. A copy of a letter from Sussex CEO Robert
22 Kolling to Consolidated Edison regarding this issue is attached to this testimony as
23 Exhibit NB-7. Pike customers who have discussed the Sussex option have spoken
24 positively about it. Mr. Forbes, Chair of the Pike County Commissioners, has testified

1 that he expects Pike customers to welcome participation in the cooperative in lieu of
2 continued ownership of Pike by Orange and Rockland.

3 **Q. But wouldn't a sale to this New Jersey-based cooperative deprive the Commission of**
4 **jurisdiction necessary to protect Pennsylvania customers?**

5
6 **A.** Not in this instance. The key factor in this case is that the Sussex option is far and away
7 the best way to solve consumers' problems of high rates and indifferent service. In
8 addition, the Commission can be reassured by the fact that Sussex has a history of good
9 service, as described by Mr. Lanzalotta. Also, Sussex has initiatives like its load
10 management program that follow along with public policy priorities identified by
11 Pennsylvania law and regulation. Because it is part of the New York ISO, rather than
12 PJM, Pike is at a disadvantage when it comes to meeting the requirements of the
13 Pennsylvania Alternative Energy Portfolio Standards Act. This disadvantage would not
14 affect Sussex.

15 In addition, Pike's 4500 customers will have a voice in the control of Sussex, a
16 voice they lack today. Cooperative utilities are run by professional managers, but they
17 are hired, and policy is set, by the membership through democratic voting procedures.
18 Finally, according to the testimony of Mr. Lanzalotta and Mr. Kahal, lower prices and
19 transfer to an entity with a chance of establishing a positive relationship with its
20 customers could occur fairly quickly for Pike customers if the sale were to proceed now.
21 Customers of Pike were anxious about their problems dragging on with no relief in sight.
22 A sale of the Pike system to Sussex could produce a smooth transfer from Pike to Sussex
23 as early as the end of current Pike POLR rate period and Direct aggregation contract in
24 December 2007.

25

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE)
v.) DOCKET NOS. C-200065942 et al.
PIKE COUNTY)
LIGHT AND POWER COMPANY)

DIRECT TESTIMONY

OF

MATTHEW I. KAHAL

ON BEHALF OF THE
PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

NOVEMBER 17, 2006

EXETER

ASSOCIATES, INC.
5565 Sterrett Place
Suite 310
Columbia, Maryland 21044

1 Q. WHAT IS YOUR RESPONSE?

2 A. I am encouraged that the Company seems to recognize that its structural problems cause a
3 poor market response, timing risk and undue price premiums and that it is considering the
4 feasibility of alternatives. However, so far it has not proposed or endorsed any changes.
5 Given that the Company obtained such a poor market response to a 15 MW bid, then
6 three 5 MW procurements might produce even worse results in terms of incurring small
7 load price premiums. Staggered procurements for full requirements service for such
8 small loads may or may not be feasible and could increase costs.

9 C. Acquisition by Sussex

10 Q. IS THE SALE OF PCL&P TO ANOTHER, LOWER COST UTILITY A
11 FEASIBLE SOLUTION?

12 A. Yes. Sussex has expressed strong interest in entering into discussions to negotiate the
13 purchase of PCL&P from the ultimate parent, Con Ed. To my knowledge, Con Ed's
14 management has shown no interest in such a transaction and is not actively considering
15 such an offer. In its Comments in the Commission's investigation, it stated that "While
16 the Company has a duty to consider offers for the business, Pike is committed to the
17 service of Pike County and its customers." (Comments, page 10, March 3, 2006) The
18 Comments also express skepticism that a sale of the business would benefit customers
19 due to the service area's "remote location and largely rural setting," the cost of
20 interconnecting with PJM and the complicating factor that Pike is a combined gas and
21 electric utility.

22 The Company goes even further in its August 4, 2006 reply to the County of Pike
23 Complaint. It refers to the:

24
25 unsupported and mistaken assumptions that acquisition by
26 another utility with membership in PJM will provide long-term
27 economic benefits to PCL&P's customers or that a sale of the

1 Company will result in lower rates for PCL&P's customers.
2 (Paragraph #62)

3 Q. DO YOU SHARE THE COMPANY'S SKEPTICISM OVER POTENTIAL
4 BENEFITS?

5 A. No, I disagree. I interpret the Company's comments as acknowledging that it has a
6 public interest obligation to consider the best interests of its customers, as well as
7 protecting (Con Ed) shareholders. Assuming a fair price for its investment in PCL&P,
8 Con Ed clearly will not be adversely impacted by this sale since the Company is a
9 miniscule part of the total Con Ed.

10 The Company's argument is that an acquisition would not change the basic
11 economics of generation supply for its customers. However, in the case of a Sussex
12 acquisition, the evidence indicates that this assumption is incorrect.

13 Q. PLEASE DESCRIBE SUSSEX.

14 A. Sussex is a rural electric distribution cooperative located across the Delaware River in
15 New Jersey but in very close proximity to the PCL&P service area. It serves over 11,000
16 customers in Sussex County, New Jersey and a small number in Orange County, New
17 York. Sussex has a peak demand of about 40 MW and a power supply energy
18 requirement of about 150,000 MWh per year. Thus, a PCL&P acquisition would increase
19 the size of Sussex by about 40 to 50 percent. According to the coop's website, it charges
20 its New Jersey customers a bundled service rate of 10.38 cents per kWh and a facility
21 charge of \$9.50. There is no separate delivery charge. For example, a residential
22 customer using 700 kWh per month would pay approximately \$82.16 under Sussex's
23 current rates, as compared to \$132.31 under PCL&P's current default rates (roughly a 60
24 percent premium). Using the Direct Energy generation rates, the 700 kWh residential bill
25 is about \$121 per month (about a 48 percent premium).

1 Sussex obtains its power supply from Allegheny Electric Cooperative, Inc.
2 (Allegheny), a Generation and Transmission (G&T) cooperative headquartered in
3 Harrisburg, PA, and a member of PJM. Allegheny provides G&T service to 13
4 distribution cooperatives in Pennsylvania plus Sussex. Sussex currently incurs a power
5 supply cost of 5.8 cents per kWh based on Allegheny's blended cost of supply. Even
6 after adjusting this wholesale cost for line losses, this is only about half what PCL&P
7 customers are incurring for generation supply under the Direct Energy "opt-out" price.

8 Q. THE WHOLESALE RATE THAT YOU DESCRIBE APPEARS TO BE
9 BELOW MARKET. WHAT ARE ALLEGHENY'S SOURCES OF SUPPLY?

10 A. Allegheny serves a peak load of 655 MW and serves indirectly about 222,000 retail
11 customers. It serves this load with a combination of resources that includes the
12 following:³

13 (1) Nuclear. Allegheny owns ten percent of the Susquehanna Steam Electric
14 Station (Susquehanna), a 2,360 MW, two-unit nuclear plant operated by
15 PPL Corporation which also owns the remaining 90 percent. In 2005,
16 Susquehanna accounted for 62 percent of Allegheny's total power supply,
17 and the plant operated at a capacity factor of 88.8 percent.

18 (2) Hydro. Allegheny purchases low-cost hydro from the New York Power
19 Authority's (NYPA's) Niagara and St. Lawrence projects (about 33 MW).
20 Allegheny also owns the two-unit Raystown hydro plant (42 MW).
21 Together, these sources provide about 10 percent of Allegheny's total
22 requirements.

23 (3) Market Purchases. Since 2001, Allegheny has been obtaining about 30
24 percent of its supply under a wholesale contract with Williams Energy

³ This information is derived from Allegheny's 2005 Annual Report.

1 Marketing & Trade (Williams). A portion of the Williams energy is at
2 fixed contract rates with hourly and monthly caps on the energy that must
3 be supplied at those rates. Additional requirements above the caps are
4 supplied at spot market prices.

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

11 Q. DOES THIS WHOLESALE RATE OF 5.8 CENTS INCLUDE
12 TRANSMISSION?

13 A. My understanding is that it does. Allegheny purchases transmission service from other
14 PJM transmission owners at their FERC-approved rates and includes that cost in its
15 bundled wholesale rate of 5.8 cents per kWh. These are the transmission owning PJM
16 companies that are interconnected with the 14 member distribution cooperatives.

17 Q. THE 5.8 CENT RATE IS WELL BELOW PCL&P'S CURRENT COST OF
18 POWER. WHAT IS LIKELY TO HAPPEN TO THAT RATE OVER TIME?

19 A. While power supply costs could change somewhat over time, I believe that on a long-run
20 basis they are likely to remain reasonably stable. The largest asset, Susquehanna (a two-
21 unit plant), has about 20 years remaining on its Nuclear Regulatory Commission (NRC)
22 operating license and there are reasonable prospects for a 20-year NRC license extension.
23 It is also my understanding that the owner (PPL Corporation) intends a power uprate of
24 the plant by about 10 percent, and as a co-owner, Allegheny will share in any uprate (as
25 well as uprate costs). At the present time, Allegheny's large original investment in

1 Susquehanna has been largely recovered, and as a result it seems unlikely that its "all-in"
2 cost of power from this plant will increase significantly over time.

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

6 The largest area of uncertainty is the Williams contract which is scheduled to
7 expire under its terms at the end of 2008. Presumably, Allegheny must replace this
8 supply at potentially a higher cost which could contribute to a modest increase in
9 Allegheny's blended cost of power. This would depend on market conditions at that time
10 assuming Allegheny intends to use a market purchase.

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

17 Q. UNDER A SUSSEX ACQUISITION, WILL THE PRESENT PCL&P
18 CUSTOMERS PAY RATES THAT REFLECT THE ALLEGHENY BLENDED
19 POWER SUPPLY COST?

20 A. My understanding is that Pennsylvania customers of PCL&P on a long-term basis would
21 enjoy this favorable rate. However, during a transition period it may be necessary for
22 customers to incur a surcharge due to "caps" on the Williams contract energy (i.e., over
23 certain thresholds incremental energy purchased from Williams are priced at spot market
24 prices).

1 Please note that it is the intent of Sussex to interconnect the current PCL&P load
2 with PJM at Sussex, which will permit that load to be fully served by the Allegheny
3 supply portfolio. As OCA witness Lanzallota explains, this could be accomplished at a
4 capital investment cost of about \$1 to \$2 million.

5 Q. ARE THERE ANY OTHER ADVANTAGES TO THIS ACQUISITION?

6 A. Yes. A stand-alone PCL&P must meet the requirements of Pennsylvania's renewable
7 energy regulations, which is a further complication to its procurement problems,
8 particularly if it remains tethered to the New York market. This issue would be resolved
9 under a Sussex acquisition. Allegheny's CLMS program provides compliance with this
10 statutory and regulatory requirement, while at the same time providing customer savings.

11 Q. HOW MUCH WILL THE SUSSEX ACQUISITION ADD TO THE
12 ALLEGHENY LOAD THAT IT MUST SERVE?

13 A. The Sussex acquisition of PCL&P would increase the total Allegheny load by about 2 to
14 2.5 percent. I understand that the PCL&P acquisition is subject to approval by the
15 Allegheny Board of Directors.

16 Q. DO YOU SEE ANY DISADVANTAGE TO THE SUSSEX ACQUISITION?

17 A. No. This would appear to resolve all issues in this case (and the Commission's earlier
18 investigation) in a manner fair to all parties and highly favorable to PCL&P customers.

19 D. Integration with Affiliates

20 Q. SHOULD INTEGRATION OF POWER PROCUREMENT WITH AFFILIATES
21 BE CONSIDERED?

22 A. This should be considered only if a PCL&P acquisition by Sussex cannot be achieved. In
23 that case, the integration of the PCL&P POLR procurement with a larger utility affiliate
24 potentially may provide lower and more stable costs for customers. As part of this

ORIGINAL

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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Deanne O'Dell, Esquire
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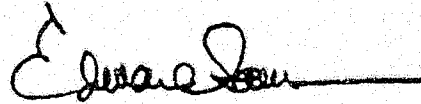
JAN - 5 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

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Respectfully submitted,



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Date: January 5, 2007

Counsel for PCL&P



OFFICE OF CONSUMER ADVOCATE

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January 10, 2007

DOCUMENT
FOLDER

ORIGINAL

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

RE: County of Pike
v.
Pike County Light & Power Company
Docket No. C-200065942, et al.

Dear Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the Answer of the Office of Consumer Advocate to the Pike County Light & Power Company's Motion to Compel Discovery Responses and for Sanctions, in the above-referenced proceeding.

Copies have been served on the parties of record as indicated on the enclosed Certificate of Service.

Sincerely,

Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625

Enclosures

cc: Honorable Ember S. Jandebour
Certificate of Service

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23

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUC
SECRETARY'S BUREAU

County of Pike

v.

Pike County Light & Power Company

Docket No. C-20065942, et al

ORIGINAL

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE TO
THE PIKE COUNTY LIGHT & POWER COMPANY'S
MOTION TO COMPEL DISCOVERY RESPONSES AND FOR SANCTIONS

Pursuant to Section 5.342 and 5.371 of the Pennsylvania Public Utility Commission's (Commission) rules, 52 Pa. Code § 5.342, 5.371, the Office of Consumer Advocate (OCA) provides the following Answer to the Pike County Light & Power Company (PCL&P or Company) Motion to Compel Discovery Responses and for Sanctions. For the reasons set forth below, the Company's Motion should be denied.

I. INTRODUCTION

The Company asks the Administrative Law Judge (ALJ) to compel the production of an unredacted version of an analysis performed on behalf of the Sussex Rural Electric Cooperative (Sussex), that includes an analysis and valuation of what Sussex would be willing to pay for the acquisition of PCL&P. A redacted version of the document was provided to the Company on December 29 as part of an updated response to OCA Set I, Number 22. As

explained by the OCA, the unredacted document includes purchase price assessments which, if publicly disclosed, would hinder Sussex's ability to negotiate a purchase of PCL&P if a negotiation took place or if the Company were put up for sale. For this reason, the OCA advised PCL&P that the information concerning valuation that is contained in that document is confidential. The OCA has advised the Company that it would provide the information to the Company if appropriate confidentiality treatment is afforded the document that would limit the use of the information to this proceeding and limit the distribution of the material among Company personnel so as to protect Sussex's negotiating positions. The OCA has provided the Company with samples of confidentiality agreements that have been entered in other recent cases before the PUC in an effort to resolve this issue in a timely manner.

The OCA did not become aware of the document in question until December 20, and provided a response indicating that the requested information was confidential on December 21, the first date available to the OCA to make such a claim. If made public or utilized by the Company outside of the context of this proceeding, the information contained in the document could place Sussex at a severe disadvantage if PCL&P were put up for sale.

As further explained below, in no way are the actions of the OCA sanctionable events. The OCA has made it clear to the Company that it is willing to provide the document, unredacted, if an appropriate confidentiality agreement is entered into between the parties. The Commission, ALJ, and all parties would have access to the information subject to its confidential treatment.

II. ANSWER

The Company's primary argument is that the OCA should be compelled to produce the unredacted version of the document identified in OCA Set 1, Number 22, or sanctions should be issued. However, the Company itself claims that the document is irrelevant in large part. Motion at 3-5. PCL&P claims that it has no interest in selling its operations to Sussex Rural Electric Cooperative, now or in the future, thereby refusing to even consider an option that could bring significant rate relief to its customers. Motion at 4. PCL&P further argues that, even if the Commission were to order the Company to enter negotiations with Sussex, there would be such prolonged litigation of that Order that any current information would be completely stale if it were ever to become relevant. Motion at 5. Despite the lack of any claimed value to the material for sale purposes, the Company maintains that it is being prejudiced by not having access to the information. Motion at 5.

The OCA submits that, notwithstanding PCL&P's statement that it will not enter into negotiations with Sussex, the unfettered release of this information could cause damage to Sussex if the Commission determines that PCL&P should be sold. As the Law Bureau stated in its Report on the competitive conditions in Pike County, there is Commission precedent for the ordered sale of a utility where "there was no real way to address unreasonable rates and poor service for the company's service territory other than a sale of the company's assets." Law Bureau Report at 19. The OCA submits that accepting the Company's position that it will not negotiate with Sussex, and that therefore PCL&P should receive the redacted information without any restrictions, effectively removes a prospective remedy from these proceedings.

Furthermore, it must be stated unequivocally that the OCA has not engaged in the practice of "subverting the Commission's discovery process." Motion at 7. To the contrary, the OCA has worked diligently to provide the Company with a full opportunity to conduct discovery on Mr. Kolling, a Sussex employee being presented as an OCA witness. The OCA has worked with witness Kolling to provide full answers to all data requests.

A brief history of the events leading to this point is important. At the outset of its Motion, the Company notes that "Set I sought, among other things, information and documentation relating to claims advanced by OCA witness Robert Kolling in testimony filed by the OCA on November 17, 2006 as OCA Statement No. 4." Motion at 1-2. As the due date for responses to Sets I and III approached, the OCA advised the Company of pressing health issues concerning Mr. Kolling. As a result, Mr. Kolling was out of the office for out-of-state medical treatment for extended periods and unable to respond to the discovery. The OCA notified the Company of the issue once it became apparent that the OCA would be unable to file the responses on the date due. The Company fully cooperated with the OCA's request and acknowledged the circumstances by letter submitted to the ALJ and parties on December 19, in which it provided the OCA until December 22 to provide responses. A copy of the Company's letter is attached as Exhibit A.¹ The OCA was able to complete the responses to Sets I and III through coordinated efforts between OCA staff and Mr. Kolling at the Sussex headquarters in New Jersey. At its meeting with Mr. Kolling on December 20, the OCA learned of the document

¹ The OCA acknowledges and appreciates the Company's cooperation in this regard.

that PCL&P now seeks to obtain through this Motion. The OCA immediately provided the responses to Sets I and III to the Company on December 21.²

As the facts demonstrate, the OCA has not worked to "subvert" the Commission's discovery rules but, rather, has worked diligently to provide full discovery responses to the Company on a timely basis given the circumstances that were presented. In its December 19 letter, the Company acknowledged that it was working with the OCA to "find a mutually agreeable way to proceed." Attached Exhibit A. Again, with the Company's cooperation, the OCA was able to provide responses to Sets I and III within the extended response period provided by the Company to account for Mr. Kolling's unavailability.

In its Motion, PCL&P acknowledges that, "The parties have discussed further production of responses to the subject interrogatories, but no agreement has been reached and no further progress on the issue is expected." Motion at 3. The OCA has offered to make the redacted information from Set I, No. 22 available under an appropriate proprietary agreement. The OCA is willing to provide this information to the Company with protections for Sussex. Under a proprietary agreement, the Commission, ALJ and other parties would have access to the information for use in these proceedings. The OCA would be willing to provide the Company with an opportunity to review the Sussex document in this proceeding, while preventing either the Company or other potential market participants from later using that information to Sussex's disadvantage.

It should also be noted that, contrary to the implications set forth in the Company's Motion, OCA witnesses Kahal, Lanzalotta and Brockway were not provided the redacted Sussex document in question by the OCA until December 21, 2006 (the same day the

² In addition to the materials attached to the Company's Motion, OCA Sets I and III contained responses to 49 interrogatories, including a considerable volume of attachments regarding Sussex in the form of reports, by-laws, contracts, agreements, and maps.

responses were served on the Company) and, even at this time, none of the OCA witnesses has been provided with an unredacted version of the document. The Company suggests that because witnesses Kahal and Brockway both relied on this document, PCL&P is prejudiced by not having unfettered access to the valuation information contained in the document. Motion at 5-6. The OCA submits that the Company's conclusion is incorrect. Neither Mr. Kahal nor Ms. Brockway were provided the document, in either redacted or unredacted formats, prior to the time their testimony was submitted to the parties.

For example, assertions by Ms. Brockway regarding the expressed willingness of Sussex to offer a "reasonable" price are supported within her testimony by the assertions made by Sussex in its letter to ConEd, which she attached to her testimony. Ms. Brockway testified that "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 Consolidated Edison regarding this issue is attached to this testimony as Exhibit NB-7." OCA St. 3 at 27 (emphasis added). The referenced letter, which is also contained in the response to OCA Set 1, Number 21, stated Sussex's belief that it could "offer an attractive price" for PCL&P. The Company's claim that "Apparently, Ms. Brockway has reviewed these cost estimates and arrived at her conclusion, but PCL&P is being denied the opportunity to do the same" is incorrect.

The Company also asserts that the cost estimates and analysis contained in the document in question are of little value due to the passage of time. Motion at 4. The Company argues that it has no interest in negotiating a sale of PCL&P with Sussex and that if, at some point in the future, negotiations took place the data would be irrelevant. Motion at 4

The OCA submits, however, that the type of valuation of utility assets that have been redacted do not, as the Company claims, become stale or irrelevant over the passage of a single year. The valuation of utility plant, and the value that a potential buyer would place on the package of assets that would be paid for an electric utility such as PCI&P are not issues that fluctuate daily. In this regard, it is important to note that if PCL&P were put up for bid, either by Commission Order or through its own choice, Sussex would be placed at a competitive disadvantage by having its negotiating position revealed to other participants.³

In the context of this proceeding, the unfettered release of this information could be highly prejudicial. Because the information would be important to any potential sale of PCL&P, the contention that this information should be accorded some protection is soundly based. The potential sale of PCL&P is directly at issue in this proceeding. Information that compromises Sussex's ability to negotiate is certainly worthy of protection consistent with the Commission's regulations.

The OCA remains willing to work with the Company to provide the information under a protective agreement. This protection is important to Sussex in order to guard against having this information used against it either in negotiations with ConEd or in any future bidding process. Due to the time constraints created by the impending technical hearings, the OCA submits that a conference call with the ALJ and any other parties who are interested in this issue is appropriate to address this issue as soon as possible.

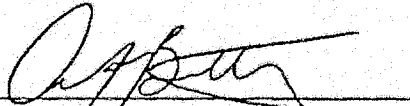
³ The issue of the Commission ordering a sale was raised in the Law Bureau's "Report on Competitive Market Conditions Regarding the Pike County Light & Power Company" issued on June 22, 2006. In its report, the Law Bureau recommended that "the Commission should consider having an independent study performed regarding the costs and benefits of the sale of the Company to another Pennsylvania FDC or a rural electric cooperative." Report at 19 (Recommendation 3).

III. CONCLUSION

The OCA submits that the Company's Motion to Compel and for Sanctions should be denied. The OCA made the claim for confidentiality at its first opportunity and is willing to move forward under a confidentiality agreement. The Company is not harmed by receiving this information under a confidentiality agreement. The actions of the OCA and Sussex do not rise to the level of sanctions requested by the Company.

WHEREFORE, for the reasons set forth above, the OCA respectfully submits that the Motion of Pike County Light & Power Company should be denied.

Respectfully Submitted,



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Dated: January 10, 2007
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Exhibit A.

December 19, 2006

BY HAND AND ELECTRONIC MAIL

Aron Beatty, Esq.
Assistant Consumer Advocate
PA Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17120-1923

**Re: County of Pike, et al. v. Pike County Light & Power Company
Docket No.: C-20059542, et al.**

Dear Aron.

Following up on our recent telephone conversations regarding the discovery we propounded to the Office of Consumer Advocate and your witness, Mr. Robert Kolling, I am writing to request clarification of a number of issues that have arisen in light of Mr. Kolling's unavailability.

First, we have not received responses to PCL&P's Interrogatories Sets I and III which were served on November 14th and November 22nd, respectively. Based on our discussions, it is our understanding that Mr. Kolling is undergoing medical treatment which has prevented him from responding to our interrogatories in a timely fashion, and that the OCA intends to gather information that is responsive to our discovery this week and have someone else at Sussex sponsor the responses. In addition, you indicated that it may be necessary for the OCA to replace Mr. Kolling as a witness for the hearings that are scheduled to begin on January 16, 2007.

The unfortunate developments involving Mr. Kolling have prejudiced PCL&P and hampered the Company's ability to prepare for hearing. It is very important for us to have responses to our interrogatories as soon as possible and to be advised forthwith who (if anyone) will take Mr. Kolling's place at the hearings in this matter.

Consequently, PCL&P requests that the OCA provide its responses to Sets I and III of the Company's Interrogatories and specify its plans with regard to Mr. Kolling's participation in the upcoming hearing no later than Friday, December 22 at 12:00 p.m. The OCA's prompt response

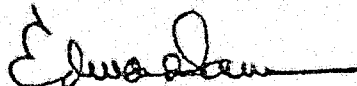
December 19, 2006

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to this request is necessary to eliminate the uncertainty surrounding Mr. Kolling's testimony and to prevent further prejudice to PCL&P.

As we have done thus far, the Company is willing to discuss this situation with the OCA to find a mutually agreeable way to proceed. Please call if you have any questions or concerns.

Sincerely,



Edward G. Lanza
Counsel for PCL&P

cc: Hon. Ember Jandebour, ALJ
Parties of Record
Robert Kolling
John L. Carley, Esq.

CERTIFICATE OF SERVICE

RECEIVED
2007 JAN 10 PM 3:52
PA PUC
SECRETARY'S BUREAU

County of Pike

v.

Docket No. C-20065942, et al.

Pike County Light & Power Company

I hereby certify that I have this day served a true copy of the foregoing document, the Answer of the Office of Consumer Advocate to the Pike County Light & Power Company's Motion to Compel Discovery Responses and for Sanctions, 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:

Dated this 10th day of January 2007.

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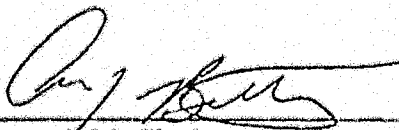
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