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

IN REPLY PLEASE
REFER TO OUR FILE

JULY 18, 2006

C-20065942

PIKE COUNTY LIGHT & POWER CO.
C/O ORANGE & ROCKLAND UTIL, INC.
4 IRVING PLACE
NEW YORK NY 10003

COUNTY OF PIKE
v.
PIKE COUNTY LIGHT & POWER CO.

Dear Sir/Madam:

Attached is copy of an amended complaint filed on behalf of the complainant in the above titled proceeding.

Such answer as you desire to make to the amended complaint should be filed in this Office and served upon the complainant within twenty days from receipt of this letter.

Very truly yours,

James J. McNulty
Secretary

DOCKETED
JUL 18 2006

cc: ALJ - w/copy of amended complaint
OTS - w/copy of amended complaint

jih

DOCUMENT
FOLDER

Duquesne Light
Our Energy . Your Power

Regina M. Sestak
Assistant General Counsel

Legal Department
411 Seventh Avenue, 8-2
Pittsburgh, PA 15219

Tel 412-393-1546
Fax 412-393-1418
rsestak@duqlight.com

ORIGINAL

July 18, 2006

2006 JUL 20 AM 8:41
SECRETARY'S BUREAU

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: John Gudzan v. Duquesne Light Company
PUC Docket No. C-20066016

Dear Secretary McNulty:

An original and three copies of Duquesne Light Company's Reply to Complainant's Motion for Change of Hearing Date are enclosed. Duquesne Light has no objection to the requested change in hearing date. However, Duquesne Light is filing a Reply in order to address certain assertions made in said Motion that are clearly inaccurate and raise an inference that Duquesne Light has failed to comply with Commission Regulations. Copies of this Reply are being served upon Complainant, his attorney of record, and the presiding officer in accordance with Commission Regulations.

BTL

DOCUMENT
FOLDER

Sincerely,

Regina M. Sestak

Regina M. Sestak
Attorney for Duquesne Light Company

cc: John Gudzan (with enclosure)
Thomas J. Michael, Attorney at Law (with enclosure)
Administrative Law Judge Robert P. Meehan (with enclosure)

06 JUL 24 AM 9:03
PA PUC

ORIGINAL

2006 JUL 20 A 8:42
SECRETARY'S BUREAU

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOHN GUDZAN,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. C-20066016
	)	
DUQUESNE LIGHT COMPANY,	)	
	)	
Respondent	)	

RESPONDENT'S REPLY TO COMPLAINANT'S MOTION FOR CHANGE OF HEARING DATE

AND NOW comes Respondent Duquesne Light Company (hereinafter "Duquesne Light"), by and through its attorney Regina M. Sestak, and files the following Reply to Complainant's Motion for Change of Hearing Date:

1. Admitted in part and denied as stated in part. Complainant's characterization of himself as "Claimant" in this and in following paragraphs is inaccurate

2. Admitted in part and denied as stated in part. Complainant's characterization of Duquesne Light as "the Defendant" is inaccurate. Duquesne Light is the Respondent in this matter.

3 Admitted in part and denied as denied as stated in part. The Notice of Hearing (Complainant's Exhibit A) was issued by the Public Utility Commission (hereinafter "PUC" or "Commission") Office of Administrative Law Judge, not by Administrative Law Judge Robert P. Meehan (hereinafter "ALJ Meehan").

4. Admitted.

DOCUMENT FOLDER

DOCKETED
DEC 18 2006

2006 JUL 20 P 3:03
PA PUC
SECRETARY'S BUREAU

5. Admitted in part and denied as stated in part. The discovery request served upon Duquesne Light is clearly a request for production of documents, not interrogatories. (*See* Complainant's Exhibit C). Further, although the cover letter that accompanied Complainant's discovery request is dated June 26, 2006, it arrived in an envelope that is post-marked June 27, 2006. A copy of the envelope showing said postmark is attached hereto, incorporated herein, and marked Exhibit 1.

6. After reasonable investigation, Duquesne Light is without sufficient knowledge or information to form a belief as to the date on which Complainant's counsel received its objections, and this averment is therefore denied.

7. After reasonable investigation, Duquesne Light is without sufficient knowledge or information to form a belief as to the date on which Complainant received its Exhibits, and this averment is therefore denied.

8. Admitted. However, the contents of this paragraph, taken with Complainant's Paragraph 5, raise an inference that Duquesne Light's objection was untimely. This inference arises because Complainant has failed to consider another relevant Commission Regulation. Commission Regulation 1.56, 52 Pa. Code §1.56, provides that:

> (a) The date of service shall be the day when the document served meets one of the following conditions:
>
> (1) The document is deposited in the United States mail.
>
> (2) The document is deposited with an overnight express package delivery service.
>
> (3) The document is delivered in person.
>
> (4) The document is transmitted by telefacsimile or electronic mail as provided in §1.54(b) (relating to service by a party) prior to 4:30 p.m. local prevailing time.
>
> (5) The document enters an information processing system designated by the recipient for the purpose of receiving service and from which the recipient is able to retrieve the served document in a form capable of being processed by the recipient's system prior to 4:30 local time.
>
> (b) Unless otherwise prescribed by the Commission or presiding officer, whenever a party is required or permitted to do an act within a prescribed

> period after service of a document upon the party and the document is served by first-class mail by the United States Postal Service, 3 days shall be added to the prescribed period.

Duquesne Light has no way of determining when Complainant actually deposited the document in the United States mail, it therefore reasonable relied upon the June 27, 2006 postmark in determining the date its objections were due. Ten days from June 27 is July 7. However, when the additional 3 days under (b) are added, Duquesne Light's objections were due on July 10, 2006, which is the date on which they were filed. Similarly, the documents to which Duquesne Light did not object will be provided to Complainant on or before July 20, 2006.

9. Admitted in part and denied in part. Because Duquesne Light's objections were served by United States mail, under Commission Regulation 1.56 Complainant's motion to compel would be due on July 23, 2006. However, because July 23, 2006 is a Sunday, Commission Regulation 1.12(a), 52 Pa. Code §1.12(a), applies. Commission Regulation 1.12(a) provides:

> Except as otherwise provided by statute, in computing a period of time prescribed or allowed by this title or by statute, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or holiday. A part-day holiday shall be considered as a holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

Complainant's motion to compel is therefore due on July 24, 2006.

10. Admitted.

11. Admitted.

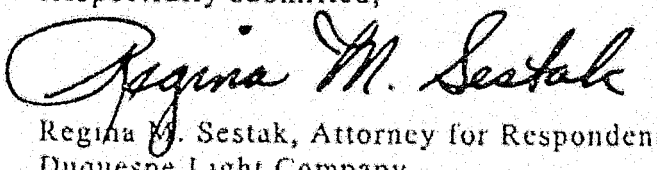
12. After reasonable investigation, Duquesne Light is without sufficient knowledge or information to form a belief as to the truth of this averment, and it is therefore denied.

13. This paragraph is a conclusion of law to which no response is required.

14. This paragraph is a conclusion of law to which no response is required.

WHEREFORE, Duquesne Light has no objection to the requested continuance.

Respectfully submitted,



Regina M. Sestak, Attorney for Respondent
Duquesne Light Company
411 7th Avenue
P.O. Box 1930
Pittsburgh, PA 15230-1930

Telephone: (412) 393-4113
FAX: (412) 393-6645

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
2006 JUL 20 AM 9:34
SECRETARY'S BUREAU

JOHN GUDZAN,	)	
	)	
Complainant	)	
	)	
v.	)	No. C-20066016
	)	
DUQUESNE LIGHT COMPANY,	)	
	)	
Respondent	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party) by first-class mail upon:

John Gudzan
1108 Roosevelt Street
Conway, PA 15027

Thomas J. Michael
Attorney at Law
436 South Main Street, Suite 200
Pittsburgh, PA 15220

Administrative Law Judge Robert P. Meehan
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Date: July 18, 2006

Respectfully submitted,

DUQUESNE LIGHT COMPANY
By Counsel.

Regina M. Sestak

Regina M. Sestak
Pa. I.D. # 23632

Duquesne Light Company
411 Seventh Avenue, 8-2
Pittsburgh, PA 15219
Telephone: (412) 393-1546
FAX (412) 393-1418

SAUL EWING
Attorneys at Law
A Delaware LLP
Celebrating 85 years of service.

ORIGINAL

John J. Gallagher
Phone: (717) 257-7509
Fax: (717) 257-7591
jgallagher@saul.com
www.saul.com

July 28, 2006

BY HAND

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

Re: Valerie McCutcheon, et al. v. Pike County Light & Power Company
Docket Nos. ~~C-20006942~~ C-20065942, et al. (consolidated)

Dear Mr. McNulty:

Enclosed for filing please find an original and three (3) copies of the undersigned's Entry of Appearance on behalf of Pike County Light & Power Company in the referenced matter.

A Certificate of Service is also attached.

Do not hesitate to call if you have any questions.

Sincerely,

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

cc: Hon. Ember S. Jandebeur, ALJ
John L. Carley, Esq.

DOCUMENT FOLDER

DOCKETED
AUG 23 2006

RECEIVED
2006 JUL 28 PM 4:11
PA PUC
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

VALERIE McCUTCHEON, et al.

Complainants

v.

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

PIKE COUNTY LIGHT & POWER COMPANY,

Respondent

ENTRY OF APPEARANCE

Please enter our appearance in the above-captioned matters on behalf of Pike County Light & Power Company.

On the basis of this notice, we respectfully request a copy of each and every document hereafter issued by the Commission in this matter.

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)
SAUL EWING, LLP
2 North 2nd Street, 7th Floor
Harrisburg, PA 17101
(717) 257-7509
(717) 237-7591 [fax]

Counsel for
Pike County Light & Power Company

Date: July 28, 2006

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2006 JUL 28 PM 4:11
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DOCUMENT
FOLDER

AUG 23 2006

BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

VALERIE McCUTCHEON, 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).

Valerie Mccutchen
507 Avenue F
Matamoras Pa 18336

Gary M Chase
121 Miller Road
Milford Pa 18337

William Hessling
Business Administrator
Delaware Valley School District
236 Route 6 & 209
Milford Pa 18337

William Degraw
Janeth Degraw
104 Wheatfield Plaza
Milford Pa 18337

Chaba M Pallaghy
1036 Pennsylvania Avenue
Matamoras Pa 18336

County Of Pike
506 Broad Street
Milford Pa 18337

Jay Rose
County Solicitor
County Of Pike
506 Broad Street
Milford Pa 18337

Jeff L'hote
108 Mill Creek Court
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Gary R Orben
112 Independence Drive
Milford Pa 18337

Francis L Hall Jr
4 Elizabeth Street
Matamoras Pa 18336

Michelle Storms
103 N Castle Drive
Milford Pa 18337

Joseph Fretta
223 Broad Street
Milford Pa 18337

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Waterwheel Cafe & Bakery
Nancie Simonet
150 Water Street
Milford Pa 18337

Jake Wood
C/O Darryl Wood
307 W Harford Street
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Kirkpatrick & Lockhart
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Kathleen Ferranti
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Stebo Inc D/B/A Malibu Ranch
351 Foster Hill Road
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Hare Hollow Inc
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611 Broad Street
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Thomas W Hoff
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Earl Edwards
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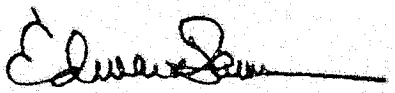
Milford Pa 18337

Sandra M. Paul
4078 Circle Court
Milford Pa 18337

Raymond A Paquette
155 Pine Acres Lane
Milford Pa 18337-9534

Steve Height
301 Pennsylvania Ave.
Matamoras Pa 18336

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 PCP&L

Date: July 28, 2006

COUNTY OF PIKE
PIKE COUNTY ADMINISTRATION BUILDING
506 BROAD STREET
MILFORD, PA 18337
570 296 3479
FAX: 570-296-6055

ORIGINAL

JAY R. ROSE, ESQUIRE
COUNTY SOLICITOR

SHELLI L. WHITMER, ESQUIRE
ASSISTANT COUNTY SOLICITOR

STACEY BEECHER CHELAK, ESQUIRE
ASSISTANT COUNTY SOLICITOR

July 29, 2006

Sent Via U.S. Express Mail, Overnight Delivery

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

RECEIVED
JUL 29 2006
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: ***County of Pike v. Pike County Light & Power Company***
No. C-20065942

Dear Secretary McNulty:

Enclosed herewith for filing please find an original and two (2) copies of each of the following documents, filed on behalf of the County of Pike in the above captioned matter: (a) Entry of Appearance with Certificate of Service; and (b) Pre-Hearing Conference Memorandum with Certificate of Service.

Thank you for your kind attention to this matter.

Very truly yours,
COUNTY OF PIKE

DOCUMENT
FOLDER

By: Shelli L. Whitmer
Shelli L. Whitmer, Esquire
Assistant Pike County Solicitor

/slw
Enclosures

cc: The Honorable Ember S. Jandebeur
Ms. Valerie McCutcheon
Mr. Gary M. Chase
Mr. William Hessling, Delaware Valley School District
Mr. William DeGraw & Ms. Janeth DeGraw
Mr. Chaba M. Pallaghy
Mr. Jeff L'Hote
Mr. Gary R. Orben
Mr. Francis L. Hall, Jr.
Ms. Michelle Storms
Mr. Joseph Fretta
Ms. Nancie Simonet, Waterwheel Café & Bakery
Mr. Jake Wood
Mr. William L. Loosemoore & Ms. Irene Loosemoore
Samall Properties, Inc.
James P. Melia, Esquire
Three Lane Utilities
Three Lane Utility Corp.
Mr. Richard Snyder
Mr. Michael Trenner
E.E. Hauser
Ms. Kathleen Ferranti
Ms. Carol Ann Sklar d/b/a Carol Ann's Linen Closet
Pike County Outfitters
Stebo, Inc., d/b/a Malibu Ranch
S & M Management, Inc.
Hare Hollow, Inc.
Mr. Joseph DeMalderis
Michael W. Hassell, Esquire
Anthony D. Kanagy, Esquire
Mr. James Pollard & Ms. Laura Pollard
Mr. Dan Kane
Mr. Peter R. Rushton
Rigas Panagiotis, Milford Diner
Ms. Jeanette Abbott
Mr. Anthony Grigal
Altec Lansing
Mr. James E. Sechrist
Mr. John W. Dalton, Jr.
Mr. Charles J. Deller
Mr. Harry Forbes
Beecher & Chelak
Tanya J. McCloskey, Esquire
Aron J. Beatty, Esquire
James A. Mullins, Esquire
William R. Lloyd, Jr., Esquire
Daniel G. Asmus, Esquire
Ms. Sylvia Recchia
Mr. Mark Robbins
Mr. Peter P. Kenny
Municipal Authority of the Borough of Milford
611 Broad Street, LLC
Mr. Lawrence Budzeyko
Mr. Jerome Grigas
Mr. Thomas Hoff
John L. Carley, Esquire
Michael Weinstein, Esquire
County of Pike

THE COUNTY OF PIKE
Pike County Administration Building
506 Broad Street
Milford, Pennsylvania 18337
(570) 296-7613
Fax: (570) 296-6055

Jay R. Rose, Esquire, Solicitor
Attorney I.D. No. 8189

Shelli L. Whitmer, Esquire, Asst. Solicitor
Attorney I.D. No. 78274

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

COUNTY OF PIKE	:	
v.	:	
PIKE COUNTY LIGHT & POWER COMPANY	:	**No. C-20065942**
	:	

: : : :

THE COUNTY OF PIKE
Pike County Administration Building
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Milford, Pennsylvania 18337
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Jay R. Rose, Esquire, Solicitor
Attorney I.D. No. 8189

Shelli L. Whitmer, Esquire, Asst. Solicitor
Attorney I.D. No. 78274

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE	:	
v.	:	
PIKE COUNTY LIGHT & POWER COMPANY	:	**No. C-20065942**
	:	

CERTIFICATE OF SERVICE

I, Shelli L. Whitmer, Esquire, Assistant Solicitor for the County of Pike, hereby certify that a true and correct copy of the Entry of Appearance for the County of Pike was served on the individuals and entities set forth in the attached Exhibit "A" on the dates and in the manner indicated therein.

RECEIVED
JUL 29 2006
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Respectfully submitted,
COUNTY OF PIKE

Date: July 28, 2006

By: _____
Shelli L. Whitmer, Esquire
Assistant Pike County Solicitor
Attorney I.D. No. 78274
Pike County Administration Building
506 Broad Street
Milford, Pennsylvania 18337
(570) 296-7613; Fax (570) 296-6055
Email: swhitmer@pikecountyattorneys.com

EXHIBIT "A" TO CERTIFICATE OF SERVICE

Service by Overnight Delivery on July 29, 2006

The Honorable Ember S. Jandebeur, Administrative Law Judge
100 Lackawanna Avenue
Scranton State Office Building, Room 317
Scranton, Pennsylvania 18503

Service by U.S. First Class Mail on July 31, 2006

Ms. Valerie McCutcheon
507 Avenue F
Matamoras, Pennsylvania 18336

Mr. Gary M. Chase
121 Miller Road
Milford, Pennsylvania 18337

Mr. William Hessling,
Business Administrator
Delaware Valley School District
236 Routes 6 & 209
Milford, Pennsylvania 18337

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Ms. Janeth DeGraw
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Ms. Irene Loosemoore
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Samall Properties, Inc.
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Kirkpatrick & Lockhart Nicholson Graham, LLP
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Three Lane Utilities
c/o Mr. Richard Snyder
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Three Lane Utility Corp.
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Mr. Richard Snyder
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100 Laurel Acres Road
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Anthony D. Kanagy, Esquire
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Ms. Laura Pollard
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Aron J. Beatty, Esquire
James A. Mullins, Esquire
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Harrisburg, Pennsylvania 17101-1923

William R. Lloyd, Jr., Esquire
Daniel G. Asmus, Esquire
Office of Small Business Advocate
300 North Second Street
Commerce Building, Suite 1102
Harrisburg, Pennsylvania 17101

Ms. Sylvia Recchia
203 West Harford Street
Milford, Pennsylvania 18337

Mr. Mark Robbins
105 Harvey Road
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Mr. Peter P. Kenny
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Municipal Authority of the Borough of Milford
P.O. Box 459
120 Pear Alley
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Mr. Lawrence Budzeyko
211 East Catherine Street
Milford, Pennsylvania 18337

Mr. Jerome Grigas
125 William Penn Drive
Milford, Pennsylvania 18337

Mr. Thomas W. Hoff
108 West Ann Street
Milford, Pennsylvania 18337

John L. Carley, Esquire
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003-0987

Michael Weinstein, Esquire
Weinstein, Schneider, Kannebecker & Lokuta
104 West High Street
Milford, Pennsylvania 18337

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ORIGINAL

Jay R. Rose, Esquire, Solicitor
Attorney I.D. No. 8189

Shelli L. Whitmer, Esquire, Asst. Solicitor
Attorney I.D. No. 78274

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE	:	
v.	:	
PIKE COUNTY LIGHT & POWER COMPANY	:	**No. C-20065942**
	:	

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JUL 29 2006
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PRE-HEARING CONFERENCE MEMORANDUM OF THE COUNTY OF PIKE

THE COUNTY OF PIKE, by and through its Solicitors, Jay R. Rose, Esquire, and Shelli L. Whitmer, Esquire, hereby submits a Pre-Hearing Conference Memorandum in accordance with Section 333 of the Public Utility Code, 66 Pa.C.S.A. § 333, and the Pre-Hearing Conference Order and Second Interim Order of Consolidation issued on July 14, 2006, averring as follows:

I. INTRODUCTION

The County of Pike (the "County") filed a Formal Complaint against the Pike County Light & Power Company (the "Company") on or about February 24, 2006, alleging that the electric rate increases that went into effect on January 1, 2006, resulted in an unfair burden on customers of the Company. The County filed an Amended Formal Complaint in this matter on or about July 12, 2006. In its Amended Complaint, the County alleged that the Company is not providing safe and adequate service and that the Company's rates are not just and reasonable,

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and has asked that the Commission mandate that the Company be sold to another Pennsylvania electric distribution company or a rural electric cooperative. The County also requested that the Commission implement the recommendations made by its Law Bureau in June 2006. The County now submits its Pre-Hearing Conference Memorandum in anticipation of the Pre-Hearing Conference scheduled in this matter for Thursday, August 3, 2006.

II. BACKGROUND

The County joins in, adopts and incorporates herein by reference the Background information as set forth in Paragraph II of the Pre-Hearing Conference Memorandum of the Office of Consumer Advocate filed in this matter.

III. ISSUES AND SUB-ISSUES

The County joins in, adopts and incorporates herein by reference the Issues and Sub-Issues as set forth in Paragraph III of the Pre-Hearing Conference Memorandum of the Office of Consumer Advocate filed in this matter.

IV. WITNESSES

In this proceeding, the County intends to present the direct and rebuttal testimony of any or all of the following individuals:

(1) Harry Forbes, Individually and on Behalf of the County of Pike
Chairman, Pike County Board of Commissioners
Pike County Administration Building
506 Broad Street
Milford, Pennsylvania 18337

(2) Richard Caridi
Vice-Chairman, Pike County Board of Commissioners
Pike County Administration Building
506 Broad Street
Milford, Pennsylvania 18337

(3) Karl A.Wagner, Jr., Esquire
Pike County Commissioner
Pike County Administration Building
506 Broad Street
Milford, Pennsylvania 18337

The County reserves the right to call such additional witnesses as may be necessary, and will supplement this response upon making a determination on this matter.

V. QUESTIONS RAISED BY THE ADMINISTRATIVE LAW JUDGE IN THE JULY 14, 2006 ORDER

1. EXPLANATION AS TO WHY THIS MATTER SHOULD NOT BE DISMISSED AS MOOT.

The County joins in, adopts and incorporates herein by reference the Explanation as set forth in Sub-Paragraph V(1) of the Pre-Hearing Conference Memorandum of the Office of Consumer Advocate filed in this matter.

2. DIRECT ENERGY'S PARTICIPATION IN THIS CASE.

The County joins in, adopts and incorporates herein by reference the response as set forth in Sub-Paragraph V(2) of the Pre-Hearing Conference Memorandum of the Office of Consumer Advocate filed in this matter.

VI. PROPOSED PROCEDURE AND SCHEDULE

The County joins in, adopts and incorporates herein by reference the Proposed Procedure and Schedule as set forth in Paragraph VI of the Pre-Hearing Conference Memorandum of the Office of Consumer Advocate filed in this matter.

VII. DISCOVERY

The County joins in, adopts and incorporates herein by reference the proposed Discovery schedule as set forth in Paragraph VII of the Pre-Hearing Conference Memorandum of the Office of Consumer Advocate filed in this matter.

VIII. SERVICE ON THE COUNTY

The County is represented in this matter by Jay R. Rose, Esquire, Pike County Solicitor, and Shelli L. Whitmer, Esquire, Assistant Pike County Solicitor, and copies of all documents and notices in this proceeding should be served as follows:

Jay R. Rose, Esquire
Pike County Solicitor
Pike County Administration Building
506 Broad Street
Milford, Pennsylvania 18337
Telephone: (570) 296-7613
Fax: (570) 296-6055

IX. SETTLEMENT

The County is willing to participate in settlement discussions; however, to date, no such discussions have occurred.

X. PUBLIC EVIDENTIARY HEARINGS

The County requests that hearings be held in the Company's service area to enable the Formal Complainants and also other ratepayers and affected community members to testify.

Respectfully submitted,
COUNTY OF PIKE

Date: July 28, 2006

By: _____
Jay R. Rose, Esquire, Pike County Solicitor
Attorney I.D. No. 8189

By: _____
Shelli L. Whitmer, Esquire
Assistant Pike County Solicitor
Attorney I.D. No. 78274
Pike County Administration Building
506 Broad Street
Milford, Pennsylvania 18337
(570) 296-7613; Fax (570) 296-6055
Email: swhitmer@pikecountyattorneys.com

THE COUNTY OF PIKE
Pike County Administration Building
506 Broad Street
Milford, Pennsylvania 18337
(570) 296-7613
Fax: (570) 296-6055

Jay R. Rose, Esquire, Solicitor
Attorney I.D. No. 8189

Shelli L. Whitmer, Esquire, Asst. Solicitor
Attorney I.D. No. 78274

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE	:	
v.	:	
PIKE COUNTY LIGHT & POWER COMPANY	:	**No. C-20065942**
	:	

CERTIFICATE OF SERVICE

I, Shelli L. Whitmer, Esquire, Assistant Solicitor for the County of Pike, hereby certify that a true and correct copy of the Pre-Hearing Conference Memorandum for the County of Pike was served on the individuals and entities set forth in the attached Exhibit "A" on the dates and in the manner indicated therein.

Respectfully submitted,
COUNTY OF PIKE

Date: July 28, 2006

By: _____

Shelli L. Whitmer, Esquire
Assistant Pike County Solicitor
Attorney I.D. No. 78274
Pike County Administration Building
506 Broad Street
Milford, Pennsylvania 18337
(570) 296-7613; Fax (570) 296-6055
Email: swhitmer@pikecountyattorneys.com

EXHIBIT "A" TO CERTIFICATE OF SERVICE

Service by Overnight Delivery on July 29, 2006

The Honorable Ember S. Jandebeur, Administrative Law Judge
100 Lackawanna Avenue
Scranton State Office Building, Room 317
Scranton, Pennsylvania 18503

Service by U.S. First Class Mail on July 31, 2006

Ms. Valerie McCutcheon
507 Avenue F
Matamoras, Pennsylvania 18336

Mr. Gary M. Chase
121 Miller Road
Milford, Pennsylvania 18337

Mr. William Hessling,
Business Administrator
Delaware Valley School District
236 Routes 6 & 209
Milford, Pennsylvania 18337

Mr. William DeGraw
Ms. Janeth DeGraw
104 Wheatfield Plaza
Milford, Pennsylvania 18337

Mr. Chaba M. Pallaghy
1036 Pennsylvania Avenue
Matamoras, Pennsylvania 18336

Mr. Jeff L'Hote
108 Mill Creek Court
Milford, Pennsylvania 18337

Mr. Gary R. Orben
112 Independence Drive
Milford, Pennsylvania 18337

Mr. Francis L. Hall, Jr.
4 Elizabeth Street
Matamoras, Pennsylvania 18336

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Ms. Michelle Storms
103 North Castle Drive
Milford, Pennsylvania 18337

Mr. Joseph Fretta
223 Broad Street
Milford, Pennsylvania 18337

Ms. Nancie Simonet
Waterwheel Café & Bakery
150 Water Street
Milford, Pennsylvania 18337

Mr. Jake Wood
c/o Mr. Darryl Wood
307 West Harford Street
Milford, Pennsylvania 18337

Mr. William L. Loosemoore
Ms. Irene Loosemoore
113 Rod & Gun Club Road
Milford, Pennsylvania 18337

Samall Properties, Inc.
10 Buist Road
P.O. Box 927
Milford, Pennsylvania 18337

James P. Melia, Esquire
Kirkpatrick & Lockhart Nicholson Graham, LLP
17 North Second Street, 18th Floor
Harrisburg, Pennsylvania 17101-1507

Three Lane Utilities
c/o Mr. Richard Snyder
P.O. Box 927
Milford, Pennsylvania 18337

Three Lane Utility Corp.
P.O. Box 2666
Westfield, New Jersey 07091

Mr. Richard Snyder
P.O. Box 927
Milford, Pennsylvania 18337

Mr. Michael Trenner
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New York, New York 10004

E.E. Hauser
108 Route 6, Building 4
Milford, Pennsylvania 18337

Ms. Kathleen Ferranti
P.O. Box 134
Milford, Pennsylvania 18337

Ms. Carol Ann Sklar
d/b/a Carol Ann's Linen Closet
317 Broad Street
Milford, Pennsylvania 18337

Pike County Outfitters
178 Christian Hill Road
Milford, Pennsylvania 18337

Stebo, Inc. d/b/a Malibu Ranch
351 Foster Hill Road
Milford, Pennsylvania 18337

S & M Management, Inc.
P.O. Box 1429
Milford, Pennsylvania 18337

Hare Hollow, Inc.
322 Broad Street
Milford, Pennsylvania 18337

Mr. Joseph DeMalderis
100 Laurel Acres Road
Milford, Pennsylvania 18337

Michael W. Hassell, Esquire
Anthony D. Kanagy, Esquire
Post & Schell, P.C.
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Harrisburg, Pennsylvania 17101-1601

Mr. James Pollard
Ms. Laura Pollard
410 Avenue O
Matamoras, Pennsylvania 18336

Mr. Dan Kane
108 Route 2001, 2nd Floor
Milford, Pennsylvania 18337

Mr. Peter R. Rushton
113 West Ann Street
Milford, Pennsylvania 18337

Rigas Panagiotis
Milford Diner
301 Broad Street
Milford, Pennsylvania 18337

Ms. Jeanette Abbott
106 East High Street, Apt. 2
Milford, Pennsylvania 18337

Mr. Anthony Grigal
1409 East Ann Street
Milford, Pennsylvania 18337

Altec Lansing
535 Routes 6 & 209
Milford, Pennsylvania 18337

Mr. James E. Sechrist
205 West High Street
Milford, Pennsylvania 18337

Mr. John W. Dalton, Jr.
207 Pond Drive
Matamoras, Pennsylvania 18336

Mr. Charles J. Deller
133 Vandermark Drive
Milford, Pennsylvania 18337

Mr. Harry Forbes
127 Chippy Cole Road
Milford, Pennsylvania 18337

Beecher & Chelak
106 West High Street
Milford, Pennsylvania 18337

Tanya J. McCloskey, Esquire
Aron J. Beatty, Esquire
James A. Mullins, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923

William R. Lloyd, Jr., Esquire
Daniel G. Asmus, Esquire
Office of Small Business Advocate
300 North Second Street
Commerce Building, Suite 1102
Harrisburg, Pennsylvania 17101

Ms. Sylvia Recchia
203 West Harford Street
Milford, Pennsylvania 18337

Mr. Mark Robbins
105 Harvey Road
Milford, Pennsylvania 18337

Mr. Peter P. Kenny
120 Elena Lane
Milford, Pennsylvania 18337

Municipal Authority of the Borough of Milford
P.O. Box 459
120 Pear Alley
Milford, Pennsylvania 18337

611 Broad Street, LLC
611 Broad Street
Milford, Pennsylvania 18337

Mr. Lawrence Budzeyko
211 East Catherine Street
Milford, Pennsylvania 18337

Mr. Jerome Grigas
125 William Penn Drive
Milford, Pennsylvania 18337

Mr. Thomas W. Hoff
108 West Ann Street
Milford, Pennsylvania 18337

John L. Carley, Esquire
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003-0987

Michael Weinstein, Esquire
Weinstein, Schneider, Kannebecker & Lokuta
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Milford, Pennsylvania 18337

County of Pike
Pike County Administration Building
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Milford, Pennsylvania 18337

SAUL EWING
Attorneys at Law
A Delaware LLP
Celebrating 85 years of service.

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Edward G. Lanza
Phone: (717) 257-7571
Fax: (717) 237-7437
elanza@saul.com
www.saul.com

July 31, 2006

DOCUMENT FOLDER

BY HAND DELIVERY

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

Re: Valerie McCutcheon, 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 Prehearing Memorandum of Pike County Light & Power Company (PCL&P) in the above-referenced matter.

A Certificate of Service is also attached.

Please call if you have any questions.

Sincerely,

Edward G. Lanza
Counsel for PCL&P

cc: Parties on Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

VALERIE McCUTCHEON, et al.

Complainants

v.

PIKE COUNTY LIGHT & POWER COMPANY,

Respondent

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

PREHEARING MEMORANDUM OF PIKE COUNTY LIGHT & POWER COMPANY

Pursuant to the Public Utility Code, the Commission's Rules of Administrative Practice and Procedure and the Prehearing Conference Order of Administrative Law Judge Ember S. Jandebeur, Pike County Light & Power Company ("PCL&P"), hereby submits its Prehearing Memorandum in the above-captioned proceedings as follows:

A. Procedural History

By Order dated July 14, 2006, the Honorable Ember S. Jandebeur, ALJ, consolidated fifty (50) heretofore separate Formal Complaints filed by customers against PCL&P. In general, these complaints allege that the rates charged by PCL&P for default electric service are unjust and unreasonable, the service provided by the Company is inadequate and customers have experienced billing problems. The Office of Consumer Advocate and the Office of Small Business Advocate have intervened in this matter as well.

ALJ's Jandebeur's Prehearing Conference Order of July 14, 2006 established August 3, 2006 as the date for the Prehearing Conference to be held in Scranton, Pennsylvania.

SAUL EWING
Attorneys at Law
A Delaware LLP
Celebrating 85 years of service.

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Edward G. Lanza
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July 31, 2006

BY HAND DELIVERY

DOCUMENT FOLDER

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

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Please call if you have any questions.

Sincerely,

Edward G. Lanza
Counsel for PCL&P

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cc: Parties on Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

VALERIE McCUTCHEON, et al.

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PIKE COUNTY LIGHT & POWER COMPANY,

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Docket No. C - 20065942, et al.
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ALJ's Jandebeur's Prehearing Conference Order of July 14, 2006 established August 3, 2006 as the date for the Prehearing Conference to be held in Scranton, Pennsylvania.

B. Issues

PCL&P intends to present evidence in this matter on the following general areas:

1. The justness and reasonableness of PCL&P's current default service rates;

2. The safety, reasonableness and adequacy of PCL&P's service and reliability;

3. The reasonableness and adequacy of PCL&P's billing practices and procedures;

4. The illegal, unprecedented, inappropriate and drastic nature of the relief requested by Complainants.

The above issues list is not intended to be comprehensive or exhaustive, and PCL&P reserves the right to make reasonable amendments, additions or modifications to the same as may be necessary and/or appropriate. PCL&P stands ready to address and respond to issues that may be raised by other parties to this proceeding.

C. Witnesses

PCL&P intends to present direct, rebuttal and surrebuttal testimony, as may be necessary and appropriate, of the witnesses listed below.

1. James O'Brien - Vice President, Customer Services (billing & customer service)

2. Angelo Regan - Director of Electrical Engineering (reliability)

3. Peter McGoldrick - Chief Engineer, Transmission and Substation Engineering (interconnection with PJM)

4. William Atzl - Director of Rates, Orange & Rockland Utilities (rate issues)

PCL&P reserves the right to list and/or call additional witnesses, as may be necessary and appropriate to respond to allegations and evidence advanced or produced by other parties. As soon as PCL&P has determined whether additional witnesses will be necessary, the presiding

officer and all parties of record will be duly notified. PCL&P believes that three (3) days of hearings should be sufficient to present all the evidence in this case.

D. Exhibits

PCL&P intends to rely on the documents and exhibits that are part of the record in this matter and such documents and exhibits as are developed in the course of discovery in this proceeding. In addition, PCL&P intends to rely on the exhibits and documents filed and submitted by the other parties in the case. PCL&P reserves the right to introduce additional exhibits if necessary and appropriate.

E. Public Input Hearing

PCL&P submits that a public input hearing is neither appropriate, necessary or desirable in this proceeding. Fifty (50) complaints have been filed in this matter and the Commission's Rules of Practice and Procedure afford every complainant an opportunity to present evidence to support his/her case. The Commission's rules also provide the Respondent an opportunity to cross-examine all witnesses. The procedures in place are more than sufficient to allow all interested parties in this matter to provide input to the Commission in support or in defense of the allegations and issues presented by the parties. A public input hearing would be a repetitive and redundant exercise that will not serve any legitimate purpose and is likely to be prejudicial to PCL&P. However, if the Commission should deem it appropriate to schedule public input hearings, PCL&P reserves the right to make a statement at such a hearing, vigorously cross examine witnesses and respond to questions or claims from customers in the course of such a hearing.

F. Proposed Litigation Schedule

PCL&P respectfully proposes that the Commission defer the establishment of a procedural schedule to a possible later stage in this proceeding. As discussed in more detail below, the issues raised by the complainant's herein are moot or premature and there is no reason to establish a litigation schedule for this proceeding until the Commission resolves the mootness question. Additionally, PCL&P intends to file responsive pleadings and motions that will call for the dismissal of this case, and we respectfully suggest that the Commission decide PCL&P's objections and motions before establishing a procedural schedule in this case. If the presiding officer should rule that the claims herein can move forward, then the Commission can establish a litigation schedule.

At such time as it becomes appropriate, PCL&P will be willing to discuss any proposed litigation schedule with the parties of record to arrive at a mutually agreeable timetable that allows for the timely and expeditious resolution of this matter.

G. Stipulations and Settlement

PCL&P has not entered into any stipulations with any of the parties of record, and we are not prepared to make any stipulations at this time. However, PCL&P is willing and available to discuss settlement of this matter with all parties, and reserves the right to supplement this Prehearing Memorandum if stipulations are made or a settlement agreed to in the future as a result of negotiations between and among the parties.

H. The Mootness Question

PCL&P respectfully submits that the Commission should dismiss this matter as moot or, in the alternative, the Commission should find that the issues raised by the Complainants in this case are not ripe for adjudication.

With regard to the claims made by many of the Complainants that PCL&P's rates are unjust and unreasonable, the Commission has addressed this issue in a number of recent proceedings and has issued orders setting rates for default or provider of last resort (POLR) service. On December 21, 2005, the Commission issued an Order approving the PCL&P's default service rates that resulted from an auction process supervised and approved by the Commission. *Pa. PUC v. Pike County Light & Power Co.*, Docket No. P-00052168 (Order entered December 21, 2005).[1] The Commission's December 21, 2005 Order was not appealed by any party, and PCL&P's current rates are Commission-made rates.

At its public meeting of January 27, 2006, the Commission opened an investigation into the competitive market conditions in PCL&P's service territory and directed the Law Bureau to conduct a sixty-day investigation and issue a report on the matter. On June 22, 2006, the Commission released to the public the Law Bureau's "Report on Competitive Market Conditions Regarding the Pike County Light & Power Company." Although the report was made public, the Commission has taken no action on the eight recommendations contained in the report. According to statements made by Commissioner Bill Shane, "[i]ssuing this report for public consumption does not represent the end of Commission action on this matter, but rather we will continue to move forward..." Also, Commissioner Shane stated that the "Commission will use the contents of this report to determine what additional corrective steps need to be taken in order

[1] In its December 21, 2005 Order, the Commission found that, "Investigation and analysis of this proposed tariff indicates that the proposed changes appear to be in the public interest" Order at 4.

to assure that Pike County Power's customers have access to effective competition." PUC Press Release of June 22, 2006 (attached). It is clear from the foregoing that the Commission intends to act on the Law Bureau's report and take additional steps to address the concerns raised by PCL&P customers with regard to their default service rates. In other words, there is a pending proceeding before the Commission which is in the process of addressing the issues raised in the complaints in this matter with regard to rates and other related issues.

Further, on April 20, 2006, the Commission issued an Order approving the establishment of a competitive bidding process by which Electric Generation Suppliers (EGSs) could bid for the right to serve PCL&P's retail electric customers. *Petition of Direct Energy Services, LLC*, Docket No. P-00062205 (Order entered April 20, 2006). Again, the Commission found that the aggregation proposal advanced by Direct Energy ought to be approved because it is in the public interest. As a result of the Commission-approved aggregation program, the vast majority of PCL&P's customers chose to participate in the program and have experienced modest savings on their bills.

The Commission has taken these and other actions to address the issue of high rates for default electric service and continues to monitor the situation and to consider additional steps that may be necessary to mitigate the effect of increases in the price of electricity in PCL&P's service territory. Consequently, the rate issues raised by the complainants in this matter are moot because the Commission has acted and continues to act to address these issues. In the event the Commission fails to act in the other pending proceedings, the issues raised in the instant matter may become ripe for adjudication, but that time has not yet come. Allowing yet another matter to delve into these issues prematurely would be redundant and would constitute an unwise use of the parties' and the Commission's scarce resources.

I. Direct Energy as an Indispensable Party

PCL&P takes no position on the presiding officer's question as to whether Direct Energy should be included as an indispensable party in this proceeding. However, PCL&P maintains that this matter is moot or not yet ripe for disposition. As was discussed above, the issues raised by the complainant's herein are moot or premature and there is no reason to bring in another party into this proceeding until the Commission resolves the mootness question. PCL&P intends to file responsive pleadings and motions that will call for the dismissal of this case, and we respectfully suggest that the Commission decide PCL&P's objections and motions before adding another party that may or may need to participate in the case. If the presiding officer should rule that the claims herein should move forward, then the Commission can take on the issue of whether Direct Energy should be brought into the case.

Respectfully submitted,

John J. Gallagher, Esq.
Bruce V. Miller, Esq.
Edward G. Lanza, Esq.
SAUL EWING, LLP
2 North 2nd Street, 7th Floor
Harrisburg, PA 17101
(717) 257-7500

Counsel for Respondent
Pike County Light & Power Company

Date: July 31, 2006

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

IN REPLY PLEASE
REFER TO OUR FILE

PRESS RELEASE

Date: June 22, 2006

Contact: Jennifer Kocher, Press Secretary
717.787.5722

PUC Releases Report on Competitive Market Conditions for Pike County Light & Power

Commission also clarifies rule changes designed to increase competition in area

HARRISBURG – The Pennsylvania Public Utility Commission (PUC) today released a report on its staff's fact-finding inquiry into the competitive electric market in the Pike County Light & Power (PCLP) service territory.

"Issuing this report for public consumption does not represent the end of Commission action on this matter, but rather we will continue to move forward because as I have said before I am not willing to abandon these customers," said Commission Bill Shane. "This Commission will use the contents of this report to determine what additional corrective steps need to be taken in order to assure that Pike County Power's customers have access to effective competition."

The Commission voted unanimously to release the report that answers a series of 14 questions designed to help gather information regarding the enhancement of the competitive electric market in the PCLP service territory. The report details the answers to those questions provided by various interested parties including the PCLP, the Office of Consumer Advocate, the Office of Small Business Advocate, Retail Energy Supply Assoc., Constellation Energy Group Companies and a coalition of industrial consumers. The report was prepared by the Commission's Law Bureau.

At today's meeting, the Commission also provided clarification that its April 29, 2006, actions to waive some rules for Electric Generation Suppliers applied to all suppliers operating in the PCLP territory. The actions were designed to encourage increased participation in the service territory by EGS. The waivers addressed areas such as switching rules, rescission periods, exchange and release of customer information, bill format and supplier licensing.

In August 2005, the Commission approved PCLP's Default Service Implementation Plan, which included procedures necessary to implement default service (for customers when alternative providers are not available) and establish Provider of Last Resort rates for all customer classes.

In October 2005, PCLP implemented this plan by purchasing power via an auction which led to about a 70 percent rate increases for electric customers. On April 29, 2006, the Commission certified the results of a retail aggregation bidding program for the PCLP service territory that provided a modest savings for consumers.

The Pennsylvania Public Utility Commission ensures safe, reliable and reasonably priced electric, natural gas, water, telephone and transportation service for Pennsylvania consumers, by regulating public utilities and by serving as responsible stewards of competition. For recent news releases, or more information about the PUC, visit our website at www.puc.state.pa.us.

# # #

Docket No: P-00052168, P-00062205

ORIGINAL

BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

VALERIE McCUTCHEON, 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).

Valerie McCutchen
507 Avenue F
Matamoras, PA 18336

Gary M. Chase
121 Miller Road
Milford, PA 18337

William Hessling
Business Administrator
Delaware Valley School District
236 Route 6 & 209
Milford, PA 18337

William Degraw
Janeth Degraw
104 Wheatfield Plaza
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Chaba M. Pallaghy
1036 Pennsylvania Avenue
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County of Pike
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Three Lane Utilities
c/o Richard Snyder
PO Box 927
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301 Pennsylvania Ave.
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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: July 31, 2006

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August 1, 2006

Sent Via U.S. Express Mail, Overnight Delivery

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

RE: Delaware Valley School District v. Pike County Light & Power Company
No. C-20065942

Dear Secretary McNulty:

Enclosed herewith for filing please find an original and two (2) copies of each of the following documents, filed on behalf of the Delaware Valley School District in the above captioned matter: (a) Entry of Appearance with Certificate of Service; and (b) Pre-Hearing Conference Memorandum with Certificate of Service.

Thank you for your kind attention to this matter.

DOCUMENT FOLDER

Very truly yours,
DELAWARE VALLEY SCHOOL DISTRICT

By: _____
Michael E. Weinstein, Esquire
School Solicitor

MEW/ac
Enclosures

517

cc: The Honorable Ember S. Jandebeur
Ms. Valerie McCutcheon
Mr. Gary M. Chase
Mr. William Hessling, Delaware Valley School District
Mr. William DeGraw & Ms. Janeth DeGraw
Mr. Chaba M. Pallaghy
Mr. Jeff L'Hote
Mr. Gary R. Orben
Mr. Francis L. Hall, Jr.
Ms. Michelle Storms
Mr. Joseph Fretta
Ms. Nancie Simonet, Waterwheel Café &Bakery
Mr. Jake Wood
Mr. William L. Loosemoore & Ms. Irene Loosemoore
Samall Properties, Inc.
James P. Melia, Esquire
Three Lane Utilities
Three Lane Utilities Corp.
Mr. Richard Snyder
MR. Michael Trenner
E.E. Hauser
Ms. Kathleen Ferranti
Ms. Carol Ann Skyler d/b/a Carol Ann's Linen Closet
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Mr. James Pollard & Ms. Laura Pollard
Mr. Dan Kane
Mr. Peter R. Rushton
Rigas Panagiotis, Milford Diner
Ms. Jeanette Abbot
Mr. Anthony Grigal
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Daniel G. Asmus, Esquire
Ms. Silvia Recchia
Mr. Mark Robbins
Mr. Peter P. Kenny
Municipality Authority of the Borough of Milford
611 Broad Street, LLC
Mr. Lawrence Budzeyko
Mr. Jerome Grigas
Mr. Thomas Hoff
John L. Carley, Esquire
County of Pike

ORIGINAL

DELAWARE VALLEY SCHOOL BOARD
Delaware Valley School District
236 Route 6 & 209
Milford, Pennsylvania 18337
(570) 296-1800

Michael E. Weinstein, Esquire, Solicitor
Attorney I.D. No. 20806

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DELAWARE VALLEY SCHOOL DISTRICT	:	DOCUMENT FOLDER
V.	:	
PIKE COUNTY LIGHT & POWER COMPANY	:	**No. C-20065942**

ENTRY OF APPEARANCE

Please enter our appearance on behalf of **THE DELAWARE VALLEY SCHOOL DISTRICT** in the above captioned matter. We are authorized to accept service on behalf of said Complainant and request to be added to the Commission's service list.

Respectfully submitted,
DELAWARE VALLEY SCHOOL DISTRICT

Date: August 1, 2006

By: _____
Michael E. Weinstein, Esquire, School Solicitor
Attorney I.D. No. 20806
104 W. High Street
Milford, Pennsylvania 18337
(570) 296-6471; Fax (570) 296-2653

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SECRETARY'S BUREAU

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Delaware Valley School District
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(570) 296-1800

Michael E. Weinstein, Esquire, Solicitor
Attorney I.D. No. 20806

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DELAWARE VALLEY SCHOOL DISTRICT	:	
V.	:	
PIKE COUNTY LIGHT & POWER COMPANY	:	**No. C-20065942**

CERTIFICATE OF SERVICE

I, Michael E. Weinstein, Solicitor for the Delaware Valley School District, hereby certify that a true and correct copy of the Entry of Appearance for the Delaware Valley School District was served on the individuals and entities set forth in Exhibit "A" on the dates and in the manner indicated therein.

Respectfully submitted,
DELAWARE VALLEY SCHOOL DISTRICT

Dated: August 1, 2006

By: _____
Michael E. Weinstein, Esquire, School Solicitor
Attorney I.D. No. 20806
104 W. High Street
Milford, Pennsylvania 18337
(570) 296-6471; Fax (570) 296-2653

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PA PUC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "A" TO CERTIFICATE OF SERVICE

Service by Overnight Delivery on August 1, 2006

The Honorable Ember S. Jandebeur, Administrative Law Judge
100 Lackawana Avenue
Scranton State Office Building, Room 317
Scranton, Pennsylvania 18503

Service by U.S. First Class Mail on August 1, 2006

Ms. Valerie McCutcheon
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Business Administrator
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Ms. Janeth DeGraw
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Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003-0987

County of Pike
Pike County Administration Building
506 Broad Street
Milford, Pennsylvania 18337

ORIGINAL

DELAWARE VALLEY SCHOOL BOARD
Delaware Valley School District
236 Route 6 & 209
Milford, Pennsylvania 18337
(570) 296-1800

Michael E. Weinstein, Esquire, Solicitor
Attorney I.D. No. 20806

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DELAWARE VALLEY SCHOOL DISTRICT	:	
	:	
V.	:	
	:	
PIKE COUNTY LIGHT & POWER COMPANY	:	**No. C-20065942**

PRE-HEARING CONFERENCE MEMORANDUM OF THE DELAWARE VALLEY SCHOOL DISTRICT

THE DELAWARE VALLEY SCHOOL DISTRICT, by and through its Solicitor, Michael E. Weinstein, Esquire, hereby submits a Pre-Hearing Conference Memorandum in accordance with Section 333 of the Public Utility code, 66 Pa.C.S.A. § 333, and the Pre-Hearing Conference Order and Second Interim Order of Consolidation issued on July 14, 2006, averring as follows:

I. INTRODUCTION

The Delaware Valley School District (the "School District") filed a Formal Complaint against the Pike County Light & Power Company (the "Company") on or about February 24, 2006, alleging that the electric rate increases that went into effect on January 1, 2006, resulted in an unfair burden on customers of the Company. The School District filed an amended Formal Complaint in this matter on or about July 12, 2006. In its Amended Complaint, the School

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District alleged that the Company is not providing safe and adequate service and that the Company's rates are not just unreasonable, and has asked that the Commission mandate that the Company be sold to another Pennsylvania electric distribution company or a rural electric cooperative. The School District also requested that the Commission implement the recommendations made by its Law Bureau in June 2006. The School District not submits its Pre-

Hearing Conference Memorandum in anticipation of the Pre-Hearing Conference scheduled in this

matter for Thursday August 3, 2006.

II. BACKGROUND

The School District joins in, adopts and incorporates herein by reference the Background information as set fourth in Paragraph II of the Pre-Hearing Conference Memorandum of the Office of Consumer Advocate filed in this matter.

III. ISSUES AND SUB-ISSUES

The School District joins in, adopts and incorporates herein by reference the Issues and Sub-Issues as set forth in Paragraph III of the Pre-Hearing Conference Memorandum of the Office of Consumer Advocate filed in this matter.

IV. WITNESSES

In this proceeding, the School District intends to present the direct and rebuttal testimony of any or all of the following individuals:

(1) Dr. Candis Finan,
Superintendent of the Delaware Valley School District
236 Routes 6 & 209
Milford, Pennsylvania 18337

2. Mr. William Hessling
Business Administrator
Delaware Valley School District
236 Routes 6 & 209
Milford, Pennsylvania 18337

The School District reserves the right to call such additional witnesses as may be necessary, and will supplement this response upon making a determination on this matter.

V. QUESTIONS RAISED BY THE ADMINISTRATIVE LAW JUDGE IN THE JULY 14, 2006 ORDER

1. EXPLANATION AS TO WHY THIS MATTER SHOULD NOT BE DISMISSED AS MOOT.

The School Board joins in, adopts and incorporates herein by reference the Explanation as set forth in Sub-Paragraph V(1) of the Pre-Hearing Conference Memorandum of the Office of Consumer Advocate filed in this matter.

2. DIRECT ENERGY'S PARTICIPATION IN THIS CASE.

The School Board joins in, adopts and incorporates herein by reference the response as set forth in Sub-Paragraph V(2) of the Pre-Hearing Conference Memorandum of the Office of Consumer Advocate filed in this matter.

VI. PROPOSED PROCEDURE AND SCHEDULE

The School Board joins in, adopts and incorporates herein by reference the Proposed Procedure and Schedule as set forth in Paragraph VI of the Pre-Hearing Conference Memorandum of the Office of Consumer Advocate filed in this matter.

VII. DISCOVERY

The School Board joins in, adopts and incorporates herein by reference the proposed Discovery schedule as set forth in Paragraph VII of the Pre-Hearing Conference Memorandum of

the Office of Consumer Advocate filed in this matter.

VIII. SERVICE ON THE SCHOOL BOARD

The School Board is represented in this matter by Michael E. Weinstein, Esquire, Delaware Valley School District Solicitor, and copies of all documents and notices in this proceeding should be served as follows:

Michael E. Weinstein, Esquire
Delaware Valley School District Solicitor
Weinstein, Schneider, Kannebecker & Lokuta
104 W. High Street
Milford, Pennsylvania 18337
Telephone: (570) 296-6471
Fax: (570) 296-2653

IX. SETTLEMENT

The School District is willing to participate in settlement discussions; however, to date, no such discussions have occurred.

X. PUBLIC EVIDENTIARY HEARINGS

The School Board requests that hearings be held in the Company's service area to enable the Formal Complainants and also other ratepayers and affected community members to testify.

Respectfully submitted,
DELAWARE VALLEY SCHOOL DISTRICT

By _____
Michael E. Weinstein, Esquire, School Solicitor
Attorney I.D. No. 20806

Date: August 1, 2006

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PROTHONOTARY BUREAU

DELAWARE VALLEY SCHOOL BOARD
Delaware Valley School District
236 Route 6 & 209
Milford, Pennsylvania 18337
(570) 296-1800

Michael E. Weinstein, Esquire, Solicitor
Attorney I.D. No. 20806

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DELAWARE VALLEY SCHOOL DISTRICT	:	
	:	
V.	:	
	:	
PIKE COUNTY LIGHT & POWER COMPANY	:	**No. C-20065942**

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I, Michael E. Weinstein, Esquire, Delaware Valley School District Solicitor, hereby certify

that a true and correct copy of the Pre-Hearing Conference Memorandum for the Delaware Valley School District was served on the individuals and entities set forth in the attached Exhibit "A" on the dates and in the manner indicated therein.

Respectfully submitted,
DELAWARE VALLEY SCHOOL DISTRICT

Date: August 1, 2006

By: _____
Michael E. Weinstein, Esquire
Delaware Valley School District Solicitor
Attorney I.D. No. 20806
Weinstein, Schneider, Kannebecker, & Lokuta
104 West High Street
Milford, Pennsylvania 18337
(570) 296-6471; Fax (570) 296-2653

EXHIBIT "A" TO CERTIFICATE OF SERVICE

Service by Overnight Delivery on August 1, 2006

The Honorable Ember S. Jandebeur, Administrative Law Judge
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Consolidated Edison Company of New York, Inc.
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County of Pike
Pike County Administration Building
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Milford, Pennsylvania 18337

SAUL EWING
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A Delaware LLP

Celebrating 85 years of service.

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jgallagher@saul.com
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August 4, 2006

BY HAND DELIVERY

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

DOCUMENT FOLDER

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 Answer and New Matter of Pike County Light & Power Company (PCL&P) to the Amended Complaint of the County of Pike in the above-referenced matter.

A Certificate of Service is also attached.

Please call if you have any questions.

Sincerely,

John J. Gallagher
Counsel for PCL&P

cc: Parties on Certificate of Service
John L. Carley, Esq.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

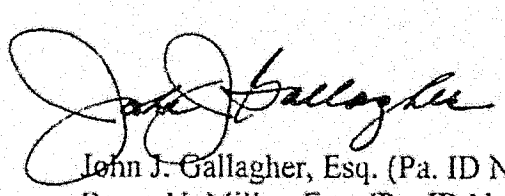
COUNTY OF PIKE, Complainant	:	
V.	:	Complaint Docket No. C – 20065942
PIKE COUNTY LIGHT & POWER COMPANY, Respondent	:	

NOTICE TO PLEAD

To: County of Pike

You are hereby notified to file a written response to the attached Answer and New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,



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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE, Complainant V. PIKE COUNTY LIGHT & POWER COMPANY, Respondent	:	Complaint Docket No. C 20065942

DOCUMENT FOLDER

ANSWER OF PIKE COUNTY LIGHT & POWER COMPANY TO THE AMENDED COMPLAINT OF THE COUNTY OF PIKE

The County of Pike ("County") has filed an Amended Formal Complaint ("Amended Complaint") in the above-referenced docket that purports to amend its Complaint of February 24, 2006 ("Complaint"). On March 13, 2006, Pike County Light & Power Company ("PCL&P" or the "Company") filed with the Pennsylvania Public Utility Commission ("Commission" or the "PUC") its Answer ("Answer") to the Complaint. The Company specifically incorporates the contents of its March 13, 2006 Answer herein. Pursuant to Sections 5.61, 5.62, and 5.65, *et al.* of the Pennsylvania Code and the Public Utility Commission's Regulations,[1] the Company, by and through its counsel, hereby amends its Answer by responding to each of the numbered paragraphs of the Amended Complaint as follows:

1. PCL&P denies the allegations contained in Paragraph 1 of the Amended Complaint, except admits that the County filed the Complaint and refers to the Complaint for its contents. The Company admits that the increases in energy charges are correct but notes that there has been no change in PCL&P's delivery rates since 1993 (Docket No. R-922518).

[1] 52 Pa. Code, §§ 5.1, *et seq.*; 66 Pa. C.S. §§ 1101, *et seq.*

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2. PCL&P denies the allegations contained in Paragraph 2 of the Amended Complaint, except admits that the Commission issued an Order on January 27, 2006 and refers to the Order for its terms.

3. PCL&P denies the allegations contained in Paragraph 3 of the Amended Complaint, except admits that a public input hearing was held on that date and that Commissioner Shane and Vice Chairman Cawley attended.

4. PCL&P denies the allegations contained in Paragraph 4 of the Amended Complaint, except admits that Direct Energy Services, LLC ("Direct") filed a Petition on March 10, 2006 in Docket No. P-00062205 and refers to the Petition for its contents, and admits that the Commission issued, adopted, and entered a Final Opinion and Order in Docket No. P-00062205 on April 20, 2006 (mod. in part on June 22, 2006) and refers to the Orders for their terms.

5. PCL&P denies the allegations contained in Paragraph 5 of the Amended Complaint, except admits that Commission's Law Bureau issued a report entitled "Report on Competitive Market Conditions Regarding the Pike County Light & Power Company" ("Report") and refers to the Report for its contents.

6. PCL&P denies the allegations contained in Paragraph 6 of the Amended Complaint, but refers to the Report for its content and context.

7. PCL&P denies the allegations contained in Paragraph 7 of the Amended Complaint.

8. PCL&P denies the allegations contained in Paragraph 8 of the Amended Complaint.

9. PCL&P denies the allegations contained in Paragraph 9 of the Amended Complaint, as it is simply a prayer for relief.

10. PCL&P denies the allegations contained in Paragraph 10 of the Amended Complaint.

11. PCL&P denies the allegations contained in Paragraph 11 of the Amended Complaint, but admits that the Company does not maintain an office in Pennsylvania. PCL&P denies the relevance of the allegation because the Company maintains an office in Port Jervis, New York, which is only a few miles from the nearest PCL&P customer in Pennsylvania. Moreover, many employees reside in or near the Company's service territory, including service personnel who can respond rapidly to emergencies in the Company's service territory.

12. PCL&P denies the allegations contained in Paragraph 12 of the Amended Complaint, except admits that Mr. Forbes spoke at the February 27, 2006 Public Input session, but denies both the accuracy and relevance of his statement.

13. PCL&P denies the allegations contained in Paragraph 13 of the Amended Complaint, except admits that the Company discovered certain minor billing errors on its own, brought such errors to the Commission's attention, refunded customers any over payments as appropriate, and is addressing such errors.

14. PCL&P denies the allegations contained in Paragraph 14 of the Amended Complaint.

15. PCL&P denies the allegations contained in Paragraph 15 of the Amended Complaint, except admits that the Commission issued an opinion in the *Big Run Telephone Company* case in 1982, but denies such opinion is relevant to the instant matter.

16. PCL&P denies the allegations contained in Paragraph 16 of the Amended Complaint, except admits it is the County's prayer for relief and denies it is warranted or appropriate in any way.

NEW MATTER

1. PCL&P incorporates by reference the averments contained in paragraphs 1 through 16 above, as if fully set forth herein.

The Commission Lacks Jurisdiction And Authority To Order The Forced Sale Of PCL&P

2. In paragraphs 8, 9, 10, 14, 15, and 16 of the Amended Complaint, the County seeks to force the sale of the Company to another entity. The relief requested by the County is not authorized under the law. The Commission lacks jurisdiction and authority to order the forced sale of PCL&P.

3. The power and authority exercised by administrative commissions must be conferred by legislative language that is clear and unmistakable. *Process Gas Consumers Group v. Pa. PUC*, 511 A.2d 1315 (Pa. 1986). The Commission's power is statutory, and the legislative grant of power to act in any particular case must be clear. The Commission derives its authority from legislative action, and its powers are confined to those specifically declared. The Public Utility Code, Pa. C.S. 66 §§ 1101, *et seq.*, covers only such matters as are expressly or by necessary implication included within its terms. *Allegheny County Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa.1967).

4. The Commission's power to order the sale of the Company is not specifically delineated in the Public Utility Code. The County has failed to identify any language in the Public Utility Code that gives the Commission the jurisdiction, power, or authority to order the a forced sale of PCL&P. Indeed, there is no legislative language whatsoever – much less clear and unmistakable language – in the Public Utility Code that grants the Commission the jurisdiction, power, or authority to order the forced sale of an electric utility company.

5. It is instructive to note that Section 529 of the Public Utility Code contains the only narrow statutory mandate where the Commission has been given the power to order the sale of small water and sewer companies. 66 Pa. C.S. § 529. The Public Utility Code grants no power to the Commission to force the sale of electric utility companies.

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

7. In support of its requested relief, the County cites the case of *Pa. PUC v. Big Run Telephone*, Docket No. C-822983 (Order entered October 15, 1982) ("Big Run"). The *Big Run* case is not relevant to the instant matter, either factually or legally. The *Big Run* case fails to identify any clear and unmistakable legislative language that confers upon the Commission the jurisdiction, power, or authority to order the forced sale of an electric utility company. Consequently, the relief requested by the County is not authorized under the law.

8. Assuming *arguendo* that the Commission has the power to order the sale of PCL&P to another utility or electricity cooperative, the exercise of such putative power would be completely unwarranted because the Company has adhered to the Public Utility Code and the Commission's regulations in all respects.

9. The County has put the cart before the horse. The Commission has the power under 66 C.S. §§ 1501 and 1504 to determine if the Company is providing safe and adequate

service at just and reasonable rates. If the Commission were to determine that such is not the case, it could then prescribe the rates and services the Company should be providing to PCL&P's customers, in addition to directing the Company to take the appropriate remedial measures necessary to correct any service deficiencies. Only if the Company were to violate such an order, made after a hearing, could the Commission order further remedial action. Here, not only has there has been no finding that the Company is not providing safe and adequate service at just and reasonable rates, but the County has not even made a prima facie showing that such is the case. Furthermore, if the Commission were to find that the Company was not providing safe and adequate service at just and reasonable rates, its only remedy authorized under the Public Utility Code would be to order PCL&P to provide specific service at specific rates. Here, however, the Company is in compliance with all orders as to rates and service. Accordingly, there is not a factual basis to support any punitive action by the Commission. In addition, certainly there is no basis to claim that PCL&P should be forcibly sold, even if that power existed in the Commission.

The Commission Has Considered And Rejected Proposals To Study The Sale Of The Company

10. In paragraphs 9, 10, 14, 15, and 16 of the Amended Complaint, the County seeks to force the sale of the Company to another entity. The Commission recently considered and twice rejected the request to *consider* a study about the costs and benefits of the sale of the Company in a proceeding at Docket P-00052168. *Pa. PUC v. Pike County Light& Power*, Docket No. P-00052168 (Order adopted August 25, entered September 23, 2005 at 23-24). In that proceeding at Docket P-00052168, the Office of Consumer Advocate ("OCA") requested that the Commission require the Company to revisit the PJM Transmission Interconnection project, including a requirement to open discussion with PPL and PJM regarding interconnection possibilities. The OCA also requested that the Commission require PCL&P to explore a sale or

transfer of the Company or its customers to an existing PJM electric distribution company ("EDC"). *Id.* at 23.

11. The Commission noted that the Company has already thoroughly explored becoming part of the PJM Regional Transmission Organization ("RTO"). "Pursuant to the August 9, 2002 Order, ... [PCL&P] completed a study in March 2004, which clearly indicated that such an interconnection project would not be economically feasible." *Id.* PCL&P previously provided the OCA with a copy of this study and the OCA did not challenge its conclusions. *Id.*

12. PCL&P also objected to the OCA's proposal that PCL&P investigate a sale of its operations to another Pennsylvania EDC as unreasonable and unwarranted. PCL&P stated that the request for such an unprecedented action proceeds solely from the unsupported assumptions that acquisition by another utility with membership in PJM RTO will provide long-term economic benefits to PCL&P's customers or that a sale of the Company will result in lower rates for PCL&P's customers. *Id.*

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

14. On January 27, 2006, the Commission conducted a public input hearing at which a large number of Pike County customers attended and voiced their concerns about the increase in the Company's rates. By motion at the Public Meeting held on January 27, 2006, the Commission initiated a fact-finding investigation into the competitive market conditions in

PCL&P's service territory at Docket No. P-00052168. *Initiation of a Fact Finding Investigation of the Competitive Market Conditions Re: Pike County Light & Power Co.*, Docket No. P-00052168 (Order entered February 14, 2006) ("Investigation Order"). The Investigation Order listed fourteen issues for comment by interested parties. The Commission directed its Law Bureau to conduct a sixty-day investigation into the matter and, thereafter, to prepare and submit to the Commission a report on its findings on the issues (the "Report").

15. At a Public Meeting held on June 22, 2006, the Commission released the Report to the public. The Report contains observations and comments from interested parties and eight recommendations made by the Commission's staff. Two of the recommendations ask the Commission to reconsider previously considered and rejected proposals. The Report recommends, *inter alia*, that the Commission "should *consider* having an independent study performed regarding the cost and benefits of the interconnection of the Company's electric system with PJM...," and that the Commission "should *consider* having an independent study performed regarding the cost and benefits of the sale of the Company to another Pennsylvania EDC or rural electric cooperative." Report at 17 and 20.

16. The Report was presented to the Commission, and the Commission released the Report to the public on June 22, 2006. The Commission, however, has taken no action on the Report. The Commission has neither adopted the Report in whole, or part, nor directed the Company to respond to it.[2] The Commission legally speaks only through its findings, rulings, orders, and regulations. 66 Pa. C.S. § 316. The Commission's decision to release the Report without an order is a tacit rejection even to *consider* the relief requested in the County's Amended Complaint and renders the issue moot. Unless and until the Commission determines to

[2] Nevertheless, PCL&P is committed to working with the Commission and its staff to address some of the recommendations contained in the Report.

act on the Report, the relief requested in paragraphs 9, 10, 14, 15, and 16 of the Amended Complaint is moot and should be dismissed as moot.

The Plaintiffs' Claims Are Barred By The Filed Rate Doctrine

17. The January 2006 increase of electricity rates is the fundamental claim in the County's original Complaint, the County's Amended Complaint, and all of the other Formal Complaints that have been consolidated with this proceeding. See e.g., Complaint, ¶ 4B; Amended Complaint, ¶¶ 1, 7, 10.[3]

18. The Company notes that the County fails to make any distinction between delivery rates (transmission and distribution) and commodity rates (generation). PCL&P's delivery rates have not increased since 1993 The increase that the County is complaining about relates to the unprecedented increase in commodity prices. Commodity prices are set by the marketplace, not by the Company. This is simply the result of the intent of the General Assembly to have the market determine electricity prices.[4] In large part, this also appears to be a timing issue. The rates of the other public utilities in the Commonwealth, like PCL&P's, have been "capped" pursuant to Pennsylvania's restructuring legislation, to allow a period of time before Pennsylvania customers became more fully subject to competitive electricity markets. PCL&P's rate cap was removed before those of most other utilities. Not only was the Company's cap removed earlier, but also it was removed at a time when energy costs were at record levels. PCL&P's experience is similar to that of other public utilities that were subject to

[3] In paragraphs 1, 7, and 10 of its Amended Complaint, the County claims that the rates of PCL&P "created an unfair burden on the County of Pike resources," are "not just and reasonable," and are "excessive as compared to those of other Pennsylvania electric utilities."

[4] Pursuant to Pennsylvania's Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801, *et seq.*, PCL&P's commodity rates were "unbundled" from delivery rates and the rates that PCL&P customers pay for their electric service were "capped" for a limited transition period. The purpose of the rate caps was to insulate customers from rate volatility until a time when market rates for generation would be implemented.

the expiration of rate caps at the same time, most notably public utility companies in Maryland, Delaware and Illinois.

19. The current commodity rates for PCL&P were established in two separate proceedings before the Commission – the Default Service rates were approved by the Commission at Docket No. P-00052168, while the Retail Aggregation rates were approved by the Commission at Docket No. P-00062205.

Default Service Rates

20. The Company's Default Service rates were established pursuant to a process supervised and approved by the Commission following a litigated proceeding. *See Pa PUC v. Pike County Light & Power Co.*, Docket No. P-00052168 (Orders entered September 23, 2005 and December 21, 2005).

21. Under the terms of a Commission-approved Settlement Petition,[5] on May 31, 2005, the Company filed with the Commission, for its review and approval, at Docket No. P-00052168, its plan containing proposed tariff changes and agreements, as well as the procedures necessary to implement PCL&P's Default Service Implementation Plan to become effective January 1, 2006 (Order adopted August 23, 2005, entered September 23, 2005). On October 25, 2005, PCL&P submitted the results of its auction process conducted in accordance with the Default Service Implementation Plan - including the impact on retail rates for residential, general, municipal street lighting and private lighting customers receiving Default Service effective January 1, 2006.

[5] Order entered August 9, 2002 at Docket No.P-00011872. The Settlement Petition established, among other things, Default Service rates for the Company through December 31, 2005. The Settlement Petition also provided that if the Commission had not issued final regulations to implement Section 2807(e)(3) of the Public Utility Code by June 1, 2005, the Company would file a plan to establish Default Service rates, pursuant to Section 2807(e)(3), to become effective January 1, 2006. As of August 25, 2005, the Commission had not issued final regulations.

22. The results of the auction were approved by Commission Secretarial Letter dated October 28, 2005, finding that "[f]urther investigation does not appear to be warranted at this time and the auction appears to have been conducted in accordance with the RFP Guidelines." The Commission approved the results of the auction and directed PCL&P to file its tariff supplement no later than sixty (60) days prior to the effective date of January 1, 2006 (Order entered September 23, 2005, at Docket No. P-00052168, as modified by the Order and the default service rates resulting from the auction).

23. On November 1, 2005, the Company filed Supplement No. 25 to Tariff Electric – Pa. P.U.C. No. 8, proposing an increase in default service rates and incorporating the approved tariff language changes, pursuant to the approved Plan and the October 28, 2005 Secretarial Letter. Twenty-three (23) tariff leaves were included in the filing.[6]

24. In its Order entered on December 21, 2006, the Commission found "Investigation and analysis of this proposed tariff indicates that the proposed changes appear to be in the public interest." The Commission permitted PCL&P's new Default Service tariffs to go into effect on January 1, 2006, and the proceeding at Docket No. P-00052168 was closed." (Order adopted December 15, 2005, and entered December 21, 2005 at 4).

Retail Aggregation Rates

25. On January 27, 2006, the Commission conducted a public input hearing at which a large number of Pike County customers attended and voiced their concerns regarding the increase in the Company's Default Service rates. Responding to concerns that the Default Service rates resulted in significantly higher generation rates for PCL&P retail customers, the Commission approved a Retail Aggregation Bidding Program proposed by Direct Energy

[6] Under the Public Utility Code, PCI &P must file tariffs with the PUC showing all schedules of rates, rules, regulations, practices, or contracts within the jurisdiction of the Commission. *See* 66 Pa. C.S. §§ 102 and 1302.

Services, a Pennsylvania-licensed EGS. *See, Petition of Direct Energy Services, LLC*, Docket No. P00062205 (Tentative Order adopted and entered April 6, 2006)

26. By Opinion and Order entered on April 20, 2006 (modified in part June 22, 2006) at the end of a litigated proceeding at Docket No. P-00062205, the Commission selected Direct to conduct a Retail Aggregation Program in PCL&P's service territory. The Commission held that, "[b]ased on our review, we conclude that Direct Energy has met its burden of proof under section 332(a) of the Public Utility Code and that the Retail Aggregation Bidding Program, as outlined in the instant Final Opinion and Order, is in the public interest pursuant to Chapter 28. We reach this conclusion in order to bring needed and timely relief to the affected customers in Pike County under the unique competitive circumstances present at this time."[7] Order entered on April 20, 2006 at 25 (mod. in part June 22, 2006).

27. Because of that Retail Aggregation Program, Direct now provides electric generation service to almost all of PCL&P's customers (aside from PCL&P's Large Primary Customers who the Commission precluded from participating). PCL&P's customers, including the County, began to receive electric generation service from Direct commencing June 2, 2006. Order entered on April 20, 2006 (mod. in part June 22, 2006).

28. The Retail Aggregation rates were established pursuant to a process supervised and approved by the Commission following a litigated proceeding at Docket No. P-00062205. The Retail Aggregation rates are collected by PCL&P on behalf of Direct. The Commission

[7] The Commission also found that, "[t]he wholesale auction process employed by Pike County [PCL&P] was approved by the Commission at the conclusion of a litigated proceeding. [P-00052168] Thereafter, Pike County [PCL&P] conducted an auction pursuant to the Commission's Order. However, the wholesale auction results were affected by several other factors which are alleged to have severely distorted the prevailing market prices, including the following: Pike County's membership in the New York Independent System Operator (NY ISO), the timing of the auction which occurred at a time when natural gas prices escalated due to Hurricane Katrina, minimal auction participants, and no competitive retail activity in its service territory." (Order at 4 adopted and entered on April 20, 2006 at Docket P-00062205).

certified the results of Retail Aggregation program on April 29, 2006.[8] PCL&P's customers, including the County, began to receive electric generation service from Direct commencing June 2, 2006. Order entered on April 20, 2006 (mod. in part June 22, 2006)

The Filed Rate Doctrine

29. "Tariffs have the force of law and are binding on both the utility and the customer." *Pennsylvania Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. Ct. 1995). Under the Public Utility Code, "[t]he Commission or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa. C.S. § 701. The County, however, does not allege that PCL&P has done or failed to do anything in violation of any law, which the Commission has jurisdiction to administer, or of any Commission regulation, or of any Commission order either: (1) during the Default Service process supervised and approved by the Commission following a litigated proceeding at Docket No. P-00052168, or (2) during the Retail Aggregation process supervised and approved by the Commission following a litigated proceeding at Docket No. P-00062205. The County simply complains that the PCL&P's existing (Default Service and Retail Aggregation) rates approved by the Commission are too high.

30. Under the "filed rate doctrine," the only lawful rate that a utility may charge is the rate approved by the Commission, and a utility may not deviate from the filed rate. *Ciamaichelo v. Independence Blue Cross*, 814 A.2d 800 (Pa. Cmwlth. Ct. 2002); *Philadelphia Suburban*

[8] The fact that Direct was able to offer customers only "modest savings" when compared to PCL&P's Default Service rate is a direct reflection of prevailing market conditions.

Water Co. v. Pa. PUC, 808 A.2d 1044 (Pa. Cmwlth. Ct. 2002); *Bell Telephone Co. of Pennsylvania v. Pa. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. Ct. 1980). The rate approved by an agency charged with establishing such a rate is presumed to be lawful and reasonable. *See, Milkman v. Am. Travelers Life Ins. Co.*, 61 Pa. D. & C.4th 502, 2002 Pa. Dist. & Cnty. Dec. LEXIS 94 (C.P. Phila. March 28, 2002). Pennsylvania courts have applied the "filed rate doctrine" to bar claims based on rates approved by state agencies. *Id.* The courts have held that "based on the Public Utility Code's establishment of a statutory filed rate doctrine and on persuasive authority from other jurisdictions, we must conclude that by logical extension, the filed rate doctrine bars claims where the complaint collaterally attacks the filed rate." *Ciamaichelo*, 814 A.2d at 804 (citing *Knipmeyer v. Bell Atl. Corp.*, 51 Pa. D. & C.4th 225, 2001 Pa. Dist. & Cnty. Dec. LEXIS 289 (C.P. Phila., May 22, 2001)); *see*, 66 Pa. C.S. §§ 1302, 1303, and 1304.

31. Throughout the course of the proceedings before the Commission, the Company complied with all Commission directives and followed the Commission orders faithfully. The Commission approved the PCL&P's Default Service and Retail Aggregation tariffs. The Company filed its tariffs, implemented the rates, and performed all of its obligations consistent with the Public Utility Code and the Commission's regulations. The Company must charge its customers in accordance with its existing Commission-approved tariffs until the Commission approves new tariffs. The filed rate doctrine bars the plaintiffs' claims to the extent that the complaint collaterally attacks the existing Commission-approved filed rates. The County is simply complaining that the existing rates approved by the Commission are too high, and such claims are barred by the filed rate doctrine. Consequently, the County has failed to state a claim for which relief can be granted.

PCL&P Continues To Provide Its Customers
Safe And Reliable Service At Just And Reasonable Rates

32. In paragraph 7 of its Amended Complaint, the County claims that the rates of PCL&P are not just and reasonable, and therefore, in violation of Section 1301 of the Pennsylvania Public Utility Code. In paragraph 8 of its Amended Complaint, the County claims that the Company's service is not safe and adequate and is, therefore, in violation of Section 1501 of the Pennsylvania Public Utility Code.

33. The Commission has the power under 66 C.S. §§ 1301, 1501, and 1504 to determine if the Company is providing safe and adequate service at just and reasonable rates. If the Commission were to determine that such is not the case, it could then prescribe the rates and services the Company should be providing PCL&P's customers, in addition to directing the Company to take the appropriate remedial measures necessary to correct any service deficiencies. Only if the Company were to violate such an order, made after a hearing, could the Commission order further remedial action. Here, not only has there has been no finding that the Company is not providing safe and adequate service at just and reasonable rates, but the County has not even made a prima facie showing that such is the case. Furthermore, if the Commission were to find that the Company was not providing safe and adequate service at just and reasonable rates, its only remedy authorized under the Public Utility Code would be to order PCL&P to provide specific service at specific rates. Here, however, the Company is in compliance with all orders as to rates and service. Accordingly, there is not a factual basis to support any punitive action by the Commission. In addition, certainly there is no basis to claim that PCL&P should be forcibly sold, even if that power existed in the Commission.

34. In Paragraphs 10, 11, 12, and 14 of the Amended Complaint, the County complains about a "lack of local control and employee services in Pike County" on the part of

the Company. Even if the factual allegations were true, this is not an issue upon which relief can or should be granted for the Complaint still would not amount to a legally valid claim.

35. PCL&P is fully committed to serving its customers, and the Company's employees and operations are a vital part of the local community. When the Company relocated its Customer Service Center to Port Jervis in 2003, not a single customer registered a complaint with the Commission. That is likely because the Company's Customer Service Center is conveniently located in Port Jervis. Furthermore, with modern dispatching and other communications, the Company's ability to conduct routine maintenance and emergency operations is unimpeded. PCL&P's customers receive all the benefits of a local office. In fact, when measuring Pike County electric sales against total electric sales, the Company has proportionately more employees living in Pennsylvania than in any county in New York or New Jersey. PCL&P is a local company that provides local services in Pike County.

36. PCL&P continues to provide its customers with safe and reliable service and to perform all of its obligations consistent with the Public Utility Code and the Commission's regulations. From 2001 through 2005, the Company has received very few informal complaints per year – on average 3 billing complaints, 7 credit complaints, and 2 service complaints.[9] Over that same time, the Company received even fewer formal complaints – on average less than 1 per year. The Company has always attempted to resolve billing and credit complaints quickly and fairly with its customers. Similarly, when a customer complains about service reliability, the Company has one of its power quality experts review the customer's internal electrical system with the customer, its consultant, or its electrical contractor. So far, in 2006, the Company has

[9] Billing complaints include high bills, budget billing, back billing, final bills, incorrect bills, rates, shared meter, switched meter, continuous transfer, connect & disconnects, electronic funds transfer, estimated bills, deposits or other miscellaneous requests. Credit complaints include bill payments issues for nonpayment, payment agreements, payment extensions and termination notices. Service complaints include power outages, momentary interruptions, voltage concerns, streetlights, lawn & driveway

received 59 billing complaints, 9 credit complaints, and one service complaint. The significant increase in the number of billing complaints filed against the Company in 2006 is solely due to the increase the Company's rates that became effective on January 1, 2006.

37. PCL&P consistently maintains and improves the integrity of the distribution system. As a part of its annual maintenance program, the Company conducts an infrared survey designed to locate potential problems with lines and equipment. If the Company detects any anomalies, it takes appropriate action to address the situation.[10] To reduce the possibility of a full circuit outage, the Company has designed an automated loop scheme to isolate faults automatically east of the sectionalizer located within the Port Jervis substation or between the Port Jervis substation and 10th Street in Matamoras. Once isolated, this scheme automatically transfers the un-faulted line to a backup source restoring power to all customers west of 10th Street. To date all of the necessary equipment has been installed, and provided with communications and control that will allow the Company to remotely monitor and manually operate this device from Orange and Rockland's Distribution Control Center in Spring Valley, New York. Programming, testing and commissioning of the device are all that remains to place this automated loop scheme in service. Because this device uses peer-to-peer communications in a team concept, it must be set up and tested by the vendor prior to commissioning. It is scheduled to be tested and commissioned in September 2006. Once in service, this device will even further enhance reliability in PCL&P's service territory.

repairs, gas leaks, new construction, pole problems, new service installations, service upgrades, tree trimming, gas line mark outs, and gas main replacements, in addition to service wires, service brackets, lawn, and driveway repairs.

[10] The Company also maintains a comprehensive tree-trimming program to reduce the occurrence of trees coming into contact with PCL&P's conductors and possibly causing a momentary interruption or creating an outage.

The Billing Issue Raised In The County's Amended Complaint Is Moot

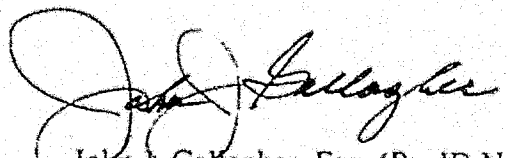
38. In Paragraph 13 of the Amended Complaint, the County alleges that the Company "has made long-standing errors in billing for numerous business customers' demand charges, resulting in substantial overcharges and required refunds to those customers." The issue has been resolved, and is now moot. As such, it should be dismissed.

39. Earlier in 2006, the Company discovered that it had inadvertently billed certain business customers the wrong demand charge. This billing error affected 273 customers, a total of approximately $68,000. Immediately upon discovering this error, PCL&P investigated all demand metered customers in order to identify those affected. Once the affected customers were identified, Pike applied credits to their accounts and notified the customers. The Company also notified the Commission of this situation. The amount refunded to each customer included interest at the Commission's mandated rate of six percent. In addition, PCL&P's investigation revealed that 80 customers had been under billed during the same period; Pike did not re-bill these customers for the higher charges.

CONCLUSION

The Complainants oppose the increase in PCL&P's rates that became effective on or after January 1, 2006. The rates at issue in the Complaints have been reviewed and approved by the Commission. Under the filed rate doctrine, PCL&P can only bill the Complainants the Commission-approved rates. The Complainant's allegations regarding service reliability, the location of PCL&P's office and its personnel, and customer billing are unfounded and are not claims upon which relief can or should be granted. Finally, the relief requested by the Complainant is not authorized by the Public Utility Code and was recently considered and rejected by this Commission in fully litigated proceedings. Accordingly, the Commission should dismiss these Complaints, without hearing.

Respectfully submitted,



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Counsel for
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Date: August 4, 2006

VERIFICATION

I, WILLIAM A. ATZL, JR., a Director in the Rate Engineering Department of Consolidated Edison Company of New York, Inc. ("Con Edison"), an affiliate of Pike County Light & Power Company ("Pike"), hereby state that the facts set forth in the foregoing Preliminary Objections are true and correct to the best of my knowledge, information and belief.

I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to sworn falsification to authorities).

William A. Atzl, Jr.
Director
Rate Engineering Department
Consolidated Edison Company of New York, Inc.

Date: August 3, 2006

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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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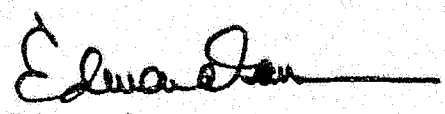
Respectfully submitted.



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Date: August 4, 2006

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August 4, 2006

BY HAND DELIVERY

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

DOCUMENT FOLDER

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 Preliminary Objections of Pike County Light & Power Company (PCL&P) to the Amended Complaint of the County of Pike in the above-referenced matter.

A Certificate of Service is also attached.

Please call if you have any questions.

Sincerely,

John J. Gallagher
Counsel for PCL&P

cc: Parties on Certificate of Service
John L. Carley, Esq.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE, Complainant V. PIKE COUNTY LIGHT & POWER COMPANY, Respondent	:	Complaint Docket No. C – 20065940

NOTICE TO PLEAD

To: County of Pike

You are hereby notified to file a written response to the attached Preliminary Objections within ten (10) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

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Bruce V. Miller, Esq. (Pa. ID No. 201922)
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Counsel for
Pike County Light & Power Company

Date: August 4, 2006

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE, Complainant V. PIKE COUNTY LIGHT & POWER COMPANY, Respondent	:	Complaint Docket No. C – 20065942

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SECRETARY'S BUREAU

PRELIMINARY OBJECTIONS OF PIKE COUNTY LIGHT & POWER COMPANY TO THE AMENDED COMPLAINT OF THE COUNTY OF PIKE

I. INTRODUCTION

Pursuant to Section 5.101 of the Commission's Regulations, 52 Pa. Code § 5.101, Pike County Light & Power Company ("PCL&P" or the "Company") hereby respectfully submits these Preliminary Objections to the Amended Complaint of the County of Pike ("County"). In support of its Preliminary Objections, PCL&P submits the following:

II. FACTUAL BACKGROUND

On July 14, 2006, the County filed an Amended Formal Complaint ("Amended Complaint") in the above-referenced docket that purports to amend its Complaint of February 24, 2006 ("Complaint"). On March 13, 2006, PCL&P filed with the Pennsylvania Public Utility Commission ("Commission") its Answer ("Answer") to the Complaint. The Company specifically incorporates the contents of its Answer herein. In addition to the averments set forth in its Answer, PCL&P preliminarily objects to the County's Amended Complaint and respectfully requests that the claims therein be dismissed with prejudice.

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Also on July 14, 2006, Administrative Law Judge Ember S. Jandebeur issued a Prehearing Conference Order and Second Interim Order of Consolidation directing that fifty (50) formal complaints relating to this matter be consolidated for purposes of hearing and disposition. The substantive allegations of the above-referenced Amended Complaint are substantially the same as the allegations of the other complaints consolidated by ALJ Jandebeur's July 14, 2006 Order. Consequently, to the extent that PCL&P's preliminary objections to the County's claims are sustained, PCL&P respectfully submits that the Commission should sustain the preliminary objections of PCL&P as to all the consolidated complaints. For the reasons set forth below, PCL&P respectfully submits that all the complaints consolidated by the July 14, 2006 Order should be dismissed.

III. PRELIMINARY OBJECTIONS

A. Preliminary Objection – Lack of Commission Jurisdiction

1. In paragraphs 8, 9, 10, 14, 15 and 16 of its Amended Complaint, the County seeks the forced sale of PCL&P to another entity and urges the Commission to order a compulsory divestiture.

2. The County's Amended Complaint fails to set forth a claim for which the relief sought – the forced sale of PCL&P – can be granted.

3. The County's Amended Complaint has failed to identify any language in the Public Utility Code which gives the Commission the jurisdiction, power or authority to order the forced sale of PCL&P.

4. Under the Public Utility Code, the Commission lacks the jurisdiction and/or the authority to order the forced sale of PCL&P.

5. The Commission's power is statutory, and the legislative grant of power to act in any particular case must be clear. The Commission derives its authority from legislative action, and its powers are confined to those specifically declared. The Public Utility Code, 66 Pa. C.S. § 1101, *et seq.*, covers only such matters as are expressly or by necessary implication included within its terms. *Allegheny County Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa. 1967).

6. The power and authority to be exercised by the Commission must be conferred by legislative language that is clear and unmistakable. *Process Gas Consumer Group v. Pa. PUC*, 511 A.2d 1315 (Pa. 1986).

7. There is no legislative language whatsoever – much less clear and unmistakable language – in the Public Utility Code that grants the Commission the jurisdiction, power or authority to order the forced sale of an electric utility.

8. In support of its request to have the Commission order the forced sale of PCL&P, the County cites the case of *Pa. PUC v. Big Run Telephone*, Docket No. C-822983 (Order entered October 15, 1982) ("*Big Run*"). However, the *Big Run* case is not relevant to the instant matter, either factually or legally.

9. The *Big Run* case cited by the County also fails to identify any clear and unmistakable legislative language that confers upon the Commission the jurisdiction, power or authority to order the forced sale of an electric utility.

10. It is instructive to note that the Commission has the statutory power to order the acquisition of small water and sewer utilities under Section 529 of the Public Utility Code, 66 Pa. C.S. § 529. The Public Utility Code grants no such power to the Commission with regard to electric utilities.

11. Under Pennsylvania rules of statutory construction, the inclusion of specific matters in a statute implies the exclusion of all other matters. *Ken R. on behalf of Charles v. Arthur Z.*, 682 A.2d 1267, 1270 (Pa. 1996). This is known as the doctrine of *inclusio unius est exclusio alterius*.

12. Based on the doctrine of *inclusio unius est exclusio alterius*, when the General Assembly granted the Commission the power to order the acquisition of small water and sewer utilities, it intended to deprive the Commission of the jurisdiction, power or authority to order the forced sale of any and all other types of utilities.

13. Based on the foregoing, PCL&P respectfully requests that the Commission sustain its preliminary objection relating to jurisdiction and find that the Commission lacks the jurisdiction, power or authority to order the forced sale of PCL&P to another entity.

14. Moreover, even assuming *arguendo* that the Commission has the power to order the sale of PCL&P to another utility or electricity cooperative, the exercise of such putative power would be completely unwarranted because the Company has adhered to the Public Utility Code and the Commission's regulations in all respects.

15. The County has put the cart before the horse. The Commission has the power under 66 C.S. §§ 1501 and 1504 to determine if a public utility is providing safe and adequate service at just and reasonable rates. If the Commission were to determine that such is not the case, the Commission could then prescribe the rates and services the utility should be providing its customers, in addition to directing the Company to take the appropriate remedial measures necessary to correct any service deficiencies.

16. Only if the Company were to violate such an order, made after a hearing, could the Commission order further remedial action.

17. Here, not only has there has been no finding that the PCL&P is not providing safe and adequate service at just and reasonable rates, but the County has not even made a *prima facie* showing that such is the case.

18. Furthermore, if the Commission were to find that PCL&P was not providing safe and adequate service at just and reasonable rates, its only remedy authorized under the Public Utility Code would be to order PCL&P to provide specific service at specific rates. Because none of that has been done, the Commission has no basis even to exercise a claimed power to order the Company to be sold.

B. Preliminary Objection – Legal Insufficiency: The Plaintiffs' Claims Are Barred By The Filed Rate Doctrine

19. PCL&P incorporates by reference the averments contained in paragraphs 1 through 18 above, as if fully set forth herein.

20. In paragraphs 1, 7, and 10 of its Amended Complaint, the County claims that the Default Service rates of PCL&P "create an unfair burden on the County of Pike resources," are "not just and reasonable," and are "excessive." Amended Complaint, ¶¶ 1, 7, 10.

21. The Commission specifically approved the Default Service rates that are the subject of the County's original Formal Complaint, the Amended Complaint and all other Formal Complaints that have been consolidated with this proceeding.

22. PCL&P's Default Service rates were established pursuant to a process supervised and approved by the Commission following a litigated proceeding. *See, Pa. PUC v. Pike County Light & Power Co.*, Docket N. P-00052168 (Orders entered September 23, 2005 and December 21, 2005).

23. The Company's filing was submitted pursuant to the Request for Proposals ("RFP") process and Default Service Implementation Plan filed May 31, 2005, and approved by

the Commission in its Order adopted August 23, 2005, and entered September 23, 2005 at Docket No. P-00052168.

24. On October 27, 2005, PCL&P filed the results of its auction process, which included the impact on retail rates for customers receiving Default Service.

25. By Order entered December 21, 2005, this Commission permitted PCL&P's new Default Service tariffs to go into effect on January 1, 2006, and the proceeding at Docket No. P-00052168 was closed.

26. PCL&P is required to bill its Default Service customers for electric generation service at rates set in accordance with its tariff and cannot charge any other rate than that set forth in the tariff. 66 Pa. C.S. § 1303; *Bell Telephone Co. of Pennsylvania v. Pa. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. Ct. 1980).

27. "Tariffs have the force of law and are binding on both the utility and the customer." *Pennsylvania Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Commw. Ct. 1995).

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

29. At all times, the Commission found PCL&P's rates to be in the public interest and approved the same.

30. In the course of the referenced proceedings, PCL&P complied with all Commission directives and followed the Commission's orders faithfully.

31. Pursuant to the Public Utility Code, PCL&P is required to bill its Default Service customers in accordance with its existing Commission-approved Default Service tariff until the Commission approves a new Default Service tariff. 66 Pa. C.S. § 1303.

32. Under the "filed rate doctrine," the only lawful rate that a utility may charge is that approved by the Commission and a utility may not deviate from the filed rate. *Ciamaichelo v. Independence Blue Cross*, 814 A.2d 800 (Pa. Cmwlth. Ct. 2002); *Philadelphia Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. Ct. 2002); *Bell Telephone Co. of Pa v. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. Ct. 1980); 66 Pa.C.S.A. § 1303.

33. Also, under the "filed rate doctrine," a rate approved by an agency charged with establishing such a rate is presumed to be lawful and reasonable. *See, Milkman v. Am. Travelers Life Ins. Co.*, 61 Pa. D. & C.4th 502, 2002 Pa. Dist. & Cnty. Dec. LEXIS 94 (C.P. Phila. March 28, 2002).

34. The filed rate doctrine bars claims where the complaint collaterally attacks the filed rate. *Ciamaichelo*, 814 A.2d at 804; *See,* 66 Pa.C.S.A. §§ 1302, 1303, and 1304; *Knipmeyer v. Bell Atl. Corp.*, 51 Pa. D. & C.4th 225, 2001 Pa. Dist. & Cnty. Dec. LEXIS 289 (C.P. Phila. May 22, 2001).

35. Under the Public Utility Code, "[t]he Commission or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa. C.S. § 701.

36. The County does not allege that PCL&P has done or failed to do anything in violation, or claimed violation, of any law that the Commission has jurisdiction to administer, or

of any regulation or order of the Commission during the Default Service process supervised and approved by the Commission following a litigated proceeding in Docket No. P-00052168.

37. PCL&P has implemented rates and tariffs and performed all of its obligations consistent with the Public Utility Code and the Commission's regulations and orders.

38. Based on the foregoing, PCL&P respectfully requests that the Commission sustain its preliminary objections that the filed rate doctrine bars claims where the Complaint collaterally attacks the filed Default Service rate.

39. PCL&P respectfully requests that the Commission sustain its preliminary objections as to the Amended Complaint's legal insufficiency and find that the County has failed to state a claim for which relief can be granted.

C. Preliminary Objection – Nonjoinder of a Necessary Party

40. PCL&P incorporates by reference the averments contained in paragraphs 1 through 39 above, as if fully set forth herein.

41. The January 2006 increase of electricity rates is the fundamental claim in the County's original Complaint, the County's Amended Complaint, and all of the other Formal Complaints that have been consolidated with this proceeding. *See e.g.*, Complaint, ¶ 4B, Amended Complaint, ¶¶ 1, 7, 10.[1]

42. The County has failed to make a distinction between delivery rates (transmission and distribution) and commodity rates (generation).

43. PCL&P's delivery rates have not increased since 1993 (Docket No. R-922518).

44. The increase that the County complains about relates to the unprecedented increase in commodity prices.

[1] In paragraphs 1, 7, and 10 of its Amended Complaint, the County claims that the rates of PCL&P "created an unfair burden on the County of Pike resources," are "not just and reasonable," and are "excessive as compared to those of other Pennsylvania electric utilities."

45. Commodity prices are set by the market, not by PCL&P.

46. Pursuant to Pennsylvania's Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801, *et seq.* ("Competition Act"), PCL&P's commodity rates were "unbundled" from delivery rates and the rates that PCL&P customers pay for their electric service were "capped" from May 1, 1999 through December 31, 2005. The purpose of the rate caps was to insulate customers from rate volatility while competitive markets developed.

47. Now PCL&P's rate caps have expired and, pursuant to the terms of the Competition Act, commodity rates are set by the prevailing market price for electric generation.

48. Because of market conditions at the time of the transition from capped commodity rates to market rates, PCL&P customers are experiencing significant increases in their bills.

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

50 The current commodity rates for PCL&P's customers were established in two separate proceedings before the Commission – the Default Service rates were approved by the Commission at Docket No. P-00052168, while the Retail Aggregation rates were approved by the Commission at Docket No. P-00062205. Pike does not mark up or profit from the Default Service commodity rates charged to its customers.

51. Following approval of the Retail Aggregation rates, almost all of PCL&P's generation customers were switched from the Default Service rates to Direct Energy Services, LLC, a Pennsylvania-licensed EGS that provided an aggregation program with lower commodity rates than those offered under PCL&P's Default Service.

52. The County's Amended Complaints and the Complaints of all other complainants in this consolidated proceeding relate to Direct Energy's commodity rates.

53. All of the fifty (50) Complainants currently are customers of, and receive their electric commodity from, Direct Energy. None of the complainants are Default Service customers of PCL&P.

54. In fact, the County and all the Complainants in this matter are objecting to the commodity rates charged by Direct Energy (and approved by the Commission), and not to the delivery rates charged by PCL&P (which rates have not increased since 1993).

55. However, the County and the rest of the Complainants have failed to file Complaints against Direct Energy, mistakenly opting instead to file Complaints against PCL&P.

56. Based on the foregoing, PCL&P respectfully requests that the Commission sustain its preliminary objections with regard to the nonjoinder of a necessary party and dismiss the Complaints in this matter against PCL&P as moot.

D. Preliminary Objection – Legal Insufficiency: Forced Sale Issue is Moot

57. PCL&P incorporates by reference the averments contained in paragraphs 1 through 56 above, as if fully set forth herein.

58. In paragraphs 9, 10, 14, 15, and 16 of the Amended Complaint, the County seeks to force the sale of the Company to another entity.

59. The Commission recently considered and twice rejected the request to *consider* a study about the costs and benefits of the sale of the Company in a proceeding at Docket P-00052168. *Pa. PUC v. Pike County Light & Power*, Docket No. P-00052168 (Order adopted August 25, entered September 23, 2005 at 23-24).

60. In that proceeding at Docket P-00052168, the Office of Consumer Advocate ("OCA") requested that the Commission require the Company to revisit the PJM Transmission Interconnection project, including a requirement to open discussion with PPL and PJM regarding

interconnection possibilities. The OCA also requested that the Commission require PCL&P to explore a sale or transfer of the Company or its customers to an existing PJM electric distribution company ("EDC"). *Id.* at 23.

61. The Commission noted that the Company has already thoroughly explored becoming part of the PJM Regional Transmission Organization ("RTO"). "Pursuant to the August 9, 2002 Order, ... [PCL&P] completed a study in March 2004, which clearly indicated that such an interconnection project would not be economically feasible." *Id.*

62. PCL&P maintained then and continues to maintain that a sale of its operations to another Pennsylvania EDC is unreasonable and unwarranted. Such an unprecedented action proceeds solely from the unsupported and mistaken assumptions that acquisition by another utility with membership in PJM will provide long-term economic benefits to PCL&P's customers or that a sale of the Company will result in lower rates for PCL&P's customers. *Id.*

63. The Commission agreed with PCL&P and found that "pursuit of membership in PJM does not appear to be in the public interest. [The Commission] shall, therefore, *decline to direct [PCL&P] to revisit interconnection with PJM or to explore the sale of its operations or customers to another Pennsylvania EDC.*" *Id.* at 24. (emphasis added)

64. Also, at its public meeting of January 27, 2006, the Commission opened an investigation into the competitive market conditions in PCL&P's service territory and directed the Law Bureau to conduct a sixty-day investigation and issue a report on the matter. *Initiation of a Fact Finding Investigation of the Competitive Market Conditions Re: Pike County Light & Power Co.*, Docket No. P-00052168 (Order entered February 14, 2006).

65. On June 22, 2006, the Commission released to the public the Law Bureau's "Report on Competitive Market Conditions Regarding the Pike County Light & Power Company" ("Report").

66. Two of the recommendations in the Report are that the Commission "should *consider* having an independent study performed regarding the cost and benefits of the interconnection of the Company's electric system with PJM...," and that the Commission "should *consider* having an independent study performed regarding the cost and benefits of the sale of the Company to another Pennsylvania EDC or rural electric cooperative." Report at 17 and 19 (emphasis added).

67. The Report was presented to the Commission, and the Commission released the Report to the public on June 22, 2006. The Commission, however, has taken no action on the Report. The Commission has neither adopted the Report in whole, or part, nor directed the Company to respond to it.

68. The Commission legally speaks only through its findings, rulings, orders, and regulations. 66 Pa. C.S. § 316.

69. The Commission's decision to release the Report without an order is a tacit rejection even to consider the relief requested in the County's Amended Complaint and renders the issue moot.

70. Unless and until the Commission determines to act on the Report, the relief requested in paragraphs 9, 10, 14, 15, and 16 of the Amended Complaint is moot and should be dismissed as moot.

71. Based on the foregoing, PCL&P respectfully requests that the Commission sustain its preliminary objections with regard to the mootness of the forced sale issue and dismiss

the County's claims and all other Complainants' claims in connection with the forced sale of PCL&P.

E. Preliminary Objection – Legal Insufficiency: Billing Issue is Moot

72. PCL&P incorporates by reference the averments contained in paragraphs 1 through 71 above, as if fully set forth herein.

73. In Paragraph 13 of the Amended Complaint, the County alleges that the Company "has made long-standing errors in billing for numerous business customers' demand charges, resulting in substantial overcharges and required refunds to those customers."

74. The County does not allege that any such billing errors affected its own rates and charges. The County has not claimed it suffered any "injury in fact" as a result of any billing errors to business customers' demand charges.

75. Earlier in 2006, the Company discovered that it had inadvertently billed certain business customers the wrong demand charge. This error affected 273 customers for a total of approximately $68,000.

76. Immediately upon discovering this error, PCL&P investigated all demand-metered customers in order to properly identify those affected.

77. Once the affected customers were identified, Pike applied credits to their accounts and notified the customers. The amount refunded to each customer included interest at the Commission's mandated rate of six percent (6%).

78. The Company also notified the Commission of this situation.

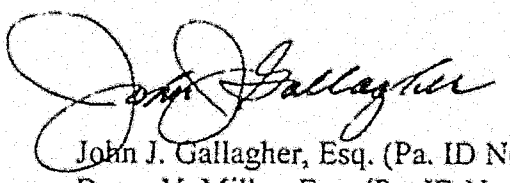
79. In addition, PCL&P's investigation revealed that 80 customers had been under billed during the same period; and PCL&P did not re-bill these customers for the higher charges.

80. PCL&P discovered, corrected and quickly and fairly resolved the billing error described in the Amended Complaint, and the issue is now moot. The County has not claimed it suffered any "injury in fact" as a result of any billing errors to business customers demand charges. Therefore, the County's claims in paragraph 13 of Amended Complaint should be dismissed as moot.

IV. CONCLUSION

Based on the foregoing, Respondent Pike County Light & Power Company respectfully requests that the Commission issue an Order sustaining its Preliminary Objections and dismissing the Amended Complaint in this matter for the reasons set forth above and granting such other relief as is deemed just and proper. In the alternative, PCL&P respectfully requests that the Commission issue an Order requiring Formal Complainants to file a more specific pleading.

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

Counsel for
Pike County Light & Power Company

Date: August 4, 2006

VERIFICATION

I, WILLIAM A. ATZL, JR., a Director in the Rate Engineering Department of Consolidated Edison Company of New York, Inc. ("Con Edison"), an affiliate of Pike County Light & Power Company ("Pike"), hereby state that the facts set forth in the foregoing Preliminary Objections are true and correct to the best of my knowledge, information and belief.

I understand that the statements herein are made subject to the penalties of 18 Pa C.S. § 4904 (relating to sworn falsification to authorities).

William A. Atzl, Jr.
Director
Rate Engineering Department
Consolidated Edison Company of New York, Inc.

Date: August 3, 2006

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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).

Valerie McCutchen
507 Avenue F
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Business Administrator
Delaware Valley School District
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William Degraw
Janeth Degraw
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County of Pike
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Three Lane Utility Corp
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Milford, PA 18337

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d/b/a Malibu Ranch
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Milford, PA 18337

Hare Hollow, Inc.
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Milford, PA 18337

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Steve Height
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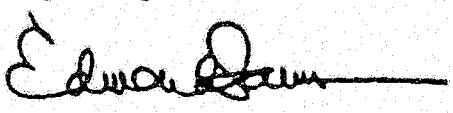
Respectfully submitted,



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(717) 237-7437

Counsel for PCL&P

Date: August 4, 2006

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

IN REPLY PLEASE
REFER TO OUR FILE

August 7, 2006

(See attached list)

C-20065901 Valerie McCutcheon
C-20065905 Gary M. Chase
C-20065922 Delaware Valley School District
C-20065923 William & Janeth DeGraw
C-20065924 Chaba M. Pallaghy
C-20065942 Pike County
C-20065943 Jeff L'Hote
C-20065966 Gary R. Orben
C-20066005 Francis L. Hall
C-20066028 Joseph Demalderis
C-20066194 Joseph Fretta
C-20066258 William & Irene Loosemore
C-20066260 Samall Properties, Inc.
C-20066261 Three Lane Utilities, c/o Richard Snyder
C-20066262 Three Lane Utility Corporation
C-20066263 Richard Snyder
C-20066264 Samall Properties, Inc.
C-20066265 Michael Trenner
C-20066266 E. E. Hauser
C-20066267 Kathleen Ferranti
C-20066268 Carol Ann Sklar, t/a Carol Anns Linen
C-20066269 Pike County Outfitters
C-20066270 Stebo, Inc. d/b/a Malibu Ranch
C-20066271 S & M Management Incoporated
C-20066273 Hare Hollow, Inc.
C-20066379 James and Laura Pollard
C-20066281 Michelle Storms

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C-20066336 Altec Lansing
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C-20066393 Dan Kane
C-20066394 Peter R. Rushton
C-20066395 Panaqiotis Rigas c/o Milford Diner
C-20066415 Anthony Grigal
C-20066431 James E. Sechrist
C-20066476 Harry Forbes
C-20066481 John W. Dalton, Jr.
C-20066483 Charles J. Deller
C-20066523 Thomas Hoff
C-20066537 Jerome Grigas
C-20066538 Lawrence Budzeyko
C-20066542 611 Broad Street LLC
C-20066546 Peter P. Kenny
C-20066547 Sylvia Recchia
C-20066549 Mark Robbins
C-20066550 Municipal Authority of the Borough of Milford
C-20066552 Judy Recchia
C-20066623 Bertrand J. Delanney
C-20066624 Bertrand J. Delanney
C-20066647 Audrey H. Austin
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.

Prehearing Telephone Conference Notice

This is to inform you that a second prehearing conference by telephone on the above-captioned case will be held as follows:

Type: Second telephone prehearing conference

Date: Tuesday, August 22, 2006

Time: 2:00 p.m.

Presiding: Administrative Law Judge Ember S. Jandebeur
Room 317
Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503
Telephone: (570) 963-4818
Fax: (570) 963-3310

The telephonic pre-hearing conference will be conducted through the Commonwealth Conference Operator. If you are located in Harrisburg, dial the following number between 1:55 p.m. and 2:00 p.m.: 433-9020. After dialing the number, enter the PIN (5829) and then enter the (#) sign.

If you are located outside Harrisburg, call 1-866-224-4890 and then enter the PIN (5829) followed by the (#) sign.

You will hear three tones indicating that you have been connected to the conference call. If you are disconnected, please follow the same procedure to be reconnected.

If you have any questions, please do not hesitate to call this office 717-787-5630

If you have any hearing exhibits to which you will refer during the hearing, 3 copies must be sent to the Administrative Law Judge and 1 copy each must be sent to every other party. All copies must be received at least 3 days before the hearing.

Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.

Except for those individuals representing themselves, the Commission's rules require that all parties have an attorney; therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

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:

- Scheduling Office: (717) 787-1399.
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Jandebeur
Susan Licon
Beth Plantz
Docket Section
Calendar File

Kirkpatrick & Lockhart Nicholson Graham LLP

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www.klng.com

August 8, 2006

ORIGINAL

Via Hand Delivery

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jmelia@klng.com

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

DOCUMENT FOLDER

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

Dear Secretary McNulty:

Please be advised that the following parties in this proceeding: Richard L. Snyder, Samall Properties and Three Lane Utilities, Inc. will be adopting the Response of the Office of Consumer Advocate to the Answer and New Matter of Pike County Light & Power Company ("PCLP") to the Amended Complaint of the County of Pike in the above referenced matter. These parties will also be adopting the Response of the Office of Consumer Advocate to the Preliminary Objections filed by PCLP in this proceeding.

An original and three copies of this letter are being filed. Copies of this letter are also being served on parties of record.

Very truly yours,

J P Melia

James P. Melia
PA Attorney I.D. 35265
Counsel for Richard L. Snyder, Samall Properties and
Three Lane Utilities, Inc.

JPM/cem

cc. Parties of Record

BA

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SAUL EWING
Attorneys at Law
A Delaware LLP
Celebrating 85 years of service.

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ORIGINAL

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August 9, 2006

BY HAND DELIVERY

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

DOCUMENT FOLDER

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 PCL&P to OCA Interrogatories – Set I was served upon all parties of record this day.

Please call if you have any questions.

Sincerely,

John J. Gallagher
Counsel for PCL&P

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

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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 Objections of Pike County Light & Power to the Interrogatories of the OCA, Set I 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).

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

Tanya J. McCloskey, Esquire
Aron J. Beatty, Esquire
Office Of Consumer Advocate
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Harrisburg, PA 17101-1923

William R. Lloyd, Jr., Esquire
Daniel Asmus, Esquire
Office Of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg Pa 17101

Jay Rose
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506 Broad Street
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James P. Melia, Esquire
Kirkpatrick & Lockhart Nicholson
Graham LLP
17 North Second St., 18th Floor
Harrisburg, PA 17101-1507

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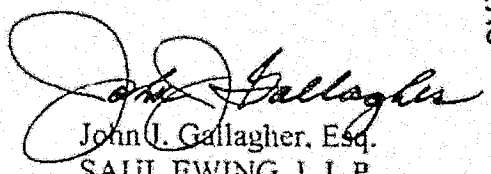

John J. Gallagher, Esq.
SAUL EWING, L.L.P.
2 North 2nd Street, 7th Floor
Harrisburg, PA 17101

Counsel for PCL&P

Date: August 9, 2006

SAUL EWING
Attorneys at Law
A Delaware LLP

Celebrating 85 years of service.

ORIGINAL

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August 9, 2006

BY HAND DELIVERY

DOCUMENT FOLDER

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 PCL&P to OCA Interrogatories – Set II was served upon all parties of record this day.

Please call if you have any questions.

Sincerely,

John J. Gallagher
Counsel for PCL&P

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

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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 Objections of Pike County Light & Power to the Interrogatories of OCA, Set II 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).

Hon. Ember S Jandebeur
Administrative Law Judge
Public Utility Commission
Room 317, Scranton State Office Building
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Scranton, PA 18503

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Date: August 9, 2006

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August 9, 2006

BY HAND DELIVERY

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Harrisburg, PA 17120

DOCUMENT FOLDER

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 PCL&P to OCA Interrogatories -- Set III was served upon all parties of record this day.

Please call if you have any questions.

Sincerely,

John J. Gallagher
Counsel for PCL&P

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

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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 Objections of Pike County Light & Power to the Interrogatories of OCA, Set III 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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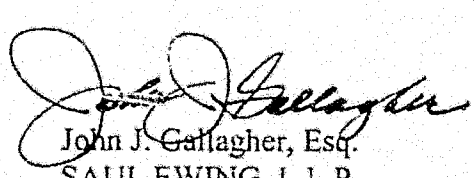

John J. Gallagher, Esq.
SAUL EWING, L.L.P.
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Harrisburg, PA 17101

Counsel for PCL&P

Date: August 9, 2006

COMMONWEALTH OF PENNSYLVANIA

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IRWIN A. POPOWSKY
Consumer Advocate

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consumer@paoca.org

August 15, 2006

ORIGINAL

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

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

Dear Secretary McNulty:

Enclosed for filing, please find an original and three (3) copies of the Joint Answer Of The County Of Pike And The Office Of Consumer Advocate To The Preliminary Objections Of Pike County Light & Power Company, in the above-referenced proceeding.

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

Sincerely,

DOCUMENT FOLDER

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

Enclosures
cc: Parties of Record
Honorable Ember S. Jandebeur
00090295.DOC

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

JOINT ANSWER OF THE COUNTY OF PIKE
AND THE OFFICE OF CONSUMER ADVOCATE
TO THE PRELIMINARY OBJECTIONS OF
PIKE COUNTY LIGHT & POWER COMPANY

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Assistant Consumer Advocate
PA Attorney I.D. #77066
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Consumer Advocate

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COUNTY OF PIKE
Jay R. Rose, Esquire
Pike County Solicitor
Attorney I.D. No. 8189

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TABLE OF CONTENTS

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Pursuant to Section 5.101(f) of the Pennsylvania Public Utility Commission's (Commission) rules regarding formal proceedings, 52 Pa. Code § 5.101(f), the County of Pike (County) and the Office of Consumer Advocate (OCA) provide the following Answer to the Preliminary Objections of Pike County Light and Power Company (PCL&P or Company):

I. INTRODUCTION AND STANDARD OF REVIEW

On August 4, 2006, PCL&P filed the Preliminary Objections of Pike County Light & Power Company to the Amended Complaint of the County of Pike (Preliminary Objections). The County of Pike and the Office of Consumer Advocate file this Joint Answer to PCL&P's Preliminary Objections pursuant to Section 5.101(f) of the Commissions Rules of Administrative Practice and Procedure. 52 Pa. Code §5.101(f).

In order for the Company to meet the standard for granting preliminary objections, it must demonstrate that dismissal of the County's complaint at this early stage is "clearly warranted and free from doubt." Reid v. GTE North, Inc. & Bell Tele. Co., No. C-0093477, 1993 Pa. PUC LEXIS 31, * 2-3. (ALJ Corbett, May 25, 1993). The Commission standard was explained as follows:

> The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions. 52 Pa. Code § 5.101. These motions are analogous to the preliminary objections authorized by Rule 1017(b) of the Pennsylvania Rules of Civil Procedure. With respect to preliminary objections seeking dismissal of a pleading, the Pennsylvania Supreme Court has held that such preliminary objections will be granted only where dismissal is clearly warranted and free from doubt. Interstate Travelers Services, Inc. v. Pa. Dept. of Environmental Resources, 486 Pa. 536, 406 A.2d 1020 (1979). This standard has been adopted by the Commission. Montaque v. Philadelphia Electric Company, Docket No. C-850323 (Order entered November 11, 1985). Clearly, preliminary motions seeking dismissal of a

> pleading will be granted only in unusual circumstances, where dismissal is clearly warranted and free from doubt.

Id. at 3-4.

Importantly, for purposes of deciding a preliminary objection, the factual allegations contained in the Complaint must be accepted as true. As stated by ALJ Solomon in denying a Motion to Dismiss:

> Our preliminary motions practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections... The moving party may not rely on its own factual assertions but must accept, for purposes of the disposition of the motion, all well-pleaded material facts of the other party as well as inferences fairly deducible from those facts.... The motion is granted only if the moving party prevails as a matter of law.

Pennsylvania Pretzel Company v. Pennsylvania Power and Light Company, 1992 Pa. PUC LEXIS 20.

The County and the OCA submit that the Company's Preliminary Objections do not clearly warrant the dismissal of this case. To the contrary, as set forth below, the County's complaint alleges significant harm that the Commission has the jurisdiction to remedy. The County seeks to have the Commission take actions that were specifically detailed in the Commission's own "Report on Competitive Market Conditions Regarding the Pike County Light & Power Company," (Report) prepared by the Law Bureau and released by the Commission at its Public Meeting held June 22, 2006.

In Section II, below, the County and the OCA will respond to each of the Company's five preliminary objections in their entirety. In Section III, below, the County and OCA respond to each paragraph of PCL&P's preliminary objections on a paragraph by

paragraph basis. For the substantive reasons set forth below, the OCA and County submit that PCL&Ps Preliminary Objections should be dismissed.[1]

[1] In addition, the Company's Preliminary Objections should be dismissed on procedural grounds to the extent they are applied to other formal complainants. The Company submits that the Preliminary Objections to the County's Amended Complaint should be applied to all Formal Complainants. Preliminary Objections at 3. The OCA and the County submit that the Company cannot ask the Administrative Law Judge to simply presume, without any demonstration, that all of the allegations and requests for relief filed in all of the individual complaints are subsumed within the County complaint and the Company's Preliminary Objections thereto.

II SUBSTANTIVE ANSWER TO THE COMPANY'S PRELIMINARY OBJECTIONS DIRECTED TO THE COUNTY OF PIKE'S AMENDED COMPLAINT

A. Response to Preliminary Objection A: The Public Utility Code And Pennsylvania Case Law Establish The Commission's Authority To Grant The Relief Requested In The Amended Complaint

1. The Commission Has Authority To Grant The Relief Requested In the County's Complaint, Including Mandating The Sale of The Company

The Company's Preliminary Objections state that the Commission does not have the jurisdiction, power or authority to order the relief requested by the County in its Amended Complaint. Preliminary Objection A. Specifically, the Company states that the County "has failed to identify any language in the Public Utility Code which gives the Commission the jurisdiction, power or authority to order the forced sale of PCL&P." Preliminary Objection, Par. 3.

In response, the County and OCA would first note that the County's prayer for relief includes, but is not limited to, the potential sale of the company. The Amended Complaint also requests the Commission to implement the recommendations contained in the Law Bureau Report that was released by the Commission on June 22, 2006. Those recommendations are set forth in Paragraph 6 of the County's Amended Complaint. Clearly, the Commission has authority to implement each of those Law Bureau recommendations, and the Company has not even suggested in its Preliminary Objections that the Commission lacks authority to implement any of those recommendations.

As to the County's specific request in its Amended Complaint that the Commission order the sale of PCL&P, that too was specifically identified as a possible solution in the Law Bureau Staff Report which explicitly noted that such a sale had been mandated by the

Commission in a prior case that had been cited by the OCA – the Big Run case, which is discussed further below. Report at p. 19.

As demonstrated in the Big Run case, and a long series of Pennsylvania appellate cases regarding the revocation of a utility's Certificate of Public Convenience, the Commission has broad powers to prohibit a utility from continuing to provide service in Pennsylvania. That power generally comes from several provisions of the Public Utility Code, including Sections 1103(a), 703(g) and 501(a). Each of these sections is discussed below:

a. Section 1103(a)

Section 1103(a) gives the Commission authority to grant a certificate of public convenience to provide service in Pennsylvania. Although Section 1103(a) does not specifically address the Commission's authority to *revoke* a certificate of public convenience, numerous cases have held that Section 1103 by necessary implication confers upon the Commission the right to revoke a certificate of public convenience as well. As early as 1918, the Pennsylvania Superior Court's determination in Diehl v. Public Service Commission clearly established this unequivocal right. See, Diehl v. Public Service Commission, 69 Pa. Super. 419 (1918). In upholding the Commission's revocation of a bus line operator's certificate of public convenience in Diehl, the Court held:

"The commission had as full power to revoke the certificate granted to Diehl, as it had to grant it." Diehl at 421. The Pennsylvania Superior Court continued to follow its holding in Diehl in subsequent cases See, e.g., Paradise v. Pennsylvania Public Utility Commission, 184 Pa. Super. 8; 132 A.2d 754 (1957), Snyder v. Pennsylvania Public Utility Commission, 187 Pa. Super. 147; 144 A.2d 468 (1958).

The Pennsylvania Supreme Court also explicitly addressed this issue in 1933 when it upheld the Commission's right to revoke a certificate of public convenience in Day v. Public Service Commission, 312 Pa. 381, 167 A. 565 (1933). In that case, the company argued—much like PCL&P argues here--that the Commission had no specific statutory authority to revoke a certificate of public convenience. As stated by the Supreme Court, the appellant's argument was that:

> the Public Service Commission being a body of purely statutory creation, its power and jurisdiction are limited by the express terms of the statutes creating it, and that there is within the Pennsylvania statutes no power or authority vested in the commission to revoke certificates of public convenience and necessity.

Day, 167 A. at 566. The Supreme Court rejected this argument, noting that the Commission had express authority to rescind its prior grant of a certificate. The Court stated:

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

Id.

As discussed further below, the PUC, in the Big Run case, similarly treated its authority to order the sale of the company to be within its statutory authority. Indeed, the Commission stated in Big Run that, only if the sale of the company failed, would it take the more drastic action of entering a show cause order as to why the company's certificate of public convenience should not be rescinded. See, Pennsylvania Public Utility Commission v. Big Run Telephone Company and Citizens Utilities Company of Pennsylvania, Docket No. C-822983 (Order Entered October 15, 1982).[2]

[2] A copy of the Commission and ALJ Recommended Decision in the Big Run case is attached to this Answer as Attachment A.

b Section 703(g)

Section 703(g) reads as follows:

> (g) RESCISSION AND AMENDMENT OF ORDERS.-- The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

66 Pa. C.S. § 703(g). This Section of the Public Utility Code authorizes the Commission to rescind or amend *any* Order previously made by it. As long as the due process rights of affected parties are not violated, in particular, notice and an opportunity to be heard are provided, the Commission's power to rescind or amend is unassailable. As a grant of a certificate of public convenience is evidenced by a Commission Order to that effect, this Section also authorizes the Commission to revoke a previously-issued certificate of public convenience. The Pennsylvania Supreme Court's holding in Day v. Public Service Commission, supra, makes this abundantly clear. See, Day v. Public Service Commission et al., 312 Pa. 381, 167 A. 565. In Day, the Pennsylvania Supreme Court relied upon the predecessor provision to Section 703(g) in stating that: "The conclusion is inevitable that the power to rescind an order entails the authority to revoke a certificate." Day at 384. Therefore, in addition to the Commission's authority to revoke a certificate of public convenience, is its general authority to revoke any prior Orders, including Orders that have previously granted certificates of public convenience.

c Section 501(a)

Section 501(a) reads:

> (a) ENFORCEMENT OF PROVISIONS OF PART.-- In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to

> enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.

66 Pa. C.S. § 501. This Section has language similar to that of Section 703(g) and, likewise, authorizes the Commission to rescind any previous orders, including orders that have granted certificates of public convenience.

2. In A Previous Case Similar To The One At Hand, The Commission Did Threaten To Revoke A Certificate Of Public Convenience And Force The Sale Of The Incumbent Utility.

As noted above, the Commission's holding in Big Run is very relevant to the current proceeding. The Commission's Order in Big Run was a culmination of several prior legal proceedings. In summary, Big Run Telephone Company filed for a base rate increase. Complaints were filed against the proposed increase and the Commission eventually allowed Big Run to recover a portion of its requested increase. The OCA and the Borough of Big Run subsequently filed Complaints against Big Run alleging deficiencies in quality of service and the OCA also filed a Complaint against the newly-awarded rates. The Commission instituted an investigation into Big Run's proposed rates, rules and regulations. Administrative Law Judge John K. Clements presided over hearings and ultimately ruled that Big Run's service record did not preclude a rate increase. The PUC adopted this Recommended Decision. However, shortly thereafter, State Senator Patrick Stapleton and State Representative Eugene Smith presented a petition with 1313 customer signatures requesting the utility services of a company other than Big Run. Another investigation was ordered by the Commission—this one focusing on the

operations of Big Run. The OCA filed a "Petition to Issue A Show Cause Order Directing Big Run Telephone Company to Show Cause Why Its Certificate of Public Convenience Should Not Be Rescinded." Administrative Law Judge Joseph J. Klovekorn presided over these proceedings. In his Recommended Decision, ALJ Klovekorn recommended:

> That there should be published in the Pennsylvania Bulletin a notice of solicitation of bids from all interested telephone companies for the assets of Big Run Telephone Company and that the Bell Telephone Company of Pennsylvania should be specifically asked to make such a bid.

Pa PUC v. Big Run Telephone Company and Citizens Utilities Company of Pennsylvania, Docket No. C-822983 (Recommended Decision of Joseph J. Klovekorn, Administrative Law Judge (September 9, 1982). Judge Klovekorn arrived at this recommendation based on "the serious problems of high rates and customer dissatisfaction" as to Big Run. R.D. at 9. In further explaining his recommendation, Judge Klovekorn reasoned:

> On the basis of the record here, I am not prepared to conclude that BRTC [Big Run Telephone Company] is providing inadequate service. I can report to the Commission, however, that an alternative source of service for the Big Run service area would be preferable to continued service by BRTC. I make this recommendation on the basis that there is no other way to bring rates down to reasonable levels and on the basis that there is general dissatisfaction with the operations and management of the Big Run Telephone Company, so widespread that relations between the Company and the ratepayers could well be termed "poisoned".

Id. at 10-11 (emphasis added). Judge Klovekorn concluded:

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

R.D. at 11. In its Order, the Commission adopted as its action the R.D. of Judge Klovekorn and ordered:

> That a notice of solicitation of bids from all interested telephone companies for the assets of Big Run Telephone Company is to be published in the Pennsylvania Bulletin and that The Bell Telephone Company of Pennsylvania should be specifically asked to make such a bid.

Big Run at 1. The magnitude of consumer concern and level of rates in Big Run prompted the Commission to use its authority and powers in an effort to facilitate a change in utility provider. Absent such a change, the Commission stated:

> That in the event the sale of Big Run Telephone Company is not effectuated within sixty (60) days of receipt of bids, the Commission shall grant the "Petition to Issue a Show Cause Order Directing Big Run Telephone Company To Show Cause Why Its Certificate of Public Convenience Should Not Be Rescinded" filed by the Office of Consumer Advocate on August 31, 1981.

Id. at 2. Soon after this Order was issued, the sale of Big Run to Bell Telephone Company occurred.

Similar to the case at hand, Big Run encompassed a level of utility rates deemed too high to customers, customer dissatisfaction with the management and operation of the utility and a customer preference for another service provider. As in Big Run, customer opposition to continued operation of this utility by a New York utility with no offices or employees in Pennsylvania is widespread. See, Hearing Transcript of February 27, 2006. At the Prehearing Conference of August 3, 2006, the County and OCA were presented with two petitions (one signed by 400 residential customers of PCL&P and the other signed by 105 business customers of PCL&P) which stated that the undersigned "want PCL&P to be sold to another utility that is not related to PCL&P or its present owners." These are the same type of facts that Judge Klovekorn relied upon in proposing the relief adopted by the Commission in the Big Run case.

Due to these similarities in circumstance, the Commission determination in Big Run should be afforded great weight in this proceeding.

Indeed, the Commission staff report cited the OCA's reference to the Big Run case for the proposition that "there is legal precedent for ordering such a sale." Report at 19. The Company seems to suggest in its Preliminary Objections that the Commission acted unlawfully in the Big Run case, when it states that "The Big Run case cited by the County also fails to identify any clear and unmistakable language that confers upon the Commission the jurisdiction, power or authority to order the forced sale of an electric utility." Par. 9. The OCA and the County respectfully submit that, in ruling on these Preliminary Objections, the role of the Administrative Law Judge is to apply relevant Commission precedent, not to declare that the Commission had previously acted in a manner that was outside of its statutory authority. There is certainly no suggestion in the history of the present proceeding that the Commission's Law Bureau or the Commission itself believes that the Big Run case is no longer valid precedent at the Pennsylvania Public Utility Commission.

The Company's argument that the enactment of Section 529 of the Public Utility Code, 66 Pa.C.S. §529, somehow precludes the Commission from granting the relief requested in this case is also far off the mark. Section 529 was added to the Public Utility Code in 1992 and is entitled "Power of commission to order acquisition of small water and sewer utilities." That section gave the Commission the authority to "order a capable public utility to acquire a small water or sewer utility" under certain circumstances. 66 Pa.C.S. §529(a). The Company argues that, because Section 529 applies only to water and sewer utilities, principles of statutory construction suggest that the General Assembly "intended to deprive the Commission of the

jurisdiction, power or authority to order the forced sale of any and all other types of utilities." This argument is clearly incorrect.

What was new about Section 529 was the authority of the Commission actually to order a utility under its jurisdiction to **acquire** a troubled utility. As noted above, the Commission has always had the authority to revoke a utility's certificate of public convenience, and thereby force its sale or abandonment. What the Commission may have lacked prior to Section 529 was the authority to order a particular company to **purchase** that utility.

In the Big Run case upon which the County and the OCA rely, the Commission did not order Bell Telephone Company to acquire Big Run Telephone Company. Rather, in its ordering paragraph, the Commission directed that Big Run's assets be put up for bid "and that The Bell Telephone Company of Pennsylvania should be specifically asked to make such a bid." Big Run at 1 (emphasis added). Similarly, in this case, the County of Pike has not demanded that a particular utility or rural cooperative be ordered to acquire the assets of PCL&P. Rather, the County has requested that, in addition to the other recommendations set forth in the Law Bureau Report released by the Commission on June 22, 2006, that the Company be put up for sale to a willing buyer. The distinction between the mandatory **acquisition** of a utility by a "capable utility" under the Commission's jurisdiction under Section 529, and the mandatory **sale** of a utility such as the Commission ordered under its general regulatory powers in the Big Run case is critical.

Indeed, in the present case, the Commission need not seek a specific buyer, as there already is an interested buyer, the Sussex Rural Electric Cooperative, which serves over 11,000 customers along PCL&P's New Jersey border. On February 24, 2006, Sussex Coop President and CEO Robert M. Kolling wrote to PCL&P's parent company, Consolidated Edison

Inc., expressing a desire to purchase PCL&P. A copy of Mr. Kolling's letter is attached to this Answer as Attachment B. There may be other potential interested buyers as well, but the point here is that the Commission is not being asked to exercise the type of power that it was granted for the mandatory acquisition of small water and sewer utilities in Section 529 of the Public Utility Code. Rather, the Commission is being asked to exercise its long-standing authority under the Public Utility Code to order the sale or abandonment of a utility that was utilized by the Commission in the Big Run case.

3. Recently, The Public Utilities Commission of Ohio Ordered The Sale Of An Electric Utility

Last year, the Public Utilities Commission of Ohio (Ohio PUC) ordered The Monongahela Power Company and Columbus Southern Power[3]:

> To immediately pursue potential terms and conditions for transferring Mon Power's Ohio territory to CSP.

In the Matter of the Certified Territory of Monongahela Power Company, 2005 Ohio PUC LEXIS 306 (2005). The Ohio PUC found it necessary to take such action because, unlike all other EDCs in Ohio, Monongahela Power did not file a rate stabilization plan with the Ohio PUC in an effort to minimize future rate shock and rate instability to its customers. The Ohio PUC, therefore, determined that:

> Since Mon Power is not willing to propose an RSP [rate stabilization plan], the Commission will consider whether another EDU [electric distribution utility] could acquire Mon Power's service territory and serve Mon Power's customers through an RSP.

Id. at 1. Less than two months later, Monongahela Power and CSP filed a Joint Report facilitating CSP's purchase of Monongahela's transmission and distribution business in Ohio,

[3] Columbus Southern Power is a subsidiary of American Electric Power.

including the right to serve Monongahela's Ohio service territory. The Ohio PUC's approach in Monongahela Power mirrored that of the Pennsylvania Commissions' in Big Run. Specifically, the Ohio PUC relied upon its general powers over Ohio public utilities to further the public interest. This Commission has similar powers and a similar purpose. See, 66 Pa. C.S. §331, 66 Pa. C.S. §501, and 66 Pa. C.S. §1301.

B. Response to Company Preliminary Objection B: The Filed Rate Doctrine Does Not Bar Complainants From Filing Complaints Seeking Prospective Relief Against Existing Rates And Service

The County and OCA submit that the Company's claim that the "filed rate doctrine" precludes complaints against existing rates is incorrect. The filed rate doctrine stands for the proposition that a commission approved "filed rate" carries with it the weight of law. Under the doctrine, a utility is barred from charging higher or lower rates than those on file with the Commission. Phila. Suburban Water Co. v. Pa. PUC, 808 A.2d 1044 (Pa. Commw. 2002). The filed rate doctrine is a bar to the retroactive recoupment or refund of revenues in contravention of the existing rates that are on file with the Commission. In the present case, the filed rate doctrine is simply irrelevant to the County's complaint for **prospective** relief.

The filed rate doctrine, also referred to as the commission-made rates doctrine, stands for the proposition that duly-filed rates carry the force of law until those rates are changed on a *prospective basis*. The courts have addressed this issue in Lancaster Ice Manufacturing Company v. Pa. PUC, 138 A.2d 262 (Pa. Super. 1958) (Lancaster Ice). In Lancaster Ice, the Superior Court of Pennsylvania stated that the principle of "commission made rates" was a "principle of law [that] exists for the protection of the utility from unfair reparations." Lancaster Ice at 267. The Commission-made rate doctrine would be relevant if the current Complainants

were seeking refunds of the rates that have been paid to the company in the past. The doctrine is not a bar to challenges that attempt to change rates prospectively through a Commission order.

In West Penn Power v. Pa. PUC, the Superior Court stated that the Commission could not reach back into past periods to refund lawfully charged rates. West Penn Power Co. v. Pa. Public Utility Commission, 100 A.2d 110, 132 (Pa. Super. 1953)(West Penn Power). Under the commission-made rate doctrine, for example, ten years could pass between rate cases. During that time, the rates that had been found to be just and reasonable by the Commission would be the legal rate. If at some later point, however, those rates were determined to no longer be just and reasonable on a prospective basis, new rates would be authorized and no retroactive adjustments would be granted. Such a prospective rate change could result from either a utility rate filing or from a customer complaint against rates. This protects the utility from refund liability, and ratepayers from retroactive recovery of a utility's costs once the rates are final. In this way, both a utility and ratepayers can move forward with rate certainty for services rendered and received.

In Cheltenham & Abington Sewerage Company v. Pa. PUC, 25 A.2d 334 (Pa. 1942)(Cheltenham), the Supreme Court of Pennsylvania found that when the Commission modifies an existing rate, the effective date of the new rate is fixed as of the date of the order. The Pennsylvania Supreme Court recognized in Cheltenham, that, "a commission-made rate furnishes the applicable law for the utility and its customers until a change is made ***by the commission***." Cheltenham 25 A.2d at 336 (emphasis added). At issue in Cheltenham was the date at which the legally filed rates of a utility were subject to change by act of the Public Service Commission (the Pennsylvania Public Utility Commission's predecessor). In Cheltenham, the Court's decision turned on the fact that a company is entitled to recover legal

Commission rates until they are changed by a further Commission action Cheltenham Id. at 338.

Here, the Company seeks to use the filed rate doctrine as a bar against complaints against existing rates in order to prevent a prospective change in those rates. Such an interpretation would render meaningless the ability of a complainant to challenge existing rates and have them changed prospectively, leaving only the utility with the right to file for a change in rates. Indeed, such an interpretation would forever bar prospective changes in tariffs for any reason at any time. The public utility code does not limit the rights of complainants in such a fashion. The current complainants are seeking a commission action, at some future point in time that would alter the existing rates and service that are contained in the Company's current tariff. The issue of whether or not rates in place prior to any future Commission action warrant a refund, the protection that is afforded the Company by the filed rate doctrine, is not relevant to the relief sought by the County in this proceeding.

The Company's current default service plan is set to expire on December 31, 2007. The County's complaint seeks to impact rates going forward, including after the conclusion of the existing default procurement plan. As noted in the amended complaint, the law bureau Report includes a recommendation to begin evaluating future default plans by the end of 2006. Report at 19. By virtue of these facts, the current level of default rates, and the future of default service procurement are timely issues that the parties have the right to challenge on a prospective basis.

C. Response to Company Preliminary Objection C: The Participation of Direct Energy Is Not Necessary To The County's Amended Complaint

The Company argues that the County's Amended Complaint, and the Complaints of all other complainants, relate to Direct Energy's commodity rate and not to the rates of

PCL&P. From this, the Company argues that all of the complainants have "mistakenly" opted to file complaints against PCL&P and that the complaints should be dismissed for this reason. The County and the OCA submit that the Company's preliminary objection on this point misses the mark.

As an initial matter, the County's amended complaint is not limited to the generation portion of bills. The County's complaint alleges insufficient quality of service and a general failure of the Company to meet its obligations to Pennsylvania's consumers. Included in the County's complaints are issues of service quality, customer relations, and billing, as well as the issues raised in the Law Bureau Report. The County's complaint is not limited to generation rate issues.

Moreover, while most customers are currently receiving generation service from Direct Energy, it is PCL&P's tariffed default service generation rates that are the cause of the problem that must be addressed. The County and all complainants have the right to file complaints against the tariffed rates of PCL&P, and they have an interest in the future of default service procurement after the current plan expires on December 31, 2007. The fact that most of PCL&P's customers are currently receiving generation service from an EGS, Direct Energy in this case, does not serve to limit their rights to file a complaint against the Company's tariffed default service rates, rates that all customers may be charged if they must return to default service

It is clear that the Commission approved the Direct Energy aggregation program in response to the extremely high level of default service generation rates being charged by PCL&P. PCL&P default rates are more than double the default generation rates charged by their Pennsylvania neighbors in PPL and Met-Ed's service territories. These rates establish the ceiling

under which Direct Energy procured power for these customers. The County complaint alleges that the tariffed PCL&P rates are unjust and unreasonable, and the fact that an EGS is able to provide service at rates below PCL&P's rates is not a bar to the current Complaint.

Finally, if PCL&P believe that Direct Energy is a necessary party, it is free to make such a motion.[4]

D. Response To Company Preliminary Objection D: There Is No Basis To Conclude That The Issue Concerning The Revocation Of PCL&P'S Certificate of Public Convenience Is Moot.

The Company's fourth preliminary objection claims that the "forced sale issue" presented in the County's amended complaint is moot. The Company argues that the Commission has twice had an opportunity to pursue this issue and has in both instances declined to pursue a sale of the Company. The Company supports this claim in two ways. First, the Company argues that the Commission mentioned the possibility of a sale in its Order approving, with modifications, the Company's default service filing of May 2005. September 23 Order at 24, P-00052168. Second, the Company argues that the Commission's silence with regard to the recent Report, including the recommendation that a possible sale be explored, is tacit rejection of the issue. The County and OCA submit that the Company's reading of the Commission's action is speculative and should be rejected.

The September 23, 2005 Order approving, with modifications, the current default service plan does not support the Company's assertion that the Commission has ruled on the issues presented in the County's complaint. In that Order, the Commission was ruling on the issue of PJM membership, and the merits of the sale of the Company to a PJM member utility in that limited context. Importantly, the Commission simply determined that, at the time of that

[4] As noted in the OCA's Prehearing Memo and incorporated in the County's Prehearing Memo, neither the County nor the OCA objects to the participation of Direct Energy in this proceeding.

order, it would not require examination of the sale of the Company. The Commission stated as follows:

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

September 23 Order at 24 (emphasis added). The Commission's ruling with regard to the sale issue was in response to the suggestion by the OCA, in Comments, that the Company open discussions with an existing PJM electric distribution company. September 23 Order at 23. The Commission determined that further evaluation at that time, premised on a report conducted pursuant to a 2002 Order, was not warranted.

The County and the OCA submit that the September 23 Order is not determinative with respect to the current amended complaint. In the amended complaint, the County refers to three reasons supporting its request for a sale of the Company: 1)the inferior service quality of PCL&P, 2) the lack of local control and employee services in Pike County on the part of PCL&P, and 3) PCL&P's excessive rate levels as compared to those of other Pennsylvania electric utilities. Amended complaint at 4. The County's position with regard to a sale of the Company is not related solely to the cost-effectiveness of interconnecting PCL&P with PJM.

Furthermore, the relevant facts and electric market conditions evaluated by the Commission in the September 23 Order have changed dramatically. At that time, the Commission was reviewing a cost-benefit analysis of interconnecting PCL&P with PJM from

2004. The market conditions that the report was based on were considerably more favorable to Pike customers. Since that time, the differential in the cost of electricity between PJM and NYISO has widened. The Company updated the 2004 transmission report in 2006, showing this widening of costs. While a more detailed review of PJM interconnection was not warranted in 2004, the County and OCA submit that such a review is appropriate at this time.

The Company further claims that the Commission's silence with regard to the recommendations that a sale be explored in the recent Law Bureau Report on conditions in PCL&P's service territory is tacit rejection of the issue. The County and OCA submit that there are no reasonable grounds to make this assumption. The Commission was certainly aware of the widening dissatisfaction with the Company in Pike County as a result of the Public Hearing testimony on February 27, 2006. It is equally plausible that the Commission views these Complaint proceedings as an opportunity to decide this issue.

The Company's attempt to use the Commission Staff Report as some type of bar to the County's complaint is totally without merit. The Company argues that "The Commission's decision to release the Report without an order is a tacit rejection even to consider the relief requested in the County's Amended Complaint and renders the issue moot." Par. 69. The Report speaks for itself, but the County and OCA submit that the purpose of the Report was not to gather dust on a Commission file shelf, and it certainly was not to preclude active parties from seeking to implement the recommendations of the Report through public proceedings at the PUC.

In a Press Release issued by the Commission upon the release of the Report, Commissioner Bill Shane is quoted as follows:

> Issuing this report for public consumption does not represent the end of Commission action on this matter, but rather we will

continue to move forward because as I have said before I am not willing to abandon these customers.

A copy of the Commission's June 22, 2006 Press Release is attached to this Answer as Attachment C.

The present Amended Complaint provides the Commission with a vehicle in which to address the pressing issues identified in the Staff's fact-finding report. Certainly, the issuance of this report cannot be used as a shield to prevent the very type of investigation that the report calls for. The Company's argument in this regard is pure speculation and should be dismissed.

E. Response to Company Preliminary Objection E: The Billing Issue Is Relevant To The Company's Amended Complaint

The Company has objected to the County's inclusion of billing issues in its amended complaint. The Company claims that the billing issues referred to have been resolved and are, therefore, moot.

The County and OCA submit that the Company's billing errors are relevant because they provide an additional example of inadequate service. The County is not seeking relief from billing mistakes in its complaint. However, the record of billing errors averred to in the complaint support the broader relief requested by the County.

III. RESPONSE TO NUMERATED PARAGRAPHS

A. PCL&P Preliminary Objection – Lack of Commission Jurisdiction

1. It is DENIED that, in paragraph 8, the County seeks the forced sale of PCL&P to another entity and urges the Commission to order a compulsory divestiture. Paragraph 8 of the County's Amended Complaint avers that the Company's service is not safe and adequate and is, therefore, in violation of Section 1501 of the Pennsylvania Public Utility Code. 66 Pa. C.S. §1501.

It is ADMITTED that Paragraph 9 recommends that the Commission, in addition to implementing the Law Bureau's recommendations, should mandate that the Company be sold to another Pennsylvania electric distribution company or a rural electric cooperative.

It is ADMITTED that Paragraph 10 avers that the sale of PCL&P should be mandated due to: 1) the inferior service quality of PCL&P, 2) the lack of local control and employee services in Pike County on the part of PCL&P, and 3) PCL&P's excessive rate levels as compared to those of other Pennsylvania electric utilities.

It is ADMITTED that Paragraph 14 avers that the magnitude of the present rates, the overwhelming customer desire for another utility provider (as heard at the Public Input session) and the lack of local control and local employees on the part of PCL&P mandate that PCL&P should be sold to another service provider to provide service in the Company's service territory.

It is ADMITTED that Paragraph 15 avers that there is legal precedent for a Commission-mandated sale of PCL&P to another Pennsylvania EDC.

It is ADMITTED that, in addition to requesting that the Commission provide the relief set forth in the County of Pike's initial Complaint, Paragraph 16 requests the Commission to order the sale of PCL&P to another Pennsylvania EDC or a rural electric cooperative. Paragraph

16 further avers that the Commission should take such other actions, including those set forth in the Law Bureau recommendations, that the Commission determines to be just and reasonable and in the public interest.

2. It is DENIED that the County's Amended Complaint fails to set forth a claim for which the relief sought - the forced sale of PCL&P - can be granted. Paragraphs 10 and 14 of the Amended Complaint set forth numerous claims upon which the relief sought, including the sale of PCL&P—can be granted. The bases for the County's claims are set forth in the responses to the Company's Preliminary Objections, supra.

3. It is DENIED that the County's Amended Complaint has failed to identify any language in the Public Utility Code which gives the Commission the jurisdiction, power or authority to order the forced sale of PCL&P. Paragraph 7 avers that PCL&P's rates violate Section 1301 of the Public Utility Code and Paragraph 8 avers that PCL&P's service violates Section 1501 of the Public Utility Code. Furthermore, the Complaint avers that Big Run constitutes legal precedent for the mandated sale of PCL&P based on Section 1103(a), Section 703(g) and Section 501(a) of the Public Utility Code.

4. It is DENIED that, under the Public Utility Code, the Commission lacks the jurisdiction and/or the authority to order the sale of PCL&P. Section 1103(a) of the Public Utility Code vests in the Commission sole authority to grant a certificate of public convenience. Although Section 1103(a) does not address the Commission's authority to *revoke* a certificate of public convenience, numerous appellate cases have held that Section 1103 implicitly confers upon the Commission the right to revoke a certificate of public convenience as well. Sections 703(g) and 501(a) authorize the Commission to rescind or amend *any* Order previously made by it. As long as the due process rights of affected parties are not violated, in particular, notice and an

opportunity to be heard, the Commission's power to rescind or amend is unassailable. As a grant of a certificate of public convenience is evidenced by a Commission Order to that effect, these Sections also authorize the Commission to revoke a previously-issued certificate of public convenience.

5. It is ADMITTED that the Commission's power is statutory. Section 501 sets forth the general powers of the Commission, which include the ability to rescind or modify previous orders, including orders that have granted certificates of public convenience.

6. It is ADMITTED that the power and authority to be exercised by the Commission must be conferred by legislative language that is clear and unmistakable. Sections 1103(a), 703(g) and 501 (a) clearly confer upon the Commission the authority to revoke PCL&P's certificate of public convenience and mandate the sale of the Company, as Pennsylvania's courts have established and as the Commission declared in the Big Run case.

7. It is DENIED that there is no legislative language in the Public Utility Code that grants the Commission the jurisdiction, power or authority to order the forced sale of an electric utility.

Section 1103(a) of the Public Utility Code vests in the Commission sole authority to grant a certificate of public convenience. Although Section 1103(a) does not address the Commission's authority to *revoke* a certificate of public convenience, numerous cases have correctly held that Section 1103 by necessary implication confers upon the Commission the right to revoke a certificate of public convenience as well. Sections 703(g) and 501(a) authorize the Commission to rescind or amend *any* Order previously made by it. As long as the due process rights of affected parties are not violated, in particular, notice and an opportunity to be heard, the Commission's power to rescind or amend is unassailable. As a grant of a certificate of public

convenience is evidenced by a Commission Order to that effect, these Sections also authorize the Commission to revoke a previously-issued certificate of public convenience.

8. It is ADMITTED that the County cites the Big Run case in support of its request. It is DENIED that the Big Run case is not relevant to the instant matter, either factually or legally. The Commission's holding in Big Run is relevant to the current proceeding. Identical to the case at hand, Big Run encompassed a level of utility rates deemed too high to customers, customer dissatisfaction with the management and operation of the utility and a customer preference for another service provider. Due to these similarities in circumstance, the Commission determination in Big Run should be afforded great weight in this proceeding. In its June 1, 2006 Report, the Law Bureau recognized that Big Run represents established Pennsylvania precedent for Commission-mandated sales of incumbent utilities. See, Report at 19. Therefore, Big Run is relevant to the current proceeding.

9. It is DENIED that the Big Run case cited by the County fails to identify any clear and unmistakable legislative language that confers upon the Commission the jurisdiction, power or authority to order the forced sale of an electric utility. Big Run demonstrated that implicit in the Commission's authority to rescind a certificate of public convenience of a utility is authority to facilitate the establishment of a replacement service provider.

10. It is DENIED that the Commission's authority under Section 529 of the Public Utility Code to order a capable public utility to acquire a small water or sewer utility speaks to the Commission's authority to mandate the sale of an electric utility. The Big Run Order was considered legal precedent at the time of the enactment of Section 529, but was not overturned or impacted by this enactment.

11. It is ADMITTED that, under Pennsylvania rules of statutory construction, the inclusion of specific matters in a statute implies the exclusion of other matters. It is DENIED, however, that this principle of statutory construction has any bearing on the issues in this case. The request for relief in the County's Amended Complaint is not affected by the enactment of Section 529.

12. It is DENIED that when the General Assembly granted the Commission the power to order the acquisition of small water and sewer utilities by a capable utility, it intended to deprive the Commission of the jurisdiction, power or authority to order the sale of any and all other types of utilities.

Section 529 was added to the Public Utility Code in 1992 and is entitled "Power of commission to order acquisition of small water and sewer utilities." That section gave the Commission the authority to "order a capable public utility to acquire a small water or sewer utility" under certain circumstances. 66 Pa.C.S. §529(a). The Company argues that, because Section 529 applies only to water and sewer utilities, principles of statutory construction suggest that the General Assembly "intended to deprive the Commission of the jurisdiction, power or authority to order the forced sale of any and all other types of utilities." This argument is clearly incorrect.

What was new about Section 529 was the authority of the Commission actually to order a utility under its jurisdiction to **acquire** a troubled utility. As noted above, the Commission has always had the authority to revoke a utility's certificate of public convenience, and thereby force its sale or abandonment. What the Commission may have lacked was the authority to order a particular company to **purchase** that utility. The distinction between the mandatory **acquisition** of a utility by a "capable utility" under the Commission's jurisdiction

under Section 529, and the mandatory sale of a utility such as the Commission ordered under its general regulatory powers in the Big Run case is critical.

13. This paragraph is a request for relief for which no response is necessary.

14 It is DENIED that a Commission-mandated sale of PCL&P would be putative in nature and completely unwarranted. It is further DENIED that the Company has adhered to the Public Utility Code and the Commission's regulations in all respects. PCL&P has not adhered to the Public Utility Code and the Commission's regulations in all respects as set forth in the allegations of the County's Complaint.

15 It is ADMITTED that the Commission has the power under 66 C.S. §§ 1501 and 1504 to determine if a public utility is providing safe and adequate service at just and reasonable rates. If a determination is made that safe and adequate service at just and reasonable rates is not being provided, the Commission can direct a Company to take the appropriate remedial measures. It is DENIED that the County has "put the cart before the horse". Issues as to Section 1301 and 1501 violations have been raised in a timely fashion and at the appropriate junctures.

16. It is DENIED that the Commission can only take further remedial action, e.g., the mandated sale of PCL&P, after: 1) a determination that Section 1501 and 1504 violations have occurred, 2) the Commission has prescribed the rates and services the utility should be providing its customers, 3) the Commission has directed the Company to take the appropriate remedial measures, and 4) the Company violates such an order. The Commission can act at any time (after notice and an opportunity to be heard have been provided) to revoke a utility's certificate of public convenience upon finding that such a revocation is in the public interest.

17. It is DENIED that there has been no finding that the PCL&P is not providing safe and adequate service at just and reasonable rates or that the County has not made a prima facie

showing that such is the case. Based on public customer testimony and facts alleged in Complaints against the Company, a prima facie showing has been made that safe and adequate service at just and reasonable rates is not being provided by the Company.

18. It is DENIED that, if the Commission were to find that PCL&P was not providing safe and adequate service at just and reasonable rates, its only remedy authorized under the Public Utility Code would be to order PCL&P to provide specific service at specific rates. It is further DENIED that the Commission has no basis to exercise a claimed power to order the Company to be sold.

Section 1103(a) of the Public Utility Code vests in the Commission sole authority to grant a certificate of public convenience. Although Section 1103(a) does not address the Commission's authority to *revoke* a certificate of public convenience, numerous cases have correctly held that Section 1103 by necessary implication confers upon the Commission the exclusive right to revoke a certificate of public convenience as well. Sections 703(g) and 501(a) authorize the Commission to rescind or amend *any* Order previously made by it. As long as the due process rights of affected parties are not violated, in particular, notice and an opportunity to be heard, the Commission's power to rescind or amend is unassailable. As a grant of a certificate of public convenience is evidenced by a Commission Order to that effect, these Sections also authorize the Commission to revoke a previously-issued certificate of public convenience.

B. PCL&P Preliminary Objection – Legal Insufficiency

19. See responses to paragraphs 1 through 18, above.

20. It is ADMITTED that the language quoted by the Company was incorporated in the County's Amended Complaint. By way of further response, the County's Amended Complaint speaks for itself and any inference raised by the selected quotations is denied.

21. It is ADMITTED that the December 21, 2005 Order "allowed" the Company to charge the default service rates contained in Supplement No. 25 to Tariff Electric – Pa. P.U.C. No. 8, including the replacement pages submitted on December 1, 2005.

22. It is DENIED that the Default Service rate proceeding was a "litigated proceeding" in the traditional sense. The matter was not assigned to an Administrative Law Judge. Interested parties submitted comments to the Commission, and the Commission issued its Order based upon those comments.

23. It is ADMITTED that the Company's filing was submitted pursuant to the Default Service Implementation Plan approved by the Commission in its September 23, 2005 Order. It is DENIED that the Default Service Implementation Plan filed on May 31, 2005 was approved as filed. The Company's filing was modified by the Commission in its September 23, 2005 Order.

24. It is ADMITTED that the auction results were filed with the Commission on October 27, 2005.

25. It is DENIED that the Docket No. P-00052168 was closed on December 21, 2005. The Commission instituted an investigation that continued into the P-00052168 docket, resulting in a recent release of a Report in that docket in June of 2006. It is ADMITTED that the December 21 Order allowed the Company to charge the default service rates contained in Supplement No. 25 to Tariff Electric – Pa. P.U.C. No. 8, including the replacement pages submitted on December 1, 2005

26. It is ADMITTED that PCL&P must charge customers tariffed rates. It is DENIED, however, that these rates can never be changed on a prospective basis.

27. It is ADMITTED that the cited case contains the quoted language. It is DENIED, however, that these rates can never be changed on a prospective basis.

28. It is ADMITTED that the Commission approved, with modifications, a Direct Energy Services Petition for a retail aggregation program. It is DENIED that the Commission's approval was a response to concerns "that the Default Service rates **would** result in significantly higher rates for PCL&P retail customers..." Emphasis added. In fact, the Direct Energy Petition was a response to existing default rates that had increased by 129% for residential customers on January 1, 2006. It is DENIED that the "resulting rates" from the Aggregation Plan are Commission-approved rates. The commission-made rate doctrine has never been applied to rates provided by a competitive electric generation supplier.

29. It is DENIED that the Commission's December 21, 2006 Order states that the approved default service rates are "in the public interest." By virtue of the Commission's opening of an investigation into the competitive market conditions in PCL&P's service territory, holding of public hearings in February of 2006 to hear sworn testimony of residents of Pike County affected by the rate increases, and their approval of the Direct Energy retail aggregation bid, the Commission's actions do not support an assertion that it finds the existing default service rates to be "in the public interest."

30. It is DENIED that PCL&P has acted "faithfully," with regard to Commission directives and orders, at all times. PCL&P complied with Commission directives and orders to the extent that the Commission acted upon the Company's filings. The Company's claim that it "faithfully" followed all orders is a subjective term that the County and OCA do not agree with.

Importantly, the Company provided the Commission with a default service plan on May 31, 2005, despite knowing that its existing default plan expired on December 31, 2005. To the extent the Commission approved the May 31, 2005 plan, with modifications, it was limited to the framework presented by the Company. In its language approving the May 31 auction with modifications, the Commission stated:

> ...we find that a two year plan for Pike, covering years 2006 and 2007, is appropriate, and direct that Pike make the appropriate modifications to its Plan.
>
> We must, however, note our general discomfort with the reliance on the financial swap transactions proposed in this proceeding, among other aspects of this filing. However, given the lack of viable alternatives offered in this case, we see no other options that would provide reasonable rate stability for Pike's POLR customers, in the time frame required, to render a timely decision. Because of these time constraints, we emphasize that this decision provides no foundation for future default service proceedings. To be clear, by voting to substantially accept this transitional POLR plan, the Commission is not endorsing the concepts embodied in the filing for any electric utility other than Pike, and then only as a transitional mechanism pending completion of the Default Service Regulations at Docket L-00040169.

September 23 Order at 20.

31. It is ADMITTED that PCL&P must charge customers tariffed rates. It is DENIED, however, that these rates can never be changed on a prospective basis.

32. It is ADMITTED that PCL&P must charge customers tariffed rates. It is DENIED, however, that these rates can never be changed on a prospective basis.

33. It is ADMITTED that, under the filed rate doctrine, tariffed rates approved by the Commission are lawful rates. It is DENIED, however, that these rates can never be changed on a prospective basis.

34. Denied. The Public Utility Code provides for the right to file complaints against existing filed rates in order to effect a change going-forward. 66 Pa.C.S. §701. The cases cited by the Company do not address a Complainant's right to challenge filed rates before the Commission in an effort to change those rates prospectively. Ciamaichelo v. Independence Blue Cross does not involve the complainant's rights under the Public Utility Code. Knipmeyer v. Bell Atl Corp involves a challenge to existing rates in a Court of Common Pleas. Knipmeyer does not apply in this proceeding. A collateral attack of commission-made rates in the Court of Common Pleas does not bear any relation to the current complaints. The Commission has statutory authority to change the rates contained in the Company's tariff, giving new, prospective rates the full force of law. The County is not challenging the Company's obligation to charge the rates contained in its tariff. Instead, the County has averred that the filed rates are not just and reasonable and in violation of the law and should be changed on a going forward basis after the conclusion of this case. Complainants have the right to pursue their complaints before the Commission.

35. It is ADMITTED that the Company's reference to the Public Utility Code is correct.

36. It is DENIED that the Company's rates are consistent with the Public Utility Code. The County has averred that the Company's rates are not "just and reasonable" as required by law and that the service is not "safe and adequate." The Commission has jurisdiction over the administration of the Public Utility Code.

37. It is DENIED that PCL&P has performed all of its obligations consistent with the Public Utility Code and the Commission's regulations and orders. The County has averred that the Company is not providing service consistent with the requirements of the Public Utility Code, specifically Sections 1301 and 1501, and the Commission's regulations.

38. A prayer for relief to which no response is needed.

39. A prayer for relief to which no response is needed.

C. PCL&P Preliminary Objection – Nonjoinder of a Necessary Party

40. Incorporates responses to paragraphs 1 through 39, above.

41. It is DENIED that the January 2006 rate increase is the "fundamental claim" in the County's amended complaint. The County's Amended Complaint also alleges service quality issues, customer service issues, billing issues, and seeks implementation of the recommendations contained in the Law Bureau Report. These issues extend beyond rate issues. To the extent that the complaints relate to rate increases, the documents speak for themselves.

42. It is DENIED that the County has failed to make a distinction between types of rates. The County's Amended Complaint is not limited to rate issues, and the rate issues raised are in regard to PCL&P's tariffed rates. Because the tariffed rates of PCL&P are at issue in the County's complaint, no distinction between "delivery" charges and "commodity" rates is necessary.

43. It is ADMITTED that PCL&P has not filed to increase delivery rates since 1993. By way of further response, there have been tax adjustments through the State Tax Adjustment Surcharge.

44. It is DENIED that the increase referred to in the County's Complaint relates solely to increases in commodity prices. The County's complaint refers to increases in the retail default rates. The generation rates charged by the Company and the commodity price of electricity on the market at any given time are not necessarily the same.

45. It is DENIED that commodity prices are set by the market, but rather are set by market participants in the market. To the extent the electricity is bought and sold in organized markets such as PJM or the New York ISO, that "commodity" price is a function of the price that can be

obtained in the markets. There are a variety of products, thousands of prices, and no one "price" of electricity. Additionally, the default generation rate is not a pure pass through of the "commodity" of electricity.

46. It is ADMITTED that the Electric Choice Act "unbundled" the generation, transmission, and distribution portions of electric service. It is DENIED that the purpose of the rate caps was to only to "insulate customer from rate volatility while competitive markets developed." The rate cap provisions of the Electric Choice Act were directly tied to the payment by customers of "stranded costs." Stranded costs are defined by the Act as those costs, "which traditionally would be recoverable in a competitive electric generation market and which the commission determines will remain following mitigation by the electric utility." 66 Pa.C.S. §2803. PCL&P customers paid the Company's stranded costs during the rate cap period. See ARIPPA v. Pa. PUC, 792 A.2d 636, 643 (Pa. Commw. 2002)("Under the legislative scheme, in exchange for utilities being paid for their stranded costs, rate caps, with certain exceptions that are at issue in this appeal, were imposed on the rate a utility could charge . .")

47. It is ADMITTED that PCL&P is no longer subject to the rate cap provisions of the Electric Choice Act. It is DENIED that commodity rates are set solely by the prevailing market price for electric generation. Under the Electric Choice Act, PCL&P is required to acquire electric energy at prevailing market prices to serve non-shopping customers, and to recover fully all reasonable costs. 66 Pa.C.S.§2807(e)(3). The actual default generation rate is determined by the Commission.

48. It is DENIED that PCL&P customers are experiencing significant increases in their bill solely because of conditions at the time of the transition from capped rates to market rates. PCL&P customers are experiencing significant increases in their default service rates that

resulted from the default service procurement process that the Company developed and pursued. The increases in default prices are not only the result of general wholesale market conditions, but also related to the default service procurement method used by the Company and other factors.

49. It is DENIED that PCL&P customers are experiencing significant increases in their bill simply because of market conditions. PCL&P customers are experiencing significant increases in their default service rates that resulted from the default service procurement process that the Company developed and pursued.

50. It is ADMITTED that Pike's default service rates and the rates resulting from the Direct Energy Retail Aggregation Program were established in proceedings before the Commission. By way of further response, the winner of the Pike auction was Con Ed Energy, an affiliate of PCL&P.

51. The statement is an allegation of fact of which the County and OCA has no first-hand knowledge and demands strict proof at hearing. By way of further response, the transfer of customers to Direct Energy did not take place until June of 2006.

52. It is DENIED that the County's Amended Complaint and the Complaints of all others relate to "Direct Energy's commodity rates." The County's amended Complaint relates to PCL&P's tariffed default service rates, among other issues.

53. It is DENIED that "all fifty (50) Complainants" are Direct Energy customers. The statement is an allegation of fact of which the County and OCA has no first-hand knowledge and demands strict proof at hearing.

54. It is DENIED that the County "is objecting to the commodity rates charged by Direct Energy." The County's amended Complaint relates to PCL&P's tariffed default service rates, among other issues.

55. It is DENIED that the County mistakenly filed a Complaint against PCL&P rather than Direct Energy. The County's amended Complaint relates to PCL&P's tariffed default service rates, among other issues.

56. Prayer for relief to which no response is needed.

D. PCL&P Preliminary Objection – Legal Insufficiency

57. Incorporates responses to paragraphs 1 through 56, above.

58. It is ADMITTED that Paragraph 9 of the Amended Complaint recommends that the Commission, in addition to implementing the Law Bureau's recommendations, should mandate that the Company be sold to another Pennsylvania electric distribution company or a rural electric cooperative.

Paragraph 10 avers that the sale of PCL&P should be mandated due to: 1) the inferior service quality of PCL&P, 2) the lack of local control and employee services in Pike County on the part of PCL&P, and 3) PCL&P's excessive rate levels as compared to those of other Pennsylvania electric utilities.

Paragraph 14 avers that the magnitude of the present rates, the overwhelming customer desire for another utility provider (as heard at the Public Input session) and the lack of local control and local employees on the part of PCL&P mandate that PCL&P should be sold to another service provider to provide service in the Company's service territory.

Paragraph 15 avers that there is legal precedent for a Commission-mandated sale of PCL&P to another Pennsylvania EDC.

In addition to requesting that the Commission provide the relief set forth in the County of Pike's initial Complaint, Paragraph 16 requests the Commission to order the sale of PCL&P to another Pennsylvania EDC or a rural electric cooperative. Paragraph 16 further avers that the

Commission should take such other actions, including those set forth in the Law Bureau recommendations, that the Commission determines to be just and reasonable and in the public interest.

59. It is DENIED that the Commission has rejected two requests to consider a study on the costs and benefits of the sale of the Company in its current condition. The Commission has declined to require an investigation to consider the costs and benefits of a sale of Pike on one previous occasion. The Commission rejected such an investigation in its September 23, 2005 Order on the basis that a now outdated transmission interconnection did not support interconnecting Pike with PJM on a cost/benefit basis. Since that time, conditions have dramatically changed regarding that study. In addition, the County seeks the forced sale of the Company based on quality of service and other issues in addition to cost issues. A sale of the Company has not been reviewed in the context presented in the County's Amended Complaint.

60. It is ADMITTED that the OCA requested that the Commission review the possibility of a sale of PCL&P, along with a review of a possible transmission interconnection to PJM, in Comments submitted at Docket No. P-00052168.

61. It is DENIED that the Commission noted that PCL&P had "thoroughly explored" becoming part of PJM in its September 23 Order at Docket No. P-00052168. The Commission did not note that the Company had "thoroughly explored becoming part of the PJM Regional Transmission Organization ("RTO")." In its September 23, 2005 Order, the Commission, in its review of the position of the parties, stated, "**Pike** notes that it had thoroughly explored becoming part of the PJM Regional Transmission Organization." September 23 Order at 23. The County and OCA submit that it was clearly the Company that assessed its review of a PJM interconnection as "thorough," not the Commission.

62. It is DENIED that the relief sought by the County proceeds from an erroneous assumption that another utility will provide lower rates. PCL&P's inferior service quality, lack of local control and employee services in Pike County, and excessive rate levels (as compared to those of other Pennsylvania electric utilities) render consideration of a sale of the Company's operations reasonable and warranted. By way of further response, the County's complaint is not based on a "mistaken assumption" that PJM membership may bring better rates and service, but is based on considerations of price differentials between the PJM and NYISO markets, the size and scope of PJM, and PJM's record of reliable service.

63. It is ADMITTED that, in its September 23, 2005 Order, the Commission determined that, at that time, pursuit of membership in PJM did not appear to be in the public interest. However, that determination was prior to the 129% increase in Pike's generation rates on January 1, 2006. Therefore, at present, re-examination of such membership is in the public interest and the Commission's Law Bureau acknowledged such in its June 1, 2006 Report.

64. It is ADMITTED that the Commission opened an investigation into the conditions in PCL&P's service territory on January 27, 2006 at Docket No. P-00052168.

65. It is ADMITTED that on June 22, 2006, the Commission released the Law Bureau's Report in response to the Commission investigation at Docket No. P-00052168.

66. It is ADMITTED that the quoted language was contained in the Report. Any implication from the emphasis added by the Company is DENIED.

67. Admitted. By way of further response, the Commission has not acted upon the Report at this time.

68. Legal argument to which no response is required.

69. It is DENIED that the lack of Commission action on the Law Bureau's Report issued June 22, 2006 is "tacit rejection" of the contents therein is pure speculation. To the contrary, in a Press Release issued by the Commission upon the release of the Report, Commissioner Bill Shane is quoted as follows:

> Issuing this report for public consumption does not represent the end of Commission action on this matter, but rather we will continue to move forward because as I have said before I am not willing to abandon these customers.

A copy of the Commission's June 22, 2006 Press Release is attached to this Answer as Attachment C.

70. It is DENIED that the County's Amended Complaint is moot. The complainants have the right, under the Public Utility Code, to be heard on their complaints.

71. Request for a prayer for relief for which no response is necessary.

E PCL&P Preliminary Objection – Legal Insufficiency

72. Incorporates responses to paragraphs 1 through 71, above.

73. It is ADMITTED that the Paragraph 13 of the Amended Complaint contains the quoted language.

74. It is ADMITTED that the County does not allege any billing errors for its own charges.

75. The specific billing amounts are an allegation of fact of which the County and OCA has no first-hand knowledge and demands strict proof at hearing.

76. The statement is an allegation of fact of which the County and OCA has no first-hand knowledge and demands strict proof at hearing.

77. The statement is an allegation of fact of which the County and OCA has no first-hand knowledge and demands strict proof at hearing.

78. The statement is an allegation of fact of which the County and OCA has no first-hand knowledge and demands strict proof at hearing.

79. The statement is an allegation of fact of which the County and OCA has no first-hand knowledge and demands strict proof at hearing.

80. It is DENIED that the billing errors alleged in the County's Amended Complaint are not relevant to the current proceeding. These billing errors speak to the adequacy of service provided by the Company. The remainder of the paragraph is legal argument to which no response is required.

IV. CONCLUSION

The Company has requested the dismissal of the County of Pike's Amended Complaint, and all consolidated complaints, based on the above five preliminary objections. The OCA and the County submit that the claimed objections do not justify dismissing these Complaints. The Public Utility Code specifically provides the County the right to pursue the specific relief requested. As discussed above, a utility does not have an absolute right to retain its Certificate of Public Convenience where the utility fails to meet its public service obligations. In addition, there are no ratemaking principles that shield the Company from prospective rate and service relief properly sought through the County's amended complaint.

Respectfully Submitted,

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Dated: August 14, 2006
00090166.DOC

COUNTY OF PIKE

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ATTACHMENT A
TO THE
JOINT ANSWER OF THE COUNTY OF PIKE
AND THE OFFICE OF CONSUMER ADVOCATE
TO THE PRELIMINARY OBJECTIONS OF
PIKE COUNTY LIGHT & POWER COMPANY

AA.00029.00180 (40/40)

Sept 9, '5

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
v.	:	C-822983
Big Run Telephone Company and Citizens Utilities Company of Pennsylvania	:	

Recommended Decision

of

Joseph J. Klovekorn
Administrative Law Judge

RECEIVED
2006 AUG 9 P
SECRETARY

(Appearances: Con't.)

Martha W. Bush, Esquire
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
for: Office of Consumer Advocate

Procedural History

This is the latest in the series of proceedings involving the long-running dispute between the residents of the Borough of Big Run (Jefferson County) and their local telephone utility.

This dispute first came to the Commission's attention in October, 1979 when the Big Run Telephone Company (BRTC) filed for a rate increase of some 41 percent.

Complaints against this rate increase were filed by the Office of Consumer Advocate (OCA) (R-79100968C001) and the Borough of Big Run (R-79100968C002). By order entered March 12, 1980, the Commission permitted BRTC to file a tariff supplement to produce additional annual revenues in the amount of $43,933 inclusive of state tax adjustment surcharge revenues. This option was accepted by BRTC, with the resulting tariffs becoming effective April 26, 1980. The base residential, one-party, Zone 1 monthly rate become $21.25, the Zone 2 rate, approximately $25.00.

On June 5, 1980 the OCA filed a formal complaint against BRTC with the Commission, docketed at C-80062021, alleging that the quality of service provided by BRTC to its customers was unlawful and inadequate. The Borough of Big Run similarly filed a complaint against the utility's service (C-80072048).

On June 27, 1980, BRTC filed with the Commission revised tariffs designed to increase annual revenues, including state tax adjustment surcharge revenues, by the amount of $108,364.

On July 9, 1980 the OCA filed a motion to consolidate for hearing and consideration its prior rate complaint and service complaint against BRTC. On July 16, 1980 BRTC responded in opposition to that motion. By Order entered September 8, 1980 the Commission ruled that

the question of consolidation was improperly certified to it and remanded the matter to the Administrative Law Judge.

On August 8, 1980 the OCA filed a complaint against the new rate increase request and further requested consolidation of that proceeding with all other outstanding complaints against BRTC.

By Order entered August 29, 1980 the Commission instituted an investigation into the proposed rates, rules and regulations of BRTC at R-80061239.

Hearings were held on these various service and rate matters before Administrative Law Judge John K. Clements. On February 9, 1981 Administrative Law Judge Clements issued his recommended decision addressing the two separate rate proceedings and the service proceeding. In his decision, Judge Clements found that the customers of Big Run had met their burden of proof as to service inadequacy--that there were an "unconscionable number of service problems in the Big Run area." He rejected, however, the request that no rate relief be granted until the service problems were solved. By Order adopted April 3, 1981, the Commission adopted, in the main, Judge Clements' decision and authorized a rate increase of $71,841 or 23 percent.

At the Public Meeting of June 5, 1981 State Senator Patrick Stapleton and State Representative Eugene Smith presented a petition containing 1,313 signatures, requesting that their telephone service be provided by a utility other than Big Run. The petition stated as follows:

> We, the citizens that live in the Big Run Telephone Company territory, are extremely dissatisfied with the substandard service and exorbitant rates of this Company and are serving notice that we no longer desire its services.
>
> We are requesting that the Pennsylvania Public Utility Commission revoke the Certificate of Public Convenience of the Big Run Telephone Company (Docket

#90683) and grant this territory to another company which will provide us with better quality telephone service at more reasonable and competitive rates.

At Public Meeting of July 24, 1981 the Commission, ordered a formal investigation (I-810353) into the operations of Big Run Telephone Company. As stated in the motion:

> This investigation will entail the formalization of a feasibility study. The feasibility study is intended to provide all parties concerned with options which may be followed to attain the ultimate goal, namely, adequate and reasonable service at a lower rate.

The Motion identified twelve issues and sub-issues which were to be considered in the investigation. The issues concentrated into three main groups of concern:

1. The ability of Big Run and affiliated companies to provide adequate service whether under present or modified corporate organization and structure;
2. The reasons for consumer dissatisfaction, including the numerous terminations, and the financial effect upon Big Run; and
3. The prospects for lowering rates charged for service by Big Run.

On August 13, 1981, the Consumer Advocate filed a "Petition to Issue A Show Cause Order Directing Big Run Telephone Company To Show Cause Why Its Certificate Of Public Convenience Should Not Be Rescinded." Under date of September 2, 1981, BRTC filed a response to said petition, alleging better than adequate service and that further proceedings were unwarranted.

On January 18, 1982 the Commission issued an order at I-810353 in which it stated that the investigation initiated the previous summer was

completed on December 31, 1981. However, the Commission in that order set forth three continuing aspects of the investigation. It directed within six months a report from BRTC on the possibility of merger with Citizens Utility Company of Pennsylvania (CUCPA);[1/] it directed within sixty days, an implementation plan from Big Run as to improvements in management; and, it directed within sixty days, a rate structure re-allocation proposal from BRTC with opportunity for public comment.

In its Order of January 18, 1982, the Commission stated that a staff investigative report revealed that the primary source of consumer discontent in the Big Run service area results not from inadequate service, but from high rates. The Commission then went on to observe that "several deficiencies" in the managerial, operational and financial operations of BRTC were revealed, but that "only enlarging the customer base . . . effectively reduce rates to the extent that they will be competitive...."

On April 30, 1982, the Commission issued this complaint at C-822983 against BRTC and CUCPA. By this Complaint, the Commission sought to order BRTC and CUCPA to file common tariffs based on the average, consolidated costs to serve the ratepayers of both utilities.

Active parties to this proceeding were Trial Staff, OCA and the respondent utilities. Five days of hearings were held in Harrisburg before the undersigned Administrative Law Judge. During these hearings,

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1/ Both BRTC and CUCPA are wholly-owned subsidiaries of Citizens Utilities Company, a national holding company headquartered in Stamford, Connecticut.

Trial Staff presented seven witnesses. Two witnesses appeared on behalf of BRTC and CUCPA. In addition, two hearings were held in Big Run where approximately forty-two persons, as well as local elected representatives, made statements.

Briefs and reply briefs were filed by the active parties.

Proposed Consolidation of Rate Schedules

Trial Staff claims that the proposed consolidation of rate schedules is required for two reasons. First, it argues that there are no significant accounting, operational, financial or managerial distinctions between Big Run and CUCPA. Second, it argues, Big Run standing alone is no longer a viable basis for the setting of just and reasonable rates and that the only way to reduce, in any significant manner, BRTC's rates is to expand its customer base.

Interestingly enough, BRTC and CURPA do not take any position on the merits of the Commission proposal. They simply note that if the Commission orders the filing of consolidated tariffs, they will file an application for a certificate of public convenience for approval of a corporate reorganization to merge both companies into one.

OCA argues that the consolidation of the rate schedules of these two utilities will result in neither improved service nor lower rates.

On the basis of the record in this proceeding, I would recommend that the Commission not order these utilities to consolidate their rate schedules. The reasons for this conclusion will be set forth below.

The fundamental question which must be asked here is whether such a consolidation would be in the public interest. Despite the

protestations of Trial Staff, this further simplifies itself into the question of whether such an action will result in lower rates or better service. There is nothing in this record which would lead to the conclusion that such would be the case.

First, as the companies point out, the day-to-day operations of BRTC and CUCPA have already been consolidated for maximum operating efficiency. According to them, if BRTC and CUCPA were merged, a savings of $113 annually will result from payment of only a single statutory agent's fee. The preparation of one annual report to the Commission, one state income tax return and one set of corporate minutes would be eliminated. This would result in no tangible economy because no reduction in work force would result.

In the event of a merger, plant accounting, customer accounting, employee accounting and vendor accounting would be performed in the same manner as at present. A merger would probably require the combination of plant accounting records and general ledgers of Big Run with those of CUCPA. This additional work would not result in any tangible increase in expense, since no additional work force would be required.

For the past ten years, with one exception, rate filings of BRTC and CUCPA have been made simultaneously, using identical methodologies. They anticipate that, in the future, they would continue to file such proceedings simultaneously and on the same basis. Consequently, costs of such proceedings would not be affected by a merger. They conclude that the realizable economies of a merger would be in the order of a few hundred dollars per year.

These conclusions appear to be supported by Trial Staff's testimony. Only Trial Staff witness Wagner pointed out any area of

savings as a result of consolidation and those savings would accrue to the Commission itself. Mr. Wagner testified that if the rates of Respondents were consolidated to reflect the average cost of service and, if Respondents were required file one, rather than two rate cases for changes in rates, and were required to maintain uniform rates in the future, the Commission's Staff could achieve certain efficiencies. This conclusion is founded upon the premise that it requires less work by the Staff to review one rate case than it does to review two rate cases. Due to the size of the companies involved, such savings would appear to be minimal.

Trial Staff also called Donald H. Muth of the Bureau of Rates to testify with regard to the financing of the two telephone companies. Generally, Mr. Muth concluded that the two telephone companies are financed similarly and that consolidation would not alter the cost of capital or the fair rate of return.

Trial Staff also presented the testimony of Mr. Carroll Smith of its Rates Bureau. Mr. Smith recommended that the respondent utilities be combined for ratemaking purposes. After analyzing revenues, main stations and telephone plant in service for the two companies he concluded that they are equivalent in terms of revenue, telephone plant in service and growth characteristics and that there should not be any problem with establishing consolidated rates.

Mr. Smith also testified on the potential rate impact if these companies were combined for ratemaking purposes. It should be noted that Trial Staff has stated many times that the rates used by Mr. Smith are illustrative only. However, it seems clear that they were selected to illustrate that the proposal to merge the two companies would produce lower rates to BRTC customer. These rates are set forth below:

Class of Service	Present Rates Big Run	Present Rates CUCPA	Estimated Rates Combined Co.
Business			
One Party	$33.17	$23.72	$24.75
Two Party	27.67	17.66	18.50
Four Party	24.00	13.65	14.50
PBX Trunk	38.54	28.07	29.00
Residence			
One Party	21.25	11.87	13.00
Two Party	17.57	10.18	11.00
Four Party	13.70	9.34	10.00
Multi-Party	13.70	—	10.00
Extensions			
Business	4.23	4.05	4.50
Residence	2.82	2.70	3.50

The above estimated rates are based on the following assumptions:

1. CUCPA stations as of December 1, 1981.
2. Big Run stations are based on information supplied by the company during the last rate case, prior to April 3, 1981, when the new rates went into effect. Thus it is assumed that with decreased rates all customers who disconnected or downgraded would reconnect or regrade to the grade of service they had before the last rate increase.
3. That the rates would be exactly the same throughout the combined company. It should be noted that the estimated rates have not been refined into rate bands.

It may be safe to assume, Trial Staff's protestations to the contrary, that these possible rates are the most favorable rates that can be reasonably expected to occur as a result of the merger. It is on the basis of these illustrative rates that we are asked to approve the consolidation. Quite simply, if the consolidation were not designed to reduce rates by broadening the customer base, there would be no reason to consider it in the context of this hearing, rather it should be relegated

to the status of a home-work assignment in some business administrative course.

The record, however, points out such flaws in the assumptions that underlie these rates as to make them an unreliable guide on the basic issue of whether this proposal will reduce the BRTC customer's rates.

First, as the companies point out, these rates: (1) do not recognize zone rates, (2) shift revenue requirements away from basic residential service, (3) contain an unrealistic increase in the rates for extension telephone and (4) are based on stale ratemaking data. Second, they are based on the assumption that all BRTC customers who disconnected or downgraded would reconnect or regrade to the grade of service they had before the last rate increase. On the basis of public testimony held July 19, 1982 in Big Run, this assumption appears highly unrealistic.2/

In summary, while Trial Staff's proposal looks promising on paper, the record here demonstrates that it will not succeed in its main purpose - a reduction in rates to BRTC's customers. If the Commission wishes to tidy up the corporate structure of these two utilities, it should approve this proposal. However, such action would be merely cosmetic, temporarily covering up the serious problems of high rates and customer dissatisfaction which exist here.

2/ It should also be noted that the policy of BRTC of requiring substantial security deposits from customers who have attempted to reconnect, sometimes of up to $100, in addition to regular reconnect charges, is hardly conducive to the return of these former subscribers (Tr. 258-59).

I recommend, therefore, that the merger proposal not be adopted and, instead, the Commission turn its attention to the fundamental problem here -the complete total dissatisfaction of the residents of Big Run with their telephone company.

Resolution of Conflict

Having recommended rejection of Trial Staff's merger plan, I feel required to consider alternatives in an effort to improve telephone service in the area and, more importantly, to restore to this Borough the tranquillity that existed before these present difficulties.

Although the quality of service offered these ratepayers has not been directly in issue here, it should be noted that Judge Clements' finding in his decision at C-80062021 (February 9, 1981) that there were an unconscionable number of service problems in the Big Run area, has been adopted by the Commission (Order adopted April 3, 1981) and remains in effect. The Commission's informal off the - record investigation at I-8110353 appears to indicate that ratepayers object to high rates rather than quality of service. This, however, does not negate the Commission's original finding of poor service - it simply indicates that the Big Run residents find the present rate levels more intolerable than the quality of service. This was emphasized at the Public Hearing of July 19, 1982 held in Big Run where ratepayers and former ratepayers recounted under oath their difficulties with this company.

As noted above, however, this hearing is not directly concerned with the quality of service offered by the utility. Therefore, on the basis of the record here, I am not prepared to conclude that BRTC is providing inadequate service. I can report to the Commission, however,

that an alternative source of service for the Big Run service area would be preferable to continued service by BRTC. I make this recommendation on the basis that there is no other way to bring rates down to reasonable levels and on the basis that there is general dissatisfaction with the operations and management of the Big Run Telephone Company, so widespread that relations between the company and the ratepayers could well be termed "poisoned."

What the public wants is impelling evidence of the public's convenience and need. Re Newcastle Transit Co., 1926B PUR 85 (Indiana P.S.C. 1925). And on the basis of the petitions filed and testimony given in all the above cited proceedings as well as this instant one, one can only conclude that what the public wants here is a new phone company.3/

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

Specifically, BRTC and its parent should permit representatives of interested buyers access to Big Run's books and records and physical

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3/ I would specifically note that the residents had expressed a distinct preference for Bell of Pennsylvania to offer service in their area (OCA Exhibit 8; Tr. 169, 173, 176, 187, 251, 268, 277, 281).

plant for the purpose of inspecting and valuing Big Run's assets. Thereafter bids should be submitted and, after the bidding process is complete, the Commission should select a successor utility to BRTC after considering such factors as the bidder's ability to serve the desires the Big Run residents, the proposed purchased price, and the net book value of the portion of the plant to be purchased.

In view of the expressed public opinion detailed above, the Commission should specifically invite the Bell Telephone Company to submit a bid.

The use of the Commission's offices to facilitate a sale of BRTC's assets may or may not be successful depending on the good will of all concerned. Alternatives must be considered in the event that this plan proves unsuccessful. I therefore recommend that in the event no progress is made toward the possible transfer of service to another utility, the Commission grant the "Petition To Issue a Show Cause Order Directing Big Run Telephone Company To Show Cause Why Its Certificate Of Public Convenience Should Not Be Rescinded" filed by the OCA on August 31, 1981 and which is still pending before it. In this way, the ultimate issue of whether BRTC should continue to serve this territory can finally be resolved.

THEREFORE:

IS IS ORDERED:

1. That the complaint adopted by the Commission on April 30, 1982 in this proceeding is sustained with respect to Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17 and dismissed with respect to Paragraphs 12, 13, 14, 18, 19, 20, 21, and 22.

2. That there should be published in the Pennsylvania Bulletin a notice of solicitation of bids from all interested telephone companies for the assets of Big Run Telephone Company and that the Bell Telephone Company of Pennsylvania should be specifically asked to make such a bid.

3. That Citizens Utilities Company and Big Run Telephone Company are directed to permit representatives of interested buyers access to the books and records and physical plant of Big Run Telephone Company for the purpose of inspecting and valuing Big Run's assets.

4. That bids should be due sixty days after date of publication in the Pennsylvania Bulletin.

Date: September 9, 1982

Joseph D. Klovekorn
Administrative Law Judge

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held October 15, 1982

Commissioners Present:

Susan M. Shanaman, Chairman
Michael Johnson
James H. Cawley, concurring in part and dissenting in part 1/
Linda C. Taliaferro (Opinion Attached)
Clifford L. Jones

Pennsylvania Public Utility Commission C-822983
v.
Big Run Telephone Company and Citizens
Utilities Company of Pennsylvania

O R D E R

BY THE COMMISSION:

We adopt as our action the Recommended Decision of Administrative Law Judge Klovekorn dated September 3, 1982, as amended; THEREFORE,

IT IS ORDERED:

1. That the complaint adopted by the Commission on April 30, 1982 in this proceeding is sustained with respect to Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17 and dismissed with respect to Paragraphs 12, 13, 14, 18, 19, 20, 21, and 22.

2. That a notice of solicitation of bids from all interested telephone companies for the assets of Big Run Telephone Company is to be published in the Pennsylvania Bulletin and that The Bell Telephone Company of Pennsylvania should be specifically asked to make such a bid.

3. That Citizens Utilites Company and Big Run Telephone Company are directed to permit representatives of interested buyers access to the books and records and physical plant of Big Run Telephone Company for the purpose of inspecting and valuing Big Run's assets.

4. That bids are due sixty (60) days after date of publication in the Pennsylvania Bulletin.

5. That in the event the sale of Big Run Telephone Company is not effectuated within sixty (60) days of receipt of bids, the Commission shall grant the "Petition To Issue a Show Cause Order Directing Big Run Telephone Company To Show Cause Why Its Certificate of Public Convenience Should Not Be Rescinded" filed by the Office of Consumer Advocate on August 31, 1981.

BY THE COMMISSION,

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: October 15, 1982

ORDER ENTERED: October 15, 1982

1/ Concurring as to granting of the ALJ Decision
Dissenting as to Paragraph 5 at this time.

Release Date: October 15, 1982
Public Meeting Date: October 15, 1982

OPINION OF COMMISSIONER LINDA C. TALIAFERRO

Re: ALJ-319 - Pa. PUC v. Big Run Telephone Co. and Citizens Utilities Company of Pa. (C-822983)

Issue Involved

Whether the Commission should adopt the Administrative Law Judge's recommended decision which recommends that the Complaint initiated by the Commission be sustained in part and orders that notice be published of solicitation of bids from all interested telephone companies for assets of Big Run, and directs Big Run to permit representatives of interested buyers access to its books and records and physical plant.

In my opinion, no. While I do agree with Judge Klovekorn's conclusion that the consolidation of rates of the two Citizen subsidiaries may only be a cosmetic remedy to customer dissatisfaction and high rates, I believe the Commission is without power to order the utility to open its books and records to interested purchasers, nor are we in the position to order Big Run to divest itself of its operating territory.

Facts/Analysis

The instant decision is the result of a Commission instituted complaint to order Big Run and Citizens Utilities Company of Pa. to file consolidated rates. This is the latest in a number of actions taken by the Commission to improve the rates and services of Big Run. However, the question of service was not specifically an issue in this case. To this extent, I agree with the exceptions of Trial Staff and Respondent that the Administrative Law Judge erred to the extent that his ruling went beyond the issues before him to encompass quality of service related questions.

The question before the Commission was whether the consolidation of rates for Big Run and Citizens Utilities Co. of Pa. will materially benefit the customers of these two utilities.

The Staff takes the position that, based upon the testimony of their witness and their analysis of potential impact of the combining of rates, a consolidation is in the public interest and may possibly result in lower rates to Big Run customers.

Both the Consumer Advocate and the Judge recommend that such a consolidation is only cosmetic and temporary. The Judge goes further to conclude that the root of the problem is the customer's dissatisfaction with their present utility and their high rates; a dissatisfaction which is so widespread that a divestiture of customers and utility is the only way to bring rates to a reasonable level. The Judge does not specify how a change in attitude on the part of Big Run customers toward a new utility will lower rates, nor does he discuss whether any new company could serve Big Run residents at a lower cost without having existing ratepayers of that company subsidize Big Run ratepayers.

The utilities, both Citizens Utilities Co. of Pa. and Big Run, take no opposition to the consolidation of rates but point out that the Commission has neither the authority to require them to present their books and records to interested buyers nor the authority to order them to sell their franchise.

Discussion

I remind my colleagues at the Commission that we know all too well the revenue problems associated with Big Run. We are also aware, when we attempted to tackle the problems raised by the citizens of Big Run, that minor operational and management corrections were not going to lower the rates of a company with high operating costs and a relatively small customer class. But, we led those citizens down the primrose path with promises that we would investigate, that we would make things better and that we would even get them a new company if we had to, when all along what we were hoping for was that someone would bail us out. Well, in my opinion, we've just about reached our last card and no one has come forward to take the heat off the Commission and, I, for one, will not participate in a further charade.

The plain facts of the matter are that this is a bad situation for the utility and the customer alike and we should tell them both that in no uncertain terms. Secondly, we should recognize that there has been no evidence presented in any of the Big Run proceedings to indicate that any other utility could do a better job and certainly no indication that anyone else wants to take over the Big Run operating territory. This we should also make clear to the residents of Big Run, no matter how distasteful it is.

We should apologize to the citizens of Big Run and their able Representatives for not being able to go further than granting the Office of Consumer Advocate's Petition for an Order to Show Cause and move on it as expeditiously as possible. To do otherwise would be because of our desire to wear the white hats and slay the dragon utility company. We have taken leave of our collective senses and usurped the legislative process of making law. If the able Representatives of Big Run were to utilize the legislative process and, in conjunction with their peers in the House and Senate, pass legislation granting the Public Utility Commission the power and authority to force an unwilling privately-owned company to divest itself of title and ownership, then clearly we could act as the Administrative Law Judge proposes. Let me say here so that I am not misunderstood -- Yes, I agree that Administrative Law Judge Klovekorn's recommendation concerning the sale of Big Run is an alternative should it yield any potential buyers; however, I do not believe we have the authority to require the Company (force, if you will) to submit to the process recommended by the Judge. If the situation were one that was agreeable to the Company and if the prospect of the Commission using its good offices would materially enhance the prospects of accomplishing what Big Run could not itself accomplish without our services, then I would recommend approval of his decision. But, on the record before us, I cannot see Administrative Law Judge Klovekorn's decision as being either novela or practical; it certainly is not legal nor could it now be said to necessarily reflect good business practices for the purchasing company if existing ratepayers subsidize Big Run ratepayers.

The only legal alternative now present before the Commission is to grant the Consumer Advocate's Show Cause Order to settle this matter once and for all. It is, in my view, the last card we hold.

Recommendation

For these reasons, I would recommend that the Commission grant the Office of Consumer Advocate's petition for an Order to Show Cause, recommend to Big Run that they again solicit bids from potentially interested purchasers of Big Run, and that we take no action to consolidate the rates of Big Run and Citizens Utilities Co. of Pa., pending the outcome of the Order to Show Cause.

The Show Cause proceeding should carefully consider the principles enunciated in the Met Ed case as the legal and evidentiary bases considered by the Public Utility Commission for a revocation of a certificate of convenience to operate a utility, it should also carefully consider and review the information gathered from our

previous investigation as well as the possibilities of finding a new utility that could offer service at a level of rates lower than those offered by Big Run.

Linda L. Taliaferro

Commissioner

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ATTACHMENT B
TO THE
JOINT ANSWER OF THE COUNTY OF PIKE
AND THE OFFICE OF CONSUMER ADVOCATE
TO THE PRELIMINARY OBJECTIONS OF
PIKE COUNTY LIGHT & POWER COMPANY

TELEPHONE (973) 875-5101
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February 10, 2006

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SECRETARY'S BUREAU

Mr. Kelvin Burke
Consolidated Edison Inc
4 Irving Place
New York, NY 10003

Dear Mr. Burke:

The purpose of this letter is to indicate to you our interest in purchasing Pike County Light and Power Company. We have expended a considerable amount of effort and expense to evaluate the economics of such a transaction. We ask that you give consideration to our proposal, and provide the information requested in the attached data request. After we have received and analyzed the information, it is our intent to submit an offer to you.

Although you serve only 4,500 electric and 1,100 gas customers in Pennsylvania, there are minimum costs associated with serving in a individual state including regulatory filings, annual reports, occasional cost of service studies supporting rate change requests, and political and public relations costs as well. In addition, the allocation of shared costs among state jurisdictions becomes more complex and increases the likelihood that it could become an issue in your New York and New Jersey filings.

Even though the elimination of the direct and indirect costs of serving a very small customer base is in itself a compelling reason for selling Pike County Light and Power, our preliminary estimates indicate that we can also present you with an attractive price as well. Based upon publicly available information and our preliminary assumptions, we have estimated a value for Pike County Light and Power to us that produce an impressive premium over book value of the common stock ranging from 1.70 to 2.50. Depending upon the results of due diligence, our preliminary estimates are subject to significant change.

Sussex Rural Electric Cooperatives ("SREC") serves over 11,000 customers in Sussex County, New Jersey and a few customers in Orange County, New York. SREC is organized into three geographic regions, each of which is entitled to three members on our Board of Directors. We take considerable pride in our close relationships with our members and our employees, and are very active in local community projects and service area development. Since our long term power contracts are not materially effected changes in natural gas prices, our current average purchase power prices is only ---- per kWh. Because of the size and geographic fit with Pike County Light and Power Company, we believe a transaction is also very beneficial to us as well.

In performing due diligence, it is our intent to keep all information in complete confidence and to not disrupt your daily operations any more than is absolutely necessary. In that regard, we are enclosed a confidentiality agreement and have attached an initial list of due diligence items that we would like to review.

In closing, our Board of Directors enthusiastically supports the proposed transaction. Because of our past conservative financial policies, our principal creditor supports our efforts in such a transaction.

I would appreciate the opportunity to personally meet with you or your representative to discuss this opportunity. Therefore, I plan to call your office to determine a convenient time. If you have any questions in the interim, please do not hesitate to contact me.

Sincerely,

Robert M. Kolling
President / CEO

Enclosures:

Cc: Mr. Robert N. Hoglund, CFO Consolidated Edison Inc.

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ATTACHMENT C
TO THE
JOINT ANSWER OF THE COUNTY OF PIKE
AND THE OFFICE OF CONSUMER ADVOCATE
TO THE PRELIMINARY OBJECTIONS OF
PIKE COUNTY LIGHT & POWER COMPANY

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

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PRESS RELEASE

Date: June 22, 2006

Contact: Jennifer Kocher, Press Secretary
717.787.5722

PUC Releases Report on Competitive Market Conditions for Pike County Light & Power

Commission also clarifies rule changes designed to increase competition in area

HARRISBURG – The Pennsylvania Public Utility Commission (PUC) today released a report on its staff's fact-finding inquiry into the competitive electric market in the Pike County Light & Power (PCLP) service territory.

"Issuing this report for public consumption does not represent the end of Commission action on this matter, but rather we will continue to move forward because as I have said before I am not willing to abandon these customers," said Commission Bill Shane. "This Commission will use the contents of this report to determine what additional corrective steps need to be taken in order to assure that Pike County Power's customers have access to effective competition."

The Commission voted unanimously to release the report that answers a series of 14 questions designed to help gather information regarding the enhancement of the competitive electric market in the PCLP service territory. The report details the answers to those questions provided by various interested parties including the PCLP, the Office of Consumer Advocate, the Office of Small Business Advocate, Retail Energy Supply Assoc., Constellation Energy Group Companies and a coalition of industrial consumers. The report was prepared by the Commission's Law Bureau.

At today's meeting, the Commission also provided clarification that its April 29, 2006, actions to waive some rules for Electric Generation Suppliers applied to all suppliers operating in the PCLP territory. The actions were designed to encourage increased participation in the service territory by EGS. The waivers addressed areas such as switching rules, rescission periods, exchange and release of customer information, bill format and supplier licensing.

In August 2005, the Commission approved PCLP's Default Service Implementation Plan, which included procedures necessary to implement default service (for customers when alternative providers are not available) and establish Provider of Last Resort rates for all customer classes.

In October 2005, PCLP implemented this plan by purchasing power via an auction which led to about a 70 percent rate increases for electric customers. On April 29, 2006, the Commission certified the results of a retail aggregation bidding program for the PCLP service territory that provided a modest savings for consumers.

The Pennsylvania Public Utility Commission ensures safe, reliable and reasonably priced electric, natural gas, water, telephone and transportation service for Pennsylvania consumers, by regulating public utilities and by serving as responsible stewards of competition. For recent news releases, or more information about the PUC, visit our website at www.puc.state.pa.us.

# # #

Docket No: P-00052168, P-00062205

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

VERIFICATION

I, Irwin A. Popowsky, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Respectfully Submitted,

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Consumer Advocate
PA Attorney I.D. # 25764
E-Mail: spopowsky@paoca.org

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
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Phone: (717) 783-5048
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Dated: August 15, 2006
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CERTIFICATE OF SERVICE

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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, Joint Answer Of The County Of Pike And The Office Of Consumer Advocate To The Preliminary Objections Of Pike County Light & Power Company, 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 15th day of August 2006.

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August 24, 2006

ORIGINAL

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

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

Dear Secretary McNulty:

Enclosed for filing, please find an original and three (3) copies of the Reply of the County of Pike and the Office of Consumer Advocate to the Pike County Light & Power Company Motion for Leave to File Responsive Pleading, in the above-referenced proceeding.

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

DOCUMENT FOLDER

Sincerely,

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

BTL

Enclosures
cc: Honorable Ember S. Jandebeur *(via electronic mail)*
Parties of Record

00090295.DOC

SECRETARY'S BUREAU
PA PUC
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45

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 AUG 24 PM 4:03
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SECRETARY'S BUREAU

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

REPLY OF THE COUNTY OF PIKE AND
THE OFFICE OF CONSUMER ADVOCATE TO THE
PIKE COUNTY LIGHT & POWER COMPANY
MOTION FOR LEAVE TO FILE RESPONSIVE PLEADING

Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission's (Commission) rules regarding Motions, 52 Pa. Code § 5.103, the County of Pike (County) and the Office of Consumer Advocate (OCA) provide the following Reply to the Pike County Light & Power Company (PCL&P or Company) Motion for Leave to File Responsive Pleading

I. INTRODUCTION

On August 4, 2006, pursuant to Section 5.101 of the Pennsylvania Public Utility Code, PCL&P filed Preliminary Objections to the Amended Complaint of the County and the OCA. The Preliminary Objections were comprised of eighty (80) numbered paragraphs that addressed five (5) broad substantive areas. In addition, the Company filed extensive New Matter, consisting of thirty-nine (39) paragraphs. Section 5.101 requires that an answer to Preliminary Objections is to be filed "within 10 days of the date of service." See, 52 Pa. Code § 5.101(f). Paragraph (g) of Section 5.101 specifies that a decision with respect to the Preliminary

DOCUMENT FOLDER

DOCKETED
DEC 18 2006

SAUL EWING
Attorneys at Law

Celebrating 85 years of service.

ORIGINAL

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August 22, 2006

BY HAND DELIVERY

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

DOCUMENT FOLDER

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 for Leave to File Responsive Pleading in the above-referenced matter.

A Certificate of Service is also attached.

Please call if you have any questions.

Sincerely,

John J. Gallagher
Counsel for PCL&P

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

2006 AUG 22 PM 3:56
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

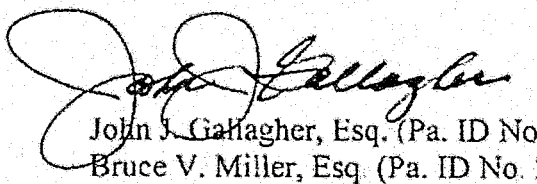
COUNTY OF PIKE, Complainant V. PIKE COUNTY LIGHT & POWER COMPANY, Respondent	:	Complaint Docket No. C – 20065942

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 for Leave to File Responsive Pleading within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,



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Counsel for
Pike County Light & Power Company

Date: August 22, 2006

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE, Complainant V. PIKE COUNTY LIGHT & POWER COMPANY, Respondent	:	Complaint Docket No. C – 20065942

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MOTION OF
PIKE COUNTY LIGHT & POWER COMPANY
FOR LEAVE TO FILE RESPONSIVE PLEADING

I. INTRODUCTION

Pursuant to Section 5.103 of the Commission's Regulations, 52 Pa. Code § 5.103, Pike County Light & Power Company ("PCL&P" or the "Company") hereby respectfully submits this Motion for Leave to File a Responsive Pleading to the Joint Answer of the County of Pike ("County") and the Office of Consumer Advocate ("OCA") to the Preliminary Objections of Pike County Light & Power Company ("Joint Answer"). PCL&P respectfully submits that the presiding officer should exercise her broad discretion to permit the filing of a responsive pleading to the Joint Answer of the County and the OCA to correct an inordinate number of misstatements and mischaracterizations of law and fact that appear in the Joint Answer.

The Company is cognizant of the fact that it is requesting permission to file a reply that is out of the ordinary in Commission procedure. PCL&P respectfully submits, however, that the filing of the requested responsive pleading is necessary in order fully to inform the presiding officer and the Commission of the relevant law and facts in this very important proceeding.

In support of its Motion, PCL&P submits the following:

II. PROCEDURAL BACKGROUND

On August 4, 2006, PCL&P filed with the Commission and served on the parties Preliminary Objections to the Amended Complaint of the County of Pike. In its Preliminary Objections, the Company sought the dismissal of the County's Complaint on the grounds that (1) the Commission lacks jurisdiction to grant the relief requested, (2) the filed-rate doctrine bars the claims in this case, (3) this matter is moot or not ripe for adjudication, and (4) the County failed to join a necessary party, among other things. PCL&P requested that its objections be sustained and the Complaints in this matter be dismissed.

On August 15, 2006, the OCA and the County filed a Joint Answer to the Company's Preliminary Objections[1] and requested that the Commission dismiss PCL&P's Preliminary Objections. In their Joint Answer, the OCA and the County mischaracterize the facts and distort the law that supposedly lends credibility to their untenable positions. If these misstatements are allowed to stand, the record in this proceeding will be irrevocably corrupted and the presiding officer and the Commission would have neither an accurate record nor appropriate law upon which to base a decision.

III. AUTHORITY TO ALLOW THE FILING OF A REPLY

The Commission's Rules and Regulations give the presiding officer the discretion and flexibility necessary to grant a party's request to file a responsive pleading. The rules do not prohibit the filing of a reply to an answer to preliminary objections, but instead, provide for a number of means for the judge and the Commission to give the parties latitude to argue their case and advocate their position. In addition, the rules provide for exceptions and waivers that add to

[1] The propriety of the OCA joining the County in its filing of an answer is questionable because the OCA is not a Complainant and PCL&P has not been afforded the opportunity to respond to the claims advanced by the OCA.

the presiding officer's power and authority to direct the conduct of a proceeding in a manner that most effectively and justly disposes of issues and claims brought before the Commission.

Although the Commission's Rules and Regulations do not provide specifically for a reply to an answer to preliminary objections, such a reply is not forbidden and may be permitted at the discretion of the presiding officer. Under Section 5.1 of the Commission's regulations, "[t]he pleadings in an action before the Commission ***include*** the following: (1) Application and Protest, (2) Formal Complaint, answer, new matter and reply to new matter, (3) Order to show cause and answer, (4) Petition and answer, (5) Preliminary objections, (6) Motions." 52 Pa. Code § 5.1 (emphasis added). The language of this section leaves the clear impression that the list is not exhaustive or exclusive. Therefore, although a reply to an answer to preliminary objections is not included in the list of pleadings allowed to be filed, it is not excluded and may be permitted at the discretion of the judge.

Even if Section 5.1 were to be interpreted as barring the filing of the reply sought by PCL&P, the Commission's rules provide procedures to waive a rule or seek an exception. In general, the Commission's procedural rules are to be "liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which [the rules are] applicable." *Id.* § 1.2. The presiding officer may waive a requirement of the rules when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party. *Id.* § 1.2(c). Also, a party may request an exception or waiver of any procedural rule or formal requirement of the Commission by showing the nature of the waiver or exception desired and the reasons that support the request. *Id.* § 1.91 and 5.43.

Finally, there is ample Commission precedent for granting motions for leave to file responses not specifically provided for in the Commission's regulations. For example, in *PUC v.*

Pennsylvania Power Co., 55 Pa. PUC 552, 1982 Pa. PUC LEXIS 154 (Order issued January 22, 1982), the presiding officer granted an OCA motion for leave to file a response to a reply statement to OCA's brief in the case. Also, in *PUC v. Bell Telephone Co. of Pa.*, 57 Pa. PUC 521, 1983 Pa. PUC LEXIS 28 (Order issued July 29, 1983), the Commission, in arriving at its decision, referenced statements made by the OCA in its motion for leave to file a reply to an answer. These are instances where the presiding officer and the Commission have exercised their discretion to allow a responsive pleading where the interests of justice necessitate it. The instant case demands that this Motion for Leave to File a Responsive Pleading be granted.

By means of this Motion, PCL&P respectfully requests that the presiding officer exercise her broad discretion, permit the Company to file a reply to the Joint Answer and grant a waiver or exception of any rule that might disallow the filing of such a reply. As more fully set forth below, there are many compelling reasons for granting this Motion and permitting the filing of a reply to the Joint Answer.

IV. REASONS FOR ALLOWING THE FILING OF A REPLY

PCL&P respectfully requests that the presiding office grant this Motion in order to address a number of misstatements and distortions of fact and law that, if allowed to stand unrebutted, would taint the record, and the presiding officer and the Commission would have neither an accurate record nor appropriate law upon which to base a decision.[2]

The true basis of the Complaints in this matter and the true nature of the relief requested by the Complainants is misstated and mischaracterized in the Joint Answer. Before the filing of the Joint Answer, the gravamen of the Complaint, as amended, was the allegedly excessive "generation rates" and "overall rates" of the Company (Amended Complaint at 1). Now the

[2] The misstatements and distortions of fact and law in the Joint Answer are more fully explained and rebutted in the proposed reply attached to this Motion (Attachment A).

OCA and the County claim that the Complaints seek to challenge the Company's current and future default service rates, including PCL&P's (yet to be determined) future default service procurement plan. Joint Answer at 14-16. This is a crucial difference, and the OCA and the County have chosen to pretend that the Complaints were not defective from the beginning by introducing this new defective challenge to default service rates for the first time.

The Joint Answer concedes that the Complaints in this case have been filed with an improper purpose - to force the Commission to act on the Law Bureau Report. Under the Public Utility Code, complaints are to be filed to compel a respondent to conform its behavior to the law and the Commission's regulations. A complaint presupposes a violation of the law and seeks to rectify the harm done as a result. It is clear from the pleadings in this matter that the Company has not violated any laws or regulations with regard to its rates or service, and that the Complainants are misusing the Commission's process for an improper purpose.

The Joint Answer attempts to respond to PCL&P's jurisdictional challenge of the Commission's authority to force a sale of the Company. Every one of the arguments contained in the Joint Answer amounts to a distraction that does not address the real legal question at hand. Contrary to the implications in the Joint Answer, the Company does not question the Commission's authority to revoke a certificate of public convenience, to amend its own orders, or to enforce the provisions of the Public Utility Code. The Company has made it clear that the Public Utility Law does not authorize the forced sale of an electric utility, nothing more.

The Joint Answer mischaracterized and misrepresented cases to support the conclusions desired by the OCA and the County. The *Big Run*[3] and *Monongahela Power*[4] cases cited in the Joint Answer are misused by the OCA and the County and their relevance and import distorted to

[3] *Pennsylvania Public Utility Commission v. Big Run Telephone Company*, Docket No. C-822983 (Order entered October 15, 1982)

[4] *In the Matter of the Certified Territory of Monongahela Power Company*, 2005 Ohio PUC LEXIS 306 (2005).

produce a result that would be inconsistent with the Public Utility Code and this Commission's precedents and long-standing practice. The *Big Run* Order does not answer the question of whether the Commission has the authority to force the sale of an electric utility; rather, it begs the question. Moreover, the *Monongahela Power* case is an Ohio decision based on specific statutory authority to transfer one utility's assets to another, something that is non-existent in Pennsylvania.

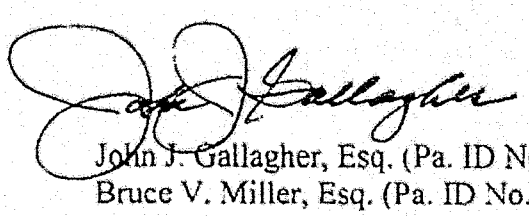
Finally, the OCA and the County are well aware that there are existing, ongoing proceedings before the Commission that are intended to address the very issues that are raised in the Complaints and the Joint Answer. OCA and the County, however, do not even discuss these proceedings and provide a reason or reasons why they cannot address the matters raised in the Complaints. Elementary standards of candor would, at the very least, require the acknowledgement of such proceedings and provide at least a "nod" to the inherent duplication of issues.

Based on the misstatements and distortions of law and fact contained in the Joint Answer, as more fully explained in the attached proposed reply, it is proper and necessary for the presiding officer to permit PCL&P to file a reply to the Joint Answer. In addition to being appropriate, the grant of this Motion would be the only just and fair way to ensure that the record in this matter and the legal precedents supporting a future decision will not be distorted.

V. CONCLUSION

Based on the foregoing, Respondent Pike County Light & Power Company respectfully requests that the presiding officer issue an Order (1) granting this Motion for Leave to File a Responsive Pleading, (2) granting a waiver or exception of any rule that might disallow the filing of such a reply, and (3) granting such other relief as the presiding officer deems just and proper. In the alternative, PCL&P respectfully requests that the presiding officer schedule oral argument prior to the issuance of a decision on PCL&P's Preliminary Objections to address the issues raised in this Motion and the attached proposed reply.

Respectfully submitted,



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Counsel for
Pike County Light & Power Company

Date: August 22, 2006

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE, Complainant	:	
V.	:	Complaint Docket No. C – 20065942
PIKE COUNTY LIGHT & POWER COMPANY, Respondent	:	

REPLY OF
PIKE COUNTY LIGHT & POWER COMPANY
TO THE JOINT ANSWER OF THE COUNTY OF PIKE
AND THE OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

Pursuant to the Order of Administrative Law Judge Ember S. Jandebeur granting the Motion of Pike County Light & Power Company ("PCL&P" or the "Company") for Leave to File a Responsive Pleading to the Joint Answer of the County of Pike ("County") and the Office of Consumer Advocate ("OCA") to the Preliminary Objections of Pike County Light & Power Company ("Joint Answer"), PCL&P respectfully submits the following Reply to the Joint Answer.

II. PROCEDURAL HISTORY

On February 24, 2006, the County filed a Formal Complaint ("Original Complaint"). On March 13, 2006, PCL&P filed its Answer ("Answer") to the Complaint with the Pennsylvania Public Utility Commission ("Commission"). On July 14, 2006, the County filed an Amended Formal Complaint ("Amended Complaint") in the above-referenced docket that amends its Original Complaint.

Also on July 14, 2006, Administrative Law Judge Ember S. Jandebeur issued a Prehearing Conference Order and Second Interim Order of Consolidation directing that

fifty (50) Formal Complaints relating to this matter be consolidated for purposes of hearing and disposition. The substantive allegations of the above-referenced Complaints are substantially the same as the allegations of the other Complaints consolidated by ALJ Jandebeur's July 14, 2006 Order.

On August 4, 2006, PCL&P filed its Preliminary Objections and Answer to the County of Pike's Amended Complaint. In its Preliminary Objections, the Company seeks the dismissal of the Original Complaint, Amended Complaint and all of the consolidated Complaints (together the "Complaints") on the grounds that, *inter alia*, (1) the Commission lacks jurisdiction to grant the relief requested, (2) the filed-rate doctrine bars the claims in this case, (3) the Commission has considered and rejected the requested relief, (4) this matter is moot or not ripe for adjudication, and (5) the County lacks standing and failed to join a necessary party. PCL&P requested that its objections be sustained and the Complaints in this matter be dismissed.

On August 15, 2006, the OCA and the County filed a Joint Answer to the Company's Preliminary Objections[1] and requested that the Commission dismiss PCL&P's Preliminary Objections. The OCA and the County make a number of misleading statements and arguments in their Joint Answer. While we do not claim that such arguments are deliberately misleading, they must, nevertheless, be corrected. In attempting to support their claims, the OCA and the County also mischaracterize the facts in this case and misstate the law to lend credibility to untenable positions. If these misstatements are allowed to stand, the record in this proceeding will be irrevocably

[1] The propriety of the OCA joining the County in its filing of an answer is questionable because the OCA is not a Complainant, and PCL&P has not been afforded the opportunity to respond to the claims advanced by the OCA. Also, by letter dated August 8, 2006, attorney James P. Melia advised the Commission and the parties that his clients, Richard L. Snyder, Samall Properties and Three Lane Utilities, Inc. would adopt the Joint Answer. Consequently, all arguments set forth herein apply with equal force to these parties.

corrupted and the presiding officer and the Commission will have neither an accurate record nor appropriate law upon which to base a decision.

III. REPLY TO JOINT ANSWER

A. The Applicable Standard of Review Compels Dismissal of the Complaints.

PCL&P takes no issue with the restatement of the standard of review for preliminary objections in the Joint Answer. The application of the applicable standard should result in the dismissal of the Complaints filed in this consolidated matter. It is clear from the case law dealing with preliminary objections in the Commonwealth that, where it is impossible for the trier of fact to grant the relief requested by the Complainant, the claims must be dismissed.

In the review of preliminary objections, facts that are ***well-pleaded, material and relevant*** will be considered as true, together with such inferences as may be drawn from such facts. *Mellon Bank, N.A. v. Fabinyi*, 650 A.2d 895 (Pa. Super. Ct. 1994). The test on preliminary objections is whether it is clear and free from doubt from all of the facts pleaded that the pleader will be ***unable to prove facts legally sufficient to establish his right to relief***. *Bower v. Bower*, 611 A.2d 181 (Pa. 1992). The question presented by a demurrer is whether, on the facts averred, the law says with certainty that ***no recovery is possible***. *Werner v. Plater-Zyberk*, 799 A.2d 776 (Pa. Super. Ct. 2002), *appeal denied*, 806 A.2d 862.

As set forth more fully in the Company's Preliminary Objections together with this Reply, the relevant facts set forth in the Complainants' pleadings, even when deemed to be true, do not amount to legally sufficient facts to establish a right to the relief sought. The Complaints fail to plead facts sufficient under applicable Pennsylvania law to

support the unprecedented, extreme, and unjustifiable remedies that the Complainants are pursuing in this case.

B. The Joint Answer Admits that the True Purpose of the Complaints is to Force Action on the Law Bureau's Report, and a Complaint Case is an Improper Forum to Force Action on the Law Bureau Report.

On page 2 of their Joint Answer, the OCA and the County concede the true purpose of the Complaints:

> The County seeks to have the Commission take actions that were specifically detailed in the Commission's own "Report..." prepared by the Law Bureau and released by the Commission at its Public Meeting held June 22, 2006.

The Joint Answer (at 20) reaffirms this with its claim that:

> ...[T]he purpose of the Report was not to gather dust on a Commission file shelf

As if that were not enough, the Joint Answer concedes that the Complaints were filed for the sole purpose of forcing Commission action on the Law Bureau Report. The Joint Answer (at 20) states that the purpose of the Law Bureau Report:

> ...[W]as not to preclude active parties from seeking to implement the recommendations of the Report through public proceedings at the PUC.

The Joint Answer (at 21) goes on to concede that:

> The present Amended Complaint provides the Commission with a vehicle in which to address the pressing needs identified in the Staff's fact finding report.

It should now be crystal clear that the Complaints are nothing more than a pretext to force action on a report that the Commission, itself, has heretofore declined to act upon.

Given the unassailable fact that the Complaints were filed *solely* to force the Commission to act on the Law Bureau Report, they must be dismissed.

Under Section 701 of the Public Utility Code, a party may complain of "any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa. C.S. § 701. Showing that PCL&P has violated some law, order or regulation is not the purpose of the Complaints in this case. The Joint Answer demonstrates beyond cavil that the purpose of the Amended Complaint was to force action on the Law Bureau Report. OCA and the County are simply unhappy that the Commission, to date, has not seen fit to take any action on the Report.

Accordingly, the proper course of action for the Complainants and OCA was to file a petition with the Commission pursuant to 52 Pa. Code § 5.43 asking it to act on the Law Bureau Report.

The failure of an administrative agency to act on a matter is, in itself, action. *See, City of Philadelphia Police Dep't v. Civil Serv. Comm'n,* 702 A.2d 878, 1997 Pa. Commw. LEXIS 814 (Pa. Cmwlth. 1997). Where, as here, the Complaints are being used solely as a pretext to force action on a Report which the Commission, in its wisdom has heretofore not chosen to act upon, the Complaints must be dismissed as a bald attempt to evade the Commission's determinations. To do otherwise would be to usurp the Commission's power and tacitly overturn its determination not to act upon the Law Bureau Report at this time.

The Complaints should, accordingly, be dismissed. The Complainants are free to petition the Commission for the relief they seek.

C. The Jurisdictional Arguments in the Joint Answer Have Nothing to Do With the Commission's Jurisdiction to Grant the Relief Sought.

The Joint Answer's argument that the Commission has the power to force a sale because Section 1103 of the Public Utility Code provides the Commission with the implied power to revoke a certificate of public convenience (Joint Answer at 5-6) has nothing to do with the dispute at hand. This argument is misplaced and irrelevant because the County has not asked the Commission to revoke PCL&P's certificate - it has asked the Commission to order a sale of PCL&P.

In a similar vein, the Joint Answer's Section 703(g) argument regarding the Commission's power to rescind and amend its orders, is also irrelevant. This is not the relief requested by the County. No complainant has sought a change to an existing order. The Complainants want the Commission to issue a ***new*** order that would direct PCL&P to put itself up for sale.

Both of the Joint Answer's claims are procedurally infirm. Procedurally, the Commission generally exercises its powers under 703(g) in response to a *petition* to rescind or amend an order or a *petition* for reconsideration. No Complaint in this consolidated proceeding has sought revocation of a certificate. No Complaint sought a revision to an existing order.

Moreover, PCL&P was not on notice that the Complainants were seeking either a revocation of a certificate or rescission or modification of a prior Commission order.[2] The issue was not even raised until the OCA and the County disclosed this "rationale" as

[2] Interestingly, in the *Big Run* case that is cited repeatedly in the Joint Answer and discussed below, the OCA filed a "Petition to Issue A Show Cause Order Directing Big Run Telephone Company to Show Cause Why Its Certificate of Public Convenience Should Not Be Rescinded." (Big Run RD at 3, 12). Undoubtedly, that filing put the company on notice that the OCA was seeking rescission of its certificate.

part of their Joint Answer to the Company's Preliminary Objections. If this proceeding were to be based upon either Section 703(g) or 1103, the failure of the complainants to give notice to PCL&P that they are seeking revocation of its certificate would violate the Company's due process rights, and any attempt by the parties to make this a case about the revocation of its certificate must be rejected by the Commission. *See, ARIPPA v. Pa PUC*, 792 A.2d 636 (Pa. Cmwlth. 2002) *appeal denied* 815 A.2d 635 (reasonable notice is a basic due process right in administrative proceedings).

The Section 501(a) argument (Joint Answer at 7-8) is hardly compelling, as it is just a catch all provision of the public utility code which gives the Commission the power to enforce its orders and regulations. Clearly, however, Section 501 cannot be interposed to support a grant to the Commission of limitless powers. Absent express legislative authority, the Commission is powerless to interfere with the general management decisions of public utility companies. *Pa. PUC v. PECO*, 473 A.2d 997 (Pa. 1984).

In their Joint Answer, the OCA and the County have claimed that the Commission has the power to order the sale of PCL&P, but the statutory provisions cited in the Joint Answer provide for other powers - not the power to order a sale. The Commission has no such power and the County and the OCA have not come close to alleging, much less demonstrating, that it does.

D. The Joint Answer Misstates and Misrepresents the Action of the Ohio Commission.

It is imperative that the ALJ realize how grossly the Joint Answer distorts the *Monongahela Power* case[3], which the Joint Answer claims provides authority for its proposition that regulators have broad general powers that include the authority to

[3] *In the Matter of the Certified Territory of Monongahela Power Company*, 2005 Ohio PUC LEXIS 306 (2005).

transfer one utility's territory to another. Joint Answer at 13-14. In that case, the Public Utilities Commission of Ohio ("PUCO") ordered an inquiry into whether another utility should take over Monongahela Power's Ohio service territory because that company refused to offer a rate stabilization plan. Subsequently, Columbus Southern Power agreed to acquire Monongahela Power's assets in Ohio.

The Joint Answer disingenuously claims that "[t]he Ohio PUC's approach in *Monongahela Power* mirrored that of the Pennsylvania Commission's in *Big Run*." (Joint Answer at 14). In addition to the fact that Ohio law does not control in Pennsylvania, what the Joint Answer conspicuously fails to disclose is that the PUCO was not relying on some "general authority" but rather on a specific statutory authority to order the transfer of a franchised service territory from one utility to another. Ohio Revised Code, Section 4933.83(B) states, in relevant part:

> The public utilities commission may, after a hearing had upon due notice, make such findings as may be supported by proof as to whether any electric supplier operating in a certified territory, or providing electric service... is rendering or proposes to render physically adequate service to an electric load center and in the event the commission finds that such electric supplier is not rendering and does not propose to render physically adequate service, the commission may enter an order specifying in what particulars such electric supplier has failed to render or propose to render physically adequate service and order that such failure be corrected within a reasonable time to be fixed in such order. If the electric supplier so ordered to correct such failure fails to comply with such order, *the commission may authorize another electric supplier to furnish electric service to such electric load center* and shall appropriately amend the maps of the certified territory of such electric suppliers.

ORC § 4933.83(B) (emphasis added). No such authority exists in Pennsylvania. Moreover, in the Ohio case, the utilities agreed to the acquisition. The PUCO made no order requiring the acquisition.

More telling is the fact that the extensive powers that the Ohio legislature explicitly granted to the PUCO cannot be exercised until *after* (a) a hearing has been held establishing inadequate service, (b) an order has been issued to the utility telling it specifically to remedy the deficiencies, and (c) the utility fails to comply with that order. The fact that, the Complainants would deny PCL&P these fundamental procedural safeguards in their eagerness to implement a forced sale underscores both the drastic and improper nature of the relief they seek.

E. The Big Run Case Suffers from Fatal Deficiencies Which Make it Wholly Inapplicable to This Proceeding.

From the beginning of this matter, the County and the OCA have sought to rely upon the *Big Run*[4] case to support the contention that the Commission has the necessary authority to order the forced sale of PCL&P. The error of relying on *Big Run* is repeated and compounded by the County and the OCA in their Joint Answer. In short, *Big Run* is readily distinguishable on the facts and on the law from the instant matter and the case is wholly inapplicable to the circumstances under consideration in this proceeding.

The OCA and the County have gone to great lengths to manufacture similarities between the *Big Run* situation and the case at hand, but there are the obvious distinguishing characteristics of the *Big Run* case, which set it far apart from the facts and circumstance of this case. The case involved a telephone company with an "unconscionable number of service problems" (Big Run RD at 2, 10) operating in the days before the break-up of AT&T, the enactment of the Competition Act and Section

[4] *Pennsylvania Public Utility Commission v Big Run Telephone Company*, Docket No. C-822983 (Order entered October 15, 1982). *See*, Attachment A of the Joint Answer which includes the Recommended Decision of Administrative Law Judge Joseph J. Klovekorn dated September 9, 1982 ("Big Run RD") and the Opinion of Commissioner Linda C. Taliaferro. It should be noted that the Commission Order approving the final sale of Big Run Telephone Company and closing the case was issued on July 20, 1984.

529 of the Public Utility Code. The case involved a long-running dispute that first came to the attention of the Commission in 1979 and took nearly five years to resolve fully. In the end, the Commission ordered the publication of bids, Big Run reached an agreement with Bell of PA to transfer its assets and abandon service, and the Commission approved their Joint Application.

More important, there are legal problems with the *Big Run* decision that cannot be ignored. The most significant of these deficiencies is the failure of the ALJ and the Commission in that case to cite any authority for their decision to force the sale of the Big Run Telephone Company. So glaring was this omission that then-Commissioner Taliaferro issued a separate opinion to denounce it. She wrote:

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

Taliaferro Opinion at 1 and 3. The Commission's decision in *Big Run* was never challenged on appeal, but PCL&P respectfully submits that the Commission's failure to cite legislative authority for its actions makes its orders susceptible to challenge and reversal. The relief requested by the Complainants is without foundation or justification, and the Complaints should be dismissed because the Commission is powerless to grant the forced sale requested by the Complainants.

F. Section 529 Demonstrates that the Relief Sought in the Complaints Is Incompatible With Due Process and Must Be Dismissed.

The Company demonstrated that, by enacting a statute that permits the Commission to order the acquisition of troubled water systems (66 Pa. C.S. § 529), the General Assembly precluded the Commission from ordering the same for electric utilities. The Joint Answer offers the facile contention that there is a significant *difference* between the Commission's power to order an acquisition and the Commission's power to order a sale. Joint Answer at 12.

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

More telling, however, is the substance of Section 529 - which the Joint Answer conveniently ignores. Contrast the Joint Answer's claim that PCL&P must be sold with the many procedural safeguards for the sale of small water and sewer companies provided in Section 529(a) - safeguards that the Joint Answer would cavalierly discard.

Indeed, before the Commission can take any action under Section 529 it must find the following, only after notice and an opportunity to be heard:

> (1) that the small water or sewer utility is in violation of statutory or regulatory standards...;

(2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;

(3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;

(4) that alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible;

(5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and

(6) that the rates charged by the acquiring capable public utility to its pre-acquisition customers will not increase unreasonably because of the acquisition.

66 Pa. C.S. § 529(a).

Therefore, even if the Commission were to find that PCL&P is providing inadequate service at unreasonable rates, *and* that it is subject to a power similar to that the Commission enjoys under Section 529, the procedural safeguards set forth in Section 529 make clear that the only action the Commission could then take would be to specify the rates and service thereafter to be provided. Only *after* the Company violated those curative orders could the Commission even begin to contemplate additional action. Therefore, even if one were to credit the Joint Answer's contention that the Commission has the inherent power to order the sale of the Company, Section 529 demonstrates that it can do so only after it orders the Company to take remedial action and only after the

Company fails or refuses to do so. Therefore, a forced sale cannot lawfully be contemplated here.

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

> *Before* the commission may order the acquisition of a small water or sewer utility in accordance with subsection (a), the commission shall discuss with the small water or sewer utility, and shall give such utility a reasonable opportunity to investigate, alternatives to acquisition, including, but not limited to:
>
> (1) The reorganization of the small water or sewer utility under new management.
>
> (2) The entering of a contract with another public utility or a management or service company to operate the small water or sewer utility.
>
> (3) The appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public.
>
> (4) The merger of the small water or sewer utility with one or more other public utilities.
>
> (5) The acquisition of the small water or sewer utility by a municipality, a municipal authority or a cooperative.

Id. § 529(b) (emphasis added).

Therefore, even if the Commission had the inherent powers that the Joint Answer claims it does, a sale of the Company would not be the only remedy that the Commission would be required to consider[5] - and, again, it could do so only after the Company was afforded an opportunity to cure the deficiencies and failed to do so.

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[5] Moreover, even if this were a Section 529 proceeding - and it clearly is not - the Commission would have to find that a putative buyer is appropriate. The Joint Answer's reference to the letter from the Sussex Rural Electric Cooperative referencing its interest in acquiring PCL&P is not only wholly extra-record but, despite all its bluster, Sussex has not made any sort of tangible offer, and has failed to demonstrate that it possesses the financial wherewithal to acquire PCL&P. Perhaps more important, even if Sussex or another buyer acquired the Company, the cost of interconnecting with PJM is not going to be any less for the buyer than for PCL&P.

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

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

Id. § 529(e).

Furthermore, the OCA and the County seem not to understand that, just like the procedures under Section 529, a forced sale, to be lawful, would have to be at a price determined under the Eminent Domain Code, 26 P.S. § 1-101, *et seq* , as the law requires. That price would be determined based on Section 1-602 of that law, where "just compensation" demands that the measure of damages be "the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as unaffected by the condemnation and the fair market value of the property interest remaining immediately after the condemnation and as affected by the condemnation." 26 P.S. § 1-602 (also known as the "before-and-after" rule). Fair market value is likely to be considerably higher than book value, so how a forced sale would reduce rates - which are based on book value - is anyone's guess.

For all of the above reasons, even if these Complaints are not dismissed, it should be clear that any proceedings to be held pursuant to the Complaints may not consider any claim concerning a sale or other disposition of the Company. Assuming, *arguendo*, that every element of rates and service raised by the Complainants could be proved, the *only* remedy that the Commission could lawfully adopt would be to issue an order prescribing the rates and service to be thereafter provided. This is so, because, as Section 529 demonstrates, due process requires that the Company must be afforded an opportunity to comply with remedial orders that might emanate from these proceedings before a sale could even lawfully be contemplated.

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

G. The Complainants Lack Standing to Claim "Prospective" Rate Relief as Default Service Customers. The 'Prospective' Claim Also Conflicts with Recent Commission Decisions, Is an Abuse of Administrative Process, Wastes Administrative Resources, and Is Intended to Harass PCL&P.

The OCA and the County claim that they are challenging PCL&P's default service rates on a prospective basis:

> The current complainants are seeking a commission action, at some future point in time that would alter the existing rates and service that are contained in the Company's current tariff.

Joint Answer at 16. The OCA and the County allege that this is an appropriate time to challenge the default service rates because they are expiring soon. They also raise a *new*

claim for the first time in their Joint Answer - that they are challenging the Company's future default service procurement process in this Formal Complaint proceeding:

> The Company's current default service plan is set to expire on December 31, 2007. The County's complaint seeks to impact rates going forward, including after the conclusion of the existing default procurement plan. As noted in the amended complaint, the law bureau Report includes a recommendation to begin evaluating future default plans by the end of 2006...By virtue of these facts, the current level of default rates, and the future of default service procurement are timely issues that the parties have the right to challenge on a prospective basis.

Joint Answer at 16 (emphasis added). And finally, the Complainants argue that even though they (and most PCL&P's customers) are not current default service customers, they still have the right to challenge the existing default service rates *and* PCL&P's future default service procurement because they may become PCL&P default service customers in the future:

> ...while most customers are currently receiving generation service from Direct Energy, it is PCL&P's tariffed default service generation rates that are the cause of the problem that must be addressed. The County and all complainants have the right to file complaints against the tariffed rates of PCL&P, and they have an interest in the future of default service procurement after the current plan expires on December 31, 2007. The fact that most of PCL&P's customers are currently receiving generation service from an EGS, Direct Energy in this case, does not serve to limit their rights to file a complaint against the Company's tariffed default service rates, rates that all customers may be charged if they must return to default service.

Joint Answer at 17.

The Complainants lack standing to assert their claim for 'prospective' rate relief from the existing default service because none of the Complainants is taking service under the default service tariff. This claim is based entirely on a hypothetical, speculative harm for rates that the customers would be charged *if* they returned to default service. The claim should be dismissed because the parties lack standing.

The Complainants' *new* claim that attempts to litigate PCL&P's future default service procurement process in this Complaint proceeding is equally infirm. Such a claim is not the proper subject of a Formal Complaint proceeding under the Public Utility Code and the Commission's regulations. *See* 52 Pa. Code §§ 5.21, 5.22; 66 Pa.C.S. §§ 501, 504-506, 701, 1301, 1501. The new claim neither complains of any act or thing done or omitted to be done by PCL&P in violation of any law which the Commission has jurisdiction to administer nor does it relate to a provision in a tariff, regulation, report or other similar document on file with the Commission. *See* 52 Pa. Code § 5.21(a) and (b). It is not even a "timely issue" as claimed by the Complainants. The Commission recently held that the Company's future default service procurement requirements will commence on June 1, 2009, and not January 1, 2008, as alleged in the Joint Answer at 16-17.[6]

Most disturbing, however, is the fact that the Complainants have added a claim that seeks to litigate the Company's future default service procurement process in a Formal Complaint proceeding. This is improper. The Company's future default service procurement process is the subject of the Commission's longstanding formal rulemaking proceeding at Docket No. L-00040169. As the OCA well knows,[7] the Commission

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[6] *See PA PUC v. PCL&P*, Opinion and Order adopted June 22, 2006, entered June 28, 2006, at Docket No. P-00062205. In its Petition for Clarification,, PCL&P asked the Commission to clarify its April 20, 2006 Order "by providing a specific framework and timetable for establishing the specific methodology by which PCL&P is to secure its default service supply for the period commencing January 1, 2008 (including the review process to be available to all interested Parties)." The OCA was a party in this litigated proceeding, and the County submitted testimony in the proceeding. The Commission found "we are not convinced by Pike County's argument that the subsequent renewal term [of Direct Energy's Aggregation Program] will prejudice the development of any future EGS supply plan or other plan offered by Pike County. Nor are we convinced that it will have a negative impact upon customer choice options within Pike County's service territory. However, we encourage Pike County to work with the Commission in developing an appropriate default service plan commencing June 1, 2009, and beyond. . ." *Id.* at 5.

[7] As recently as February 14, 2006, Mr. Popowsky, the Consumer Advocate testified before the House Environmental Resources and Energy Committee stating:

> There are two critical developments that must occur between now and 2010 in order for consumers to be protected from potentially significant rate increases at the time that most of

commenced a formal rulemaking process in late 2004, to establish a complete and integrated default service regulatory scheme. *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. § 2807(e)(2)* at Docket No. L-00040169. (Order entered December 16, 2004). The OCA is an active party in that pending formal rulemaking proceeding.

The Electricity Generation Customer Choice and Competition Act ("Competition Act"), 66 Pa. C.S. §§ 2801-2812, requires the Commission to promulgate regulations defining the obligation of electric distribution companies (EDCs) to serve retail customers at the end of the restructuring transition period, *i.e.*, the default service procurement obligation. 66 Pa. C.S. § 2807(e)(2). The Commission has drafted and is in the process of developing and implementing, with input from all of the stakeholders, a complete and comprehensive default service regulatory scheme for all jurisdictional EDCs.[8]

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our rate caps expire. One is that Pennsylvania must have a reasonable retail default service system in place to ensure that consumers have a reliable, stable and reasonably priced alternative that they can count on even if they cannot or choose not to shop for retail electricity service. Second, we must have a robust competitive PJM wholesale market that is not overly dependent on natural gas, or any single fuel, that can drive wholesale market clearing prices to unreasonable levels.

As to the first component - *reasonable default service -- that matter is currently before the Pennsylvania PUC in a longstanding rulemaking proceeding*, (emphasis added) (Testimony of Irwin A. Popowsky, Consumer Advocate Regarding Energy Policy for Pennsylvania, February 14, 2006, page 12).

[8] The General Assembly has shown a clear legislative intent to provide a complete and integrated regulatory scheme. The Formal complaint attempts to duplicate, conflict and replace the Commission's pending formal rulemaking process that has already produced a proposed regulations. The Commission has already determined that

> Having chosen to allow for individual filings, this section provides a standard that must be met by any default service implementation plan. Default service implementation plans shall be filed fifteen months prior to expiration of either the approved generation rate cap or currently effective default service plan, unless another due date is requested and approved by the Commission. The Commission has decided that the approved POLR plans currently in operation should be allowed to continue through their expiration date. This includes plans for Citizens Electric Company, Duquesne Light Company, Pike

In this formal rulemaking proceeding, the proposed regulations call for a transparent, nondiscriminatory, competitive market based procurement process for default service (instead of an administratively determined process). As a party to the longstanding formal rulemaking proceeding and the recent litigated proceedings, the OCA is well aware of the existence of these proceedings. The OCA and the County, however, do not even discuss these proceedings or provide reasons why they cannot address the matters raised in the Complaints in those proceedings. The 'prospective' claim against PCL&P's default service procurement process conflicts with this pending Commission formal rulemaking proceeding and the comprehensive regulatory scheme that the Commission is charged with developing in that proceeding. Accordingly, this claim should be dismissed.

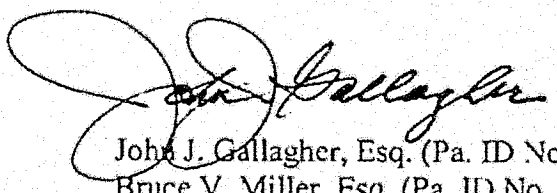
County Light & Power Company, UGI Utilities, Inc. - Electric Division, and Wellsboro Electric Company. The Commission recognizes that, given the expected length of this rulemaking process, some of these plans may expire prior to the effective date of final default service regulations. The Commission also recognizes that the effective date of the final regulations may not directly correspond with the expiration of Penn Power Company's generation rate caps on December 31, 2006. The Commission therefore will need to approve interim default service plans for some of the above-named EDC's until final regulations take effect, as has been done previously. *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa. C.S. §2807(e)(2)* at Docket No. L-00040169, Order entered December 16, 2004 at 10-11.

More recently, the Commission reopened the default service rulemaking proceeding, *inter alia*, to receive comments on the need of issuing default service regulations in the immediate future, as opposed to a time closer to the end of the transition period for all EDCs. The Independent Regulatory Review Commission ("IRRC") issued comments on the proposed regulations on July 27, 2005. The Commission must either withdraw the proposed regulation or deliver a final-form regulation to IRRC within two years of the close of the public comment period on June 27, 2007. 73 P.S. § 745.5a. *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa. C.S. § 2807(e)(2)* at Docket No. L-00040169, Order adopted and entered November 10, 2005 at 1-2.

IV. CONCLUSION

Based on the foregoing, Respondent Pike County Light & Power Company respectfully requests that the Commission issue an Order sustaining its Preliminary Objections and dismissing the Amended Complaint in this matter for the reasons set forth above and granting such other relief as is deemed just and proper. In the alternative, PCL&P respectfully requests that the Commission issue an Order requiring Formal Complainants to file a more specific pleading.

Respectfully submitted,



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Date: August 22, 2006

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 Motion of Pike County Light & Power Company for Leave to File Responsive Pleading 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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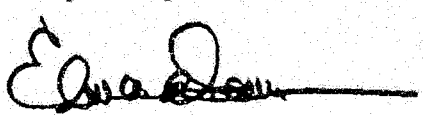
Respectfully submitted,



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Date: August 22, 2006

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August 24, 2006

ORIGINAL

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

DOCUMENT FOLDER

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

Dear Secretary McNulty:

Enclosed for filing, please find an original and three (3) copies of the Reply of the County of Pike and the Office of Consumer Advocate to the Pike County Light & Power Company Motion for Leave to File Responsive Pleading, 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

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

Enclosures
cc: Honorable Ember S. Jandebeur *(via electronic mail)*
Parties of Record

00090295.DOC

SECRETARY'S BUREAU
PA PUC

2006 AUG 24 PM 4:03

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 AUG 24 PM 4:03
PA PUC
SECRETARY'S BUREAU

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

REPLY OF THE COUNTY OF PIKE AND
THE OFFICE OF CONSUMER ADVOCATE TO THE
PIKE COUNTY LIGHT & POWER COMPANY
MOTION FOR LEAVE TO FILE RESPONSIVE PLEADING

Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission's (Commission) rules regarding Motions, 52 Pa. Code § 5.103, the County of Pike (County) and the Office of Consumer Advocate (OCA) provide the following Reply to the Pike County Light & Power Company (PCL&P or Company) Motion for Leave to File Responsive Pleading.

I. INTRODUCTION

On August 4, 2006, pursuant to Section 5.101 of the Pennsylvania Public Utility Code, PCL&P filed Preliminary Objections to the Amended Complaint of the County and the OCA. The Preliminary Objections were comprised of eighty (80) numbered paragraphs that addressed five (5) broad substantive areas. In addition, the Company filed extensive New Matter, consisting of thirty-nine (39) paragraphs. Section 5.101 requires that an answer to Preliminary Objections is to be filed "within 10 days of the date of service." See, 52 Pa. Code § 5.101(f). Paragraph (g) of Section 5.101 specifies that a decision with respect to the Preliminary

Objections is required "within 30 days of the assignment of the preliminary objections to the presiding officer." See, 52 Pa. Code § 5.101(g). Consequently, a decision is due on or around September 5, 2006.

As explained below, the OCA submits that PCL&P's Motion should not be considered at this juncture. There is no provision for such a pleading in the Public Utility Code and the Company acknowledges that its pleading is "out of the ordinary". Moreover, consideration of this pleading would unfairly prejudice the County and the OCA. The County and the OCA were required to respond to the Preliminary Objections within 10 days of service, which leaves 20 days for a decision from the presiding officer. Such abbreviated time frames are designed to provide prompt resolution of Preliminary Objections. Subsequent to the filing of the Preliminary Objections, the answering party responds and the presiding officer renders a decision. There is no provision in the rules and no justification in this case for an additional round of pleadings within this limited time frame. Therefore, the County and the OCA submit that PCL&P's Motion should be denied.

II. RESPONSE

While acknowledging that "the Commission's Rules and Regulations do not provide specifically for a reply to an answer", PCL&P asserts that its Motion should be considered. PCL&P relies on four premises in arguing for the consideration of its Motion. Specifically, the Company argues that 1) Section 5.1 does not specifically exclude the filing of its Motion and the presiding officer has discretion to permit it, 2) Section 1.2 provides for liberal construction of the Public Utility Code, 3) Section 1.91 provides for the waiver of formal requirements, and 4) legal

precedent exists for the allowance of responses not specifically provided for in the Commission's regulations. Each of these arguments should be rejected.

Section 5.1 clearly sets forth the allowable pleadings and the Company's proposed pleading is not included. As a result, PCL&P argues:

> The language of this section leaves the clear impression that the list is not exhaustive or exclusive. Therefore, although a reply to an answer to preliminary objections is not included in the list of pleadings allowed to be filed, it is not excluded...

Motion at 4. The Company's interpretation of Section 5.1 is unsupported by a plain reading of the rules. The standard for granting a preliminary objection is a strict one and the timeframe for such a decision is strict as well. It is not the purpose of the preliminary objection to argue or decide the case on the merits, but only to determine whether the case may go forward based on the initial pleadings. Therefore, a plain reading of Section 5.1 illustrates that the Company's proposed pleading is not allowable and should not be considered.

Section 1.2 of the Rules provides that the Public Utility Code "shall be liberally construed to secure the just, speedy, and inexpensive determination of every action or proceeding to which it is applicable." 52 Pa. Code § 1.2(a). This Section applies with "particularity in proceedings involving pro se litigants" and allows waiver of a requirement "if the waiver does not adversely affect a substantive right of a party." See, 52 Pa. Code § 1.2(c) (d). PCL&P is not a pro se litigant and the County and OCA's substantive rights will be adversely affected if the Motion is granted. The County, pursuant to the Public Utility Code, is to have the "last word" with respect to the Preliminary Objections. The County filed its Amended Complaint; the Company filed the Objections; and the County responded. To allow the Company's responsive pleading upsets the natural and anticipated course of events and would adversely affect the

substantive rights of the County and the OCA. It also makes the presiding officer's ability to rule on the Preliminary Objections within the 30-day timeframe exceedingly difficult.

Section 1.91 allows for waiver of filings, which would be subject to rejection under Section 1.4 of the Code. Section 1.41, 1.42 and 1.43 deal with filing fees, mode of payment of fees and schedule of fees payable to the Commission, respectively. See, 52 Pa. Code §§§ 1.41, 1.42 and 1.43. PCL&P's filing is subject to rejection based on Section 5.1, not Section 1.41, 1.42 or 1.43.

Finally, the Company relies on a 1982 holding and a 1983 holding as legal precedent for the allowance of responses not specifically provided for in the Commission's regulations. However, neither of these cases involved Preliminary Objections. The 1982 case involved an OCA Response to another party's reply to the OCA's Reply Brief. The 1983 case involved a compliance filing proceeding in which the Commission *ordered* Bell Telephone to file an Answer, which the OCA subsequently addressed in a Reply. Furthermore, both of these cases pre-date the effective date of the current Section 5.1, which specifically enumerates allowable pleadings. Based on the above, the Company's arguments in favor of allowing its responsive pleading should be rejected.

The Company also argues substantive points in its Motion, e.g., the original complaint was defective, the Commission decisions in Pennsylvania Public Utility Commission v. Big Run Telephone Company and Citizens Utilities Company of Pennsylvania, Docket No. C-822983 (Order Entered October 15, 1982) and In the Matter of the Certified Territory of Monongahela Power Company, 2005 Ohio PUC LEXIS 306 (2005) are irrelevant, and the complaints are duplicative in nature. Motion at 6-7. These substantive arguments are irrelevant to the question of whether the responsive pleading should be allowed. The OCA and the County would note,

however, that while the Company makes much of the OCA and County's interpretation, or alleged misinterpretation, of the Big Run decision, the OCA and the County attached a copy of the Big Run Recommended Decision, Commission Order and Dissenting Opinion to its Answer as Attachment A. As such, the presiding officer is in a position to determine the relevance of this case for purposes of this preliminary ruling without further argument and reargument.

As set forth above, the Company has not provided support for its argument that its responsive pleading should be allowed.

III. CONCLUSION

For the reasons set forth above, the OCA submits that the Company's Motion for Leave to File a Responsive Pleading should be rejected.

Respectfully submitted,

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00090440

COUNTY OF PIKE

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Attorney I.D. No. 8189

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Email: swhitmer@pikecountyattorneys.com

CERTIFICATE OF SERVICE

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

2006 AUG 24 PM 4:03
PA PUC
SECRETARY'S BUREAU

I hereby certify that I have this day served a true copy of the foregoing document, Reply of the County of Pike and the Office of Consumer Advocate to the Pike County Light & Power Company Motion for Leave to File Responsive Pleading, 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 August 2006.

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Counsel For: *Samall Properties, Inc., Three Lane Utility Corporation, and Richard Snyder*

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August 25, 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

ORIGINAL

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

Dear Secretary McNulty:

Enclosed for filing please find an original and three copies of the Reply of the County of Pike to Pike County Light & Power Company's Answer Raising New Matter.

Copies are being served on parties of record as indicated on the enclosed Certificate of Service

Very truly yours,

DOCUMENT
FOLDER

James P. Melia
PA Attorney I.D. 35265
Counsel for Pike County

JPM/cem
Enclosures

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

BA

2006 AUG 25 AM 11:35
PA PUC
SECRETARY'S BUREAU

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S BUREAU

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

REPLY OF THE COUNTY OF PIKE
TO THE PIKE COUNTY LIGHT & POWER
COMPANY ANSWER RAISING NEW MATTER

DOCUMENT
FOLDER

Pursuant to Section 5.63 of the Pennsylvania Public Utility Commission's (Commission) rules regarding formal proceedings, 52 Pa. Code § 5.63 (Replies to answers seeking affirmative relief or new matter), the County of Pike (County) provides the following Reply to the Answer of Pike County Light & Power Company to the Amended Complaint of the County of Pike.

I. REPLY TO ANSWER OF PIKE COUNTY LIGHT & POWER COMPANY TO THE AMENDED COMPLAINT OF THE COUNTY OF PIKE.

1. Response to Amended Complaint to which no response is required. The remaining portion of the Paragraph constitutes an allegation of fact of which the County has no first-hand knowledge and demands strict proof at hearing.

2. Response to Amended Complaint to which no response is required.

3. Response to Amended Complaint to which no response is required.

4. Response to Amended Complaint to which no response is required.

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5. Response to Amended Complaint to which no response is required.

6. Response to Amended Complaint to which no response is required.

7. Response to Amended Complaint to which no response is required.

8. Response to Amended Complaint to which no response is required.

9. Response to Amended Complaint to which no response is required.

10. Response to Amended Complaint to which no response is required.

11. Response to Amended Complaint to which no response is required. The remaining portion of the Paragraph constitutes an allegation of fact of which the County has no first-hand knowledge and demands strict proof at hearing.

12. Response to Amended Complaint to which no response is required.

13 Response to Amended Complaint to which no response is required. The remaining portion of the Paragraph constitutes an allegation of fact of which the County has no first-hand knowledge and demands strict proof at hearing.

14 Response to Amended Complaint to which no response is required.

15. Response to Amended Complaint to which no response is required.

16 Response to Amended Complaint to which no response is required.

II. REPLY TO NEW MATTER

1. Incorporation by reference to which the County incorporates its responses to Paragraphs 1-16 above.

The Commission Lacks Jurisdiction And Authority To Order The Forced Sale of PCL&P

2. It is DENIED that, in paragraph 8, the County seeks the forced sale of PCL&P to another entity. Paragraph 8 of the County's Amended Complaint avers that the Company's service is not

safe and adequate and is, therefore, in violation of Section 1501 of the Pennsylvania Public Utility Code. 66 Pa. C.S. §1501.

It is further DENIED that the relief requested by the County is not authorized under the law and that the Commission lacks jurisdiction and authority to order the forced sale of PCL&P. Section 1103(a) of the Public Utility Code vests in the Commission sole authority to grant a certificate of public convenience. Although Section 1103(a) does not address the Commission's authority to revoke a certificate of public convenience, numerous appellate cases have held that Section 1103 confers upon the Commission the right to revoke a certificate of public convenience as well. See, Diehl v. Public Service Commission, 69 Pa. Super. 419 (1918), Paradise v. Pennsylvania Public Utility Commission, 184 Pa. Super. 8; 132 A.2d 754 (1957), and Snyder v. Pennsylvania Public Utility Commission, 187 Pa. Super. 147; 144 A.2d 468 (1958). Sections 703(g) and 501(a) authorize the Commission to rescind or amend *any* Order previously made by it. As long as the due process rights of affected parties are not violated, the Commission's power to rescind or amend is unassailable. As a grant of a certificate of public convenience is evidenced by a Commission Order to that effect, these Sections also authorize the Commission to revoke a previously-issued certificate of public convenience

It is ADMITTED that Paragraph 9 recommends that the Commission, in addition to implementing the Law Bureau's recommendations, should mandate that the Company be sold to another Pennsylvania electric distribution company or a rural electric cooperative.

It is ADMITTED that Paragraph 10 avers that the sale of PCL&P should be mandated due to: 1) the inferior service quality of PCL&P, 2) the lack of local control and employee services in Pike County on the part of PCL&P, and 3) PCL&P's excessive rate levels as compared to those of other Pennsylvania electric utilities.

It is ADMITTED that Paragraph 14 avers that the magnitude of the present rates, the overwhelming customer desire for another utility provider (as heard at the Public Input session) and the lack of local control and local employees on the part of PCL&P mandate that PCL&P should be sold to another service provider to provide service in the Company's service territory.

It is ADMITTED that Paragraph 15 avers that there is legal precedent for a Commission-mandated sale of PCL&P to another Pennsylvania EDC.

It is ADMITTED that, in addition to requesting that the Commission provide the relief set forth in the County of Pike's initial Complaint, Paragraph 16 requests the Commission to order the sale of PCL&P to another Pennsylvania EDC or a rural electric cooperative. Paragraph 16 further avers that the Commission should take such other actions, including those set forth in the Law Bureau recommendations, that the Commission determines to be just and reasonable and in the public interest.

3. It is ADMITTED that the power and authority to be exercised by the Commission must be conferred by legislative language that is clear and unmistakable. Sections 1103(a), 703(g) and 501 (a) clearly confer upon the Commission the authority to revoke PCL&P's certificate of public convenience and mandate the sale of the Company, as Pennsylvania's courts have established and as the Commission declared in the Big Run case. It is further ADMITTED that the Commission's power is statutory. Section 501 sets forth the general powers of the Commission, which include the ability to rescind or modify previous orders, including orders that have granted certificates of public convenience.

4. It is DENIED that the Commission's power to order the sale of the Company is not specifically delineated in the Public Utility Code. It is DENIED that the County has failed to identify any language in the Public Utility Code that gives the Commission the jurisdiction,

power, or authority to order a forced sale of PCL&P. Section 1103(a) of the Public Utility Code vests in the Commission sole authority to grant a certificate of public convenience. Although Section 1103(a) does not address the Commission's authority to *revoke* a certificate of public convenience, numerous appellate cases have held that Section 1103 implicitly confers upon the Commission the right to revoke a certificate of public convenience as well. Sections 703(g) and 501(a) authorize the Commission to rescind or amend *any* Order previously made by it. As long as the due process rights of affected parties are not violated, in particular, notice and an opportunity to be heard, the Commission's power to rescind or amend is unassailable. As a grant of a certificate of public convenience is evidenced by a Commission Order to that effect, these Sections also authorize the Commission to revoke a previously-issued certificate of public convenience. It is DENIED that there is no legislative language in the Public Utility Code that grants the Commission the jurisdiction, power or authority to order the forced sale of an electric utility. Sections 1103, 703(g) and 501(a) grant such jurisdiction, power and authority to the Commission. See, Diehl, Paradise and Snyder.

5. It is DENIED that the Commission's authority under Section 529 of the Public Utility Code to order a capable public utility to acquire a small water or sewer utility speaks to the Commission's authority to mandate the sale of an electric utility. The Big Run Order was considered legal precedent at the time of the enactment of Section 529, but was not overturned or impacted by this enactment. In the Big Run case, the Commission did not order Bell Telephone Company to acquire Big Run Telephone Company. Rather, in its ordering paragraph, the Commission directed that Big Run's assets be put up for bid "and that The Bell Telephone Company of Pennsylvania should be specifically asked to make such a bid." Big Run at 1 (emphasis added). Similarly, in this case, the County of Pike has not demanded that a particular

utility or rural cooperative be ordered to acquire the assets of PCL&P. Rather, the County has requested that, in addition to the other recommendations set forth in the Law Bureau Report released by the Commission on June 22, 2006, that the Company be put up for sale to a willing buyer.

6. It is ADMITTED that, under Pennsylvania rules of statutory construction, the inclusion of specific matters in a statute implies the exclusion of other matters in certain circumstances. It is DENIED, however, that this principle of statutory construction has any bearing on the issues in this case. The request for relief in the County's Amended Complaint is not affected by the enactment of Section 529.

It is DENIED that when the General Assembly granted the Commission the power to order the acquisition of small water and sewer utilities by a capable utility, it intended to deprive the Commission of the jurisdiction, power or authority to order the sale of any and all other types of utilities.

Section 529 was added to the Public Utility Code in 1992 and is entitled "Power of commission to order acquisition of small water and sewer utilities." That section gave the Commission the authority to "order a capable public utility to acquire a small water or sewer utility" under certain circumstances. 66 Pa.C.S. §529(a). The Company argues that, because Section 529 applies only to water and sewer utilities, principles of statutory construction suggest that the General Assembly "intended to deprive the Commission of the jurisdiction, power or authority to order the forced sale of any and all other types of utilities." This argument is clearly incorrect.

What was new about Section 529 was the authority of the Commission actually to order a utility under its jurisdiction to **acquire** a troubled utility. As noted above, the Commission has

always had the authority to revoke a utility's certificate of public convenience, and thereby force its sale or abandonment. What the Commission may have lacked was the authority to order a particular company to **purchase** that utility. The distinction between the mandatory **acquisition** of a utility by a "capable utility" under the Commission's jurisdiction under Section 529, and the mandatory **sale** of a utility such as the Commission ordered under its general regulatory powers in the Big Run case is critical.

7. It is ADMITTED that the County cites the Big Run case in support of its request. It is DENIED that the Big Run case is not relevant to the instant matter, either factually or legally. The Commission's holding in Big Run is relevant to the current proceeding. Identical to the case at hand, Big Run encompassed a level of utility rates deemed too high to customers, customer dissatisfaction with the management and operation of the utility and a customer preference for another service provider. Due to these similarities in circumstance, the Commission determination in Big Run should be afforded great weight in this proceeding. In its June 1, 2006 Report, the Law Bureau recognized that Big Run represents established Pennsylvania precedent for Commission-mandated sales of incumbent utilities. See, Report at 19. Therefore, Big Run is relevant to the current proceeding.

It is DENIED that the Big Run case cited by the County fails to identify any clear and unmistakable legislative language that confers upon the Commission the jurisdiction, power or authority to order the forced sale of an electric utility. Big Run demonstrated that implicit in the Commission's authority to rescind a certificate of public convenience of a utility is authority to facilitate the establishment of a replacement service provider.

It is further DENIED that the relief requested by the County is not authorized under the law. Sections 1103(a), 703(g) and 501 (a) clearly confer upon the Commission the authority to

revoke PCL&P's certificate of public convenience and mandate the sale of the Company, as Pennsylvania's courts have established and as the Commission declared in the Big Run case.

8. It is DENIED that a Commission-mandated sale of PCL&P would be putative in nature and completely unwarranted. It is further DENIED that the Company has adhered to the Public Utility Code and the Commission's regulations in all respects. PCL&P has not adhered to the Public Utility Code and the Commission's regulations in all respects as set forth in the allegations of the County's Complaint.

9. It is ADMITTED that the Commission has the power under 66 C.S. §§ 1501 and 1504 to determine if a public utility is providing safe and adequate service at just and reasonable rates. If a determination is made that safe and adequate service at just and reasonable rates is not being provided, the Commission can direct a Company to take the appropriate remedial measures. It is DENIED that the County has "put the cart before the horse". Issues as to Section 1301 and 1501 violations have been raised in a timely fashion and at the appropriate junctures.

It is DENIED that the Commission can only take further remedial action, e.g., the mandated sale of PCL&P, after: 1) a determination that Section 1501 and 1504 violations have occurred, 2) the Commission has prescribed the rates and services the utility should be providing its customers, 3) the Commission has directed the Company to take the appropriate remedial measures, and 4) the Company violates such an order. The Commission can act at any time (after notice and an opportunity to be heard have been provided) to revoke a utility's certificate of public convenience upon finding that such a revocation is in the public interest.

It is DENIED that there has been no finding that the PCL&P is not providing safe and adequate service at just and reasonable rates or that the County has not made a prima facie showing that such is the case. Based on public customer testimony and facts alleged in

Complaints against the Company, a prima facie showing has been made that safe and adequate service at just and reasonable rates is not being provided by the Company.

It is DENIED that, if the Commission were to find that PCL&P was not providing safe and adequate service at just and reasonable rates, its only remedy authorized under the Public Utility Code would be to order PCL&P to provide specific service at specific rates. It is DENIED that the Company is in compliance with all orders as to rates and service. It is DENIED that the forced sale of PCL&P would be punitive in nature. It is further DENIED that the Commission has no basis to exercise a claimed power to order the Company to be sold.

Section 1103(a) of the Public Utility Code vests in the Commission sole authority to grant a certificate of public convenience. Although Section 1103(a) does not address the Commission's authority to *revoke* a certificate of public convenience, numerous cases have correctly held that Section 1103 by necessary implication confers upon the Commission the exclusive right to revoke a certificate of public convenience as well. Sections 703(g) and 501(a) authorize the Commission to rescind or amend *any* Order previously made by it. As long as the due process rights of affected parties are not violated, in particular, notice and an opportunity to be heard, the Commission's power to rescind or amend is unassailable. As a grant of a certificate of public convenience is evidenced by a Commission Order to that effect, these Sections also authorize the Commission to revoke a previously-issued certificate of public convenience.

10. It is DENIED that the Commission has rejected two requests to consider a study on the costs and benefits of the sale of the Company in its current condition. The Commission has declined to require an investigation to consider the costs and benefits of a sale of Pike on one previous occasion. The Commission rejected such an investigation in its September 23, 2005

Order on the basis that a now outdated transmission interconnection did not support interconnecting Pike with PJM on a cost/benefit basis. Since that time, conditions have dramatically changed regarding that study. In addition, the County seeks the forced sale of the Company based on quality of service and other issues in addition to cost issues. A sale of the Company has not been reviewed in the context presented in the County's Amended Complaint.

11. It is DENIED that the Commission noted that PCL&P had "thoroughly explored" becoming part of PJM in its September 23 Order at Docket No. P-00052168. The Commission did not note that the Company had "thoroughly explored becoming part of the PJM Regional Transmission Organization ("RTO")." In its September 23, 2005 Order, the Commission, in its review of the position of the parties, stated, "**Pike** notes that **it** had thoroughly explored becoming part of the PJM Regional Transmission Organization." September 23 Order at 23. The County submits that it was clearly the Company that assessed its review of a PJM interconnection as "thorough," not the Commission.

12. It is DENIED that the relief sought by the County proceeds from an erroneous assumption that another utility will provide lower rates. PCL&P's inferior service quality, lack of local control and employee services in Pike County, and excessive rate levels (as compared to those of other Pennsylvania electric utilities) render consideration of a sale of the Company's operations reasonable and warranted. By way of further response, the County's complaint is not based on a "mistaken assumption" that PJM membership may bring better rates and service, but is based on considerations of price differentials between the PJM and NYISO markets, the size and scope of PJM, and PJM's record of reliable service.

13. It is ADMITTED that, in its September 23, 2005 Order, the Commission determined that, at that time, pursuit of membership in PJM did not appear to be in the public interest. However,

that determination was prior to the 129% increase in Pike's generation rates on January 1, 2006. Therefore, at present, re-examination of such membership is in the public interest and the Commission's Law Bureau acknowledged such in its June 1, 2006 Report.

14. It is DENIED that a Public Input Hearing was held on January 27, 2006 in the Fact Finding Investigation conducted by the Commission. The Public Input Hearing was held on February 27, 2006.

15. It is ADMITTED that the quoted language was contained in the Report. Any implication from the emphasis added by the Company is DENIED.

16. It is ADMITTED. By way of further response, the Commission has not acted upon the Report at this time.

It is DENIED that the lack of Commission action on the Law Bureau's Report issued June 22, 2006 is "tacit rejection" of the contents therein is pure speculation. To the contrary, in a Press Release issued by the Commission upon the release of the Report, Commissioner Bill Shane is quoted as follows:

> Issuing this report for public consumption does not represent the end of Commission action on this matter, but rather we will continue to move forward because as I have said before I am not willing to abandon these customers.

A copy of the Commission's June 22, 2006 Press Release is attached to this Answer as Attachment C.

It is DENIED that the County's Amended Complaint is moot. The complainants have the right, under the Public Utility Code, to be heard on their complaints.

The Plaintiff's Claims Are Barred By The Filed Rate Doctrine

17. It is DENIED that the January 2006 rate increase is the "fundamental claim" in the County's amended complaint. The County's Amended Complaint also alleges service quality

issues, customer service issues, billing issues, and seeks implementation of the recommendations contained in the Law Bureau Report. These issues extend beyond rate issues. To the extent that the complaints relate to rate increases, the documents speak for themselves.

18. It is DENIED that the County has failed to make a distinction between types of rates. The County's Amended Complaint is not limited to rate issues, and the rate issues raised are in regard to PCL&P's tariffed rates. Because the tariffed rates of PCL&P are at issue in the County's complaint, no distinction between "delivery" charges and "commodity" rates is necessary. It is ADMITTED that PCL&P has not filed to increase delivery rates since 1993. By way of further response, there have been tax adjustments through the State Tax Adjustment Surcharge. It is DENIED that the increase referred to in the County's Complaint relates solely to increases in commodity prices. The County's complaint refers to increases in the retail default rates. The generation rates charged by the Company and the commodity price of electricity on the market at any given time are not necessarily the same. It is DENIED that commodity prices are set by the market, but rather are set by market participants in the market. To the extent the electricity is bought and sold in organized markets such as PJM or the New York ISO, that "commodity" price is a function of the price that can be obtained in the markets. There are a variety of products, thousands of prices, and no one "price" of electricity. Additionally, the default generation rate is not a pure pass through of the "commodity" of electricity. It is ADMITTED that the Electric Choice Act "unbundled" the generation, transmission, and distribution portions of electric service. It is DENIED that the purpose of the rate caps was to only to "insulate customer from rate volatility until a time when market rates for generation would be implemented." The rate cap provisions of the Electric Choice Act were directly tied to the payment by customers of "stranded costs." Stranded costs are defined by the Act as those

costs, "which traditionally would be recoverable in a competitive electric generation market and which the commission determines will remain following mitigation by the electric utility." 66 Pa.C.S. §2803. PCL&P customers paid the Company's stranded costs during the rate cap period. See, ARIPPA v. Pa. PUC, 792 A.2d 636, 643 (Pa. Commw. 2002)("Under the legislative scheme, in exchange for utilities being paid for their stranded costs, rate caps, with certain exceptions that are at issue in this appeal, were imposed on the rate a utility could charge..."). The remaining portion of the Paragraph constitute allegations of fact of which the County has no first-hand knowledge and demands strict proof at hearing.

19. It is ADMITTED that Pike's default service rates and the rates resulting from the Direct Energy Retail Aggregation Program were established in proceedings before the Commission. By way of further response, the winner of the Pike auction was Con Ed Energy, an affiliate of PCL&P.

Default Service Rates

20. It is DENIED that the Default Service rate proceeding was a "litigated proceeding" in the traditional sense. The matter was not assigned to an Administrative Law Judge. Interested parties submitted comments to the Commission, and the Commission issued its Order based upon those comments.

21. It is ADMITTED that the Company filed with the Commission, for its review and approval, its plan containing proposed tariff changes and agreements, as well as the procedures necessary to implement PCL&P's Default Service Implementation Plan to become effective January 1, 2006. It is admitted that, on October 25, 2005, PCL&P submitted the results of its auction process conducted in accordance with the Default Service Implementation Plan.

22. It is ADMITTED that the results of the auction were approved by Commission Secretarial Letter dated October 28, 2005. It is ADMITTED that the Commission directed PCL&P to file its tariff supplement no later than sixty days prior to the January 1, 2006 effective date.

23. It is ADMITTED that, on November 1, 2005, the Company filed its Supplement proposing an increase in default service rates and incorporating the approved tariff language changes.

24. It is DENIED that the Docket No. P-00052168 was closed on December 21, 2005. The Commission instituted an investigation that continued into the P-00052168 docket, resulting in a recent release of a Report in that docket in June of 2006. It is ADMITTED that the December 21 Order allowed the Company to charge the default service rates contained in Supplement No. 25 to Tariff Electric – Pa. P.U.C. No. 8, including the replacement pages submitted on December 1, 2005.

Retail Aggregation Plan

25. It is DENIED that the Commission conducted a public input hearing on January 27, 2006 at which a large number of Pike County customers attended and voiced their concerns regarding the increase in the Company's Default Service rates. The public input hearing was held on February 27, 2006. It is ADMITTED that the Commission approved, with modifications, a Direct Energy Services Petition for a retail aggregation program. It is ADMITTED that the Commission's approval was a response to concerns "that the Default Service rates resulted in significantly higher generation rates for PCL&P retail customers..."

26 It is ADMITTED that, by Opinion and Order entered on April 20,2006 (modified in part June 22,2006), the Commission selected Direct to conduct a Retail Aggregation Program in PCL&P's service territory.

27. It is ADMITTED that Direct now provides electric generation service to almost all of PCL&P's customers. It is ADMITTED that PCL&P's customers, including the County, began to receive electric generation service from Direct commencing June 2,2006.

28. It is ADMITTED that the Retail Aggregation rates were established pursuant to a process supervised and approved by the Commission. It is ADMITTED that the Retail Aggregation rates are collected by PCL&P on behalf of Direct. It is ADMITTED that the Commission certified the results of Retail Aggregation program on April 29,2006. It is DENIED that all of PCL&P's customers, including the County, began to receive electric generation service from Direct commencing June 2, 2006. This is an allegation of fact to which the County has no first-hand knowledge and demands strict proof thereof at hearing.

29. It is ADMITTED that the cited case contains the quoted language. It is DENIED, however, that these rates can never be changed on a prospective basis. It is ADMITTED that the Company's reference to the Public Utility Code is correct. It is DENIED that the Company's rates are consistent with the Public Utility Code. The County has averred that the Company's rates are not "just and reasonable" as required by law and that the service is not "safe and adequate." The Commission has jurisdiction over the administration of the Public Utility Code. It is DENIED that the County simply complains that the PCL&P's existing (Default Service and Retail Aggregation) rates approved by the Commission are too high. The County alleges service quality issues, customer service issues, billing issues, and seeks implementation of the recommendations contained in the Law Bureau Report.

30. It is ADMITTED that PCL&P must charge customers tariffed rates. It is DENIED, however, that these rates can never be changed on a prospective basis. It is ADMITTED that, under the filed rate doctrine, tariffed rates approved by the Commission are lawful rates. It is DENIED, however, that these rates can never be changed on a prospective basis. The Public Utility Code provides for the right to file complaints against existing filed rates in order to effect a change going-forward. 66 Pa.C.S. §701. The cases cited by the Company do not address a Complainant's right to challenge filed rates before the Commission in an effort to change those rates prospectively. Ciamaichelo v. Independence Blue Cross does not involve the complainant's rights under the Public Utility Code. Knipmeyer v. Bell Atl Corp involves a challenge to existing rates in a Court of Common Pleas. Knipmeyer does not apply in this proceeding. A collateral attack of commission-made rates in the Court of Common Pleas does not bear any relation to the current complaints. The Commission has statutory authority to change the rates contained in the Company's tariff, giving new, prospective rates the full force of law. The County is not challenging the Company's obligation to charge the rates contained in its tariff. Instead, the County has averred that the filed rates are not just and reasonable and in violation of the law and should be changed on a going forward basis after the conclusion of this case. Complainants have the right to pursue their complaints before the Commission.

31. It is DENIED that PCL&P has acted "faithfully," with regard to Commission directives and orders, at all times. The Company's claim that it "faithfully" followed all orders is a subjective term that the County does not agree with. Importantly, the Company provided the Commission with a default service plan on May 31, 2005, despite knowing that its existing default plan expired on December 31, 2005. To the extent the Commission approved the May

31, 2005 plan, with modifications, it was limited to the framework presented by the Company. In its language approving the May 31 auction with modifications, the Commission stated:

> ...we find that a two year plan for Pike, covering years 2006 and 2007, is appropriate, and direct that Pike make the appropriate modifications to its Plan.
>
> We must, however, note our general discomfort with the reliance on the financial swap transactions proposed in this proceeding, among other aspects of this filing. However, given the lack of viable alternatives offered in this case, we see no other options that would provide reasonable rate stability for Pike's POLR customers, in the time frame required, to render a timely decision. Because of these time constraints, we emphasize that this decision provides no foundation for future default service proceedings. To be clear, by voting to substantially accept this transitional POLR plan, the Commission is not endorsing the concepts embodied in the filing for any electric utility other than Pike, and then only as a transitional mechanism pending completion of the Default Service Regulations at Docket L-00040169.

September 23 Order at 20. It is DENIED that PCL&P has performed all of its obligations consistent with the Public Utility Code and the Commission's regulations and orders. The County has averred that the Company is not providing service consistent with the requirements of the Public Utility Code, specifically Sections 1301 and 1501, and the Commission's regulations. It is DENIED that the County simply complains that the PCL&P's existing (Default Service and Retail Aggregation) rates approved by the Commission are too high. The County alleges service quality issues, customer service issues, billing issues, and seeks implementation of the recommendations contained in the Law Bureau Report.

PCL&P Continues To Provide Its Customers Safe And Reliable Service At Just And Reasonable Rates.

32. It is ADMITTED that in paragraph 7 of its Amended Complaint, the County asserts that the rates of PCL&P are not just and reasonable, and therefore, in violation of Section 1301 of the

Pennsylvania Public Utility Code. It is further ADMITTED that in paragraph 8 of its Amended Complaint, the County asserts that the Company's service is not safe and adequate and is, therefore, in violation of Section 1501 of the Pennsylvania Public Utility Code.

33. It is ADMITTED that the Commission has the power under 66 C.S. §§ 1501 and 1504 to determine if a public utility is providing safe and adequate service at just and reasonable rates. If a determination is made that safe and adequate service at just and reasonable rates is not being provided, the Commission can direct a Company to take the appropriate remedial measures It is DENIED that the Commission can only take further remedial action, e.g., the mandated sale of PCL&P, after: 1) a determination that Section 1501 and 1504 violations have occurred, 2) the Commission has prescribed the rates and services the utility should be providing its customers, 3) the Commission has directed the Company to take the appropriate remedial measures, and 4) the Company violates such an order. The Commission can act at any time (after notice and an opportunity to be heard have been provided) to revoke a utility's certificate of public convenience upon finding that such a revocation is in the public interest. It is DENIED that there has been no finding that the PCL&P is not providing safe and adequate service at just and reasonable rates or that the County has not made a prima facie showing that such is the case. Based on public customer testimony and facts alleged in Complaints against the Company, a prima facie showing has been made that safe and adequate service at just and reasonable rates is not being provided by the Company. It is DENIED that, if the Commission were to find that PCL&P was not providing safe and adequate service at just and reasonable rates, its only remedy authorized under the Public Utility Code would be to order PCL&P to provide specific service at specific rates. It is further DENIED that the Commission has no basis to exercise a claimed power to order the Company to be sold.

34. It is ADMITTED that Paragraph 10 of the Amended Complaint states that the sale of PCL&P should be mandated due to: 1) the inferior service quality of PCL&P, 2) the lack of local control and employee services in Pike County on the part of PCL&P, and 3) PCL&P's excessive rate levels as compared to those of other Pennsylvania electric utilities. It is ADMITTED that Paragraph 11 of the Amended Complaint avers that there are no PCL&P employees headquartered in Pennsylvania and Pike maintains no office in Pennsylvania. It is ADMITTED that Paragraph 12 of the Amended Complaint avers that the lack of local control and the lack of employee services in Pike County on the part of PCL&P was attested to by County of Pike Commissioner Harry Forbes at the February 27, 2006 Public Input session. It is ADMITTED that Paragraph 14 of the Amended Complaint avers that the magnitude of the present rates, the overwhelming customer desire for another utility provider (as heard at the Public Input session) and the lack of local control and local employees on the part of PCL&P mandate that PCL&P should be sold to another service provider to provide service in the Company's service territory. It is DENIED that the averments in Paragraphs 10, 11, 12 and 14 constitute an issue upon which relief cannot or should not be granted as the Complaint does not amount to a legally valid claim. Paragraphs 10 and 14 of the Amended Complaint set forth numerous claims upon which the relief sought, including the sale of PCL&P—can be granted.

35. The statements are allegations of fact of which the County has no first-hand knowledge and demands strict proof at hearing.

36. The statement is an allegation of fact of which the County has no first-hand knowledge and demands strict proof at hearing.

37. The statement is an allegation of fact of which the County has no first-hand knowledge and demands strict proof at hearing.

The Billing Issue Raised In The County's Amended Complaint Is Moot

38. It is ADMITTED that Paragraph 13 of the Amended Complaint avers that PCL&P has made long-standing errors in billing for numerous business customers' demand charges, resulting in substantial overcharges and required refunds to those customers. It is DENIED that this issue has been resolved and is now moot. These billing errors speak to the adequacy of service provided by the Company. It is further DENIED that this issue should be dismissed.

39. The specific billing amounts are an allegation of fact of which the County has no first-hand knowledge and demands strict proof at hearing. The remaining statements in the Paragraph are allegations of fact of which the County has no first-hand knowledge and demands strict proof at hearing.

II. CONCLUSION

WHEREFORE, the County of Pike respectfully files this Reply to the PCL&P Answer Raising New Matter.

Respectfully submitted,

James P. Melia
PA Attorney I.D. 35265

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Counsel for Pike County

Dated: August 25, 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

VERIFICATION

I, Harry Forbes, Chairman of the Pike County Board of Commissioners, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Respectfully Submitted,

Date: August 24, 2006

Harry Forbes

2006 AUG 25 AM 11:36
PA PUC
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

County of Pike	:	
	:	
v.	:	Docket No. C-20065942
	:	
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).

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James P. Melia
PA Attorney I.D. 35265

Counsel for Pike County

Dated: August 25, 2006

2006 AUG 25 AM 11:36
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SECRETARY'S BUREAU

COMMONWEALTH OF PENNSYLVANIA

OFFICE OF CONSUMER ADVOCATE
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IRWIN A. POPOWSKY
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ORIGINAL

September 7, 2006

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

DOCUMENT FOLDER

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

Dear Secretary McNulty:

Enclosed for filing in the above-captioned docket, please find the original and three copies of two Petitions signed by 400 residential and 105 business customers of Pike County Light & Power Company. These Petitions were provided to the Office of Consumer Advocate during a Prehearing Conference in the above matter in Milford, on August 3, 2006. In accordance with the attached Certificate of Service, copies are being provided to Administrative Law Judge Jandebeur and to all parties in this proceeding.

If you have any questions please do not hesitate to contact me

Sincerely,

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

Enclosures

00090630.DOC

SECRETARY'S BUREAU
2006 SEP -7 PM 4:07

BA

ORIGINAL

CERTIFICATE OF SERVICE

RECEIVED
2006 SEP -7 PM 4:07
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, Reply of The County of Pike to The Pike County Light & Power Company Answer Raising New Matter, 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 August 2006.

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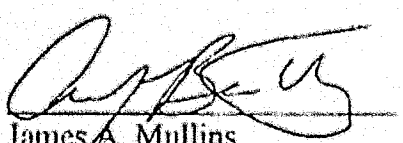

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BUSINESS OWNER PETITION

We the undersigned business owners operate our businesses(s) in the Pike County Light & Power (PCL&P) territory. Not only are our electric rates way out of line, but the service and infrastructure provided by PCL&P is inadequate. Furthermore, PCL&P has no employees in Pennsylvania, nor do they have offices in Pennsylvania. We want the Pennsylvania Utility Commission (PUC) to Revoke PCL&P's license, and we want PCL&P to be sold to another utility that is not related to PCL&P or its present owners.

(Please print all information and sign)

Name	Business	Address	Phone	Signature
Andrea Teter	Cleaning	120 moon Valley Rd	296-7258	Andrea Teter
Joseph Sudano	Sales	119 Congress Road	296-4271	Joseph Sudano
Bob Hartman	Wood Shop	115 Mill ST	296 5141	Bob Hartman
Clay Harper	Action Outfitters	546 Rt 6/209	28-6657	Clay Harper
Jennifer Hanna	Realtor	3510 Hemlock	775-9796	Jennifer Hanna

BUSINESS OWNER PETITION

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(Please print all information and sign)

Name	Business	Address	Phone	Signature
ESTHER P. IRWIN	FAR AWAY LACES INC	501 BROAD ST.	296-7575	

BUSINESS OWNER PETITION

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(Please print all information and sign)

Name	Business	Address	Phone	Signature
THOMAS FRANCE	GOLDEN GIFTS	319 BROAD ST MILFORD	570 296 5868	

BUSINESS OWNER PETITION

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(Please print all information and sign)

Name	Business	Address	Phone	Signature
C. Harper	Action Outfitters	546 Rt 6/209	296-6657	
Jonathan Long	JJ's Ass	472 W Market St	570-422-4114	
Chris Corman	Christian Cont.	409 Ave C	570 491-4863	C. Corman
Steve McKern	McKern Custom Homes	208 E Harford Milford	570 296 5580	
Michael Bernstein	Dr Bernstein	106 Broad St Matamoras	19692	

BUSINESS OWNER PETITION

We the undersigned business owners operate our businesses(s) in the Pike County Light & Power (PCL&P) territory. Not only are our electric rates way out of line, but the service and infrastructure provided by PCL&P is inadequate. Furthermore, PCL&P has no employees in Pennsylvania, nor do they have offices in Pennsylvania. We want the Pennsylvania Utility Commission (PUC) to Revoke PCL&P's license, and we want PCL&P to be sold to another utility that is not related to PCL&P or its present owners.

(Please print all information and sign)

Name	Business	Address	Phone	Signature
Milford DMC	Dr.	301 Broad St. Milford	1-570-2968611	
EastCoast Artifacts		203A East Main St. Milford	570-328-6868	
Richard Philhower	The Preservation Room	340 Rt 6 Unit E7 Matamoras PA	570-296-5301	
Pike Co Ed Assoc	Public Relations		491-2022	
Ken Rockis	Judys	220 Broad St	296-5626	
Denis R Chant Realtors	106 E Harford St. Milford		296-7717	
~~Philip Hoke 3130~~				
Philip Hoke	Insurance	313 W. Harford St	296-7492	
Ed Nickles	Ed Nickles Custom Builder	104 Bennett Ave	296-9200	
SEAN STRUB	HOTEL FAUCHERE	POB 1233 Milford	2964854	
Penny Crase	Dreyer Physical Therapy Institute	100 Wheatfield Dr.	2965911	
Compton White Jr	David E Lawler	156 Hi View Rd & PO Box 1742 w MARKET ST	570-296-5610	
Donna Polen			570 [illegible]	4118
Charlie Vaudt	Vaudt Agency	115 Roberts LANE	Milford PA	18337
[illegible]		[illegible] PA	[illegible]	
Joseph Boisvert	Family Chiropractic	RR 2 Box 205	Dingmans Ferry	
John Pgrattan	RETIRED GRADELEY			
J. Rockis	Judy's	Broad St	296-5626	
M Ceraza		35th Sunrise Lk	(570) 6[illegible] 9044	

BUSINESS OWNER PETITION

We the undersigned business owners operate our businesses(s) in the Pike County Light & Power (PCL&P) territory. Not only are our electric rates way out of line, but the service and infrastructure provided by PCL&P is inadequate. Furthermore, PCL&P has no employees in Pennsylvania, nor do they have offices in Pennsylvania. We want the Pennsylvania Utility Commission (PUC) to Revoke PCL&P's license, and we want PCL&P to be sold to another utility that is not related to PCL&P or its present owners.

(Please print all information and sign)

Name	Business	Address	Phone	Signature
Jason Roeder	The Shop	167 Reubenbell dr	491-2750	
Steve Tuskes	Tuskes Real Estate	PO 1300 Dingmans Ferry	~~570~~ 296-2342	
Mary Ann Ruby	Books in Balance	100 Wheatfield Dr.	296-7840	

BUSINESS OWNER PETITION

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(Please print all information and sign)

Name	Business	Address	Phone	Signature
Ray+Karin Willis	Ray's Auto Repair	105 E Ann St. Milford	296-8615	Karin Willis
John Casey	writing	154 Roberts Lane	296 2455	John Casey
ROSAMOND CASEY	FREEHOUSE BOOKARTS	Pinchot Ct.	434-293-8735	Rosamond Casey
Peter Larkin	CRL Electric	109 Chippy Cole Rd Milford PA 18337	570-296-2388	Peter Larkin
Tina Larkin	CRL Electric	109 Chippy Cole Rd Milford PA 18337	570-296-2388	Tina Larkin
DAVID CLARK	D+H TAXIDERMY	300 Penna. Ave, Matamoras	491-5083	David Clark
Matt Osterberg	Milford Boro Council President	Milford	296-8331	Matt Osterberg
KENNETH PEERBOOM	PRIMETIME MEATS	105 WHEATFIELD DR. MILFORD	296-6064	Kenneth Peerboom

BUSINESS OWNER PETITION

We the undersigned business owners operate our businesses(s) in the Pike County Light & Power (PCL&P) territory. Not only are our electric rates way out of line, but the service and infrastructure provided by PCL&P is inadequate. Furthermore, PCL&P has no employees in Pennsylvania, nor do they have offices in Pennsylvania. We want the Pennsylvania Utility Commission (PUC) to Revoke PCL&P's license, and we want PCL&P to be sold to another utility that is not related to PCL&P or its present owners.

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Name	Business	Address	Phone	Signature
Jorgensen's Deli		312 Broad St	570 4920100	
Dimmick Inn Steakhouse		101 E. Harford	570 296 4021	
Books + Prints		Broad St.	570 296 4771	
Antiques & misc		Broad St	570 296-4258	
Dora Helene	Dora Helene	212 Broad St	570 424-7221	
Thomas Duncan	Thomas Duncan Photography	501 Broad St	570-296-5069	
	Kindred Spirit	206 E Catherine St	570-296-5514	
	Kindred Spirit	206 E Catherine St	570	296-5514
Upriver Home	Kevin Holley	202 Broad St.	254 2026	
The Gallery & Fred Hall		101 W. Harford St Milford	4090902	

BUSINESS OWNER PETITION

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(Please print all information and sign)

Name	Business	Address	Phone	Signature
John Sorrenti	Cafe Sorrenti	305 Broad St.	570-296-2005	
JOHN LONGENDORFER	GOLDEN FISH	307 BROAD	296-0413	John Longendorfer
Dr. Gary Rochick	BracePlace USA	315 Broad St	296-2722	
Carol Ann Sklar	Carol Ann's Ladies Closet	317 Broad St	296-7703	
Ruby LLC		100 Wheatfield Dr	296-8112	
Ruben LLC		111 Wheatfield Dr	296-8112	
Lowell	Mortgages	501 Broad St.	296-6330	
Lowell	Rental	400 W. Harford	296-5899	
John T. Orben	Titling	501 Broad St	296-5971	
Pat Leonard	Austin Auto	611 Broad St.	296-6406	
Connie Secley	Main Hair Lost	102 E John St	296-4441	Connie A Secley
Joanne Skyler	W.S.K.&L.	104 W Heights St.	296-6491	Joanne Skyler
Deborah Fisher	Title Co. Licensed	115 W Harford St	296-8574	Deborah Fisher
Paul C Fischer	Title Co Licensed	115 W Harford St	296 8574	
Kelly Wilson	Hare Hollow	322 Broad St	296-5757	
Tamara Zaleski	Zaleski Optical	322 Broad St	296-4891	
Susan DiGerolamo	PATINA	320 Broad St	296-4128	

BUSINESS OWNER PETITION

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(Please print all information and sign)

Name	Business	Address	Phone	Signature
David S. Gates	7th St. Coffee	611 Broad St.	845-401-6720	
Lindsay K Gates	7th St. Coffee	611 Broad St.	845-401-6720	
Christina DiBlase	DiBlase Consulting A. BRADAC CO	611 BROAD ST	570-561-2590	
[illegible]				
S Brooks	Progressive Realty	110 E Harford St	5702965566	
E Murphy	Pike County Arts & Crafts (non profit)	109 Catharine St	5702962338	
Jon Stuckler	Tri State Bell	1041 Penn Ave	491-4807	
Lea Stuckler	TRI STATE Shell	1041 Penn Ave	491-4807	
Danny Tesinean	American Living	611 Broad St	296-3839	

BUSINESS OWNER PETITION

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(Please print all information and sign)

Name	Business	Address	Phone	Signature
Jan Hurwitz	Mega Bytesys.	400 BROAD ST MILFORD PA 18337	570 296-5978	
Philip J Hurwitz	Tri State News	400 Broad St Milford PA 18337	570 296 5978	
Joe Fretta	Fretta's	223 Broad ST	570 296-7863	
Sylvie Astrup	Yesterday's Cafe	189 E. Ann Milford	570-296-3539	
Tom Grisel	AAA Antique	109 E. Ann St	570 296 3539	
Chuck Lee	Manor Cafe	Milford Pa 18337	570 296 8885	
Dawn Took	Chrissie's Deli	17 Penn. Ave Matamoras	491-5964	
Jeffrey Mowe	Jeff's Garden	400 Ave M Matamoras PA	491-4008	
Lynn + Paul Gluck	Wooden Treasures	1002 Penn Ave, Matamoras	491-2040	
Kim Martowicz	Stewarts	701 Penn Ave. Matamoras	491-2015	

BUSINESS OWNER PETITION

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(Please print all information and sign)

Name	Business	Address	Phone	Signature
Beth Germann	MailNet	113 TH St	409-8762	Beth Germann
Alan Blumenson	Landlord	107 E Ann St	409-1084	Alan Blumenson
[illegible]				
Michael Adsit	Lattimore Point	200 E. Harford	296-5369	Michael Adsit
Charles Lutz	Pinnacle	202 E Harford	296 4521	Charles Lutz
Margaret McKiernan	Refuse	204 E Harford	596 9290	Margaret McKiernan
Greg Vannatta	Vannatta Realty & Bldg. Dev.	214 E. Harford	296-9445	Greg Vannatta
Clifton Saucier	Salgado-Saucier Inc.	210 E Harford	296-3900	Clifton Saucier
Hogan Homes	TC Hogan	302 E Harford St.	296-7210	[illegible]
Dutch Country Treas	Pat Bylsma	316 E Harford St	296-6255	Pat Bylsma
second Street Salon		401 E Harford St	296-2010	Darlene Zick Kaus
Catherine Schoppe	Schoppe's Ant.	105 Bennett Ave.	296-6243	Catherine Schoppe
David A. Repenning	Milford UMC	206 E. Ann St	296-6124	David A. Repenning
JANICE HALSTED	LAUREL VILLA	200 E ANN ST.	296-9940	Janice Halsted
DM DEGNAN	FIREWORKS WAREHOUSE	401 E HARFORD ST	296-9960	DM Degnan
THE CABINET SHOP	MIKE MCCARTHY	100 2ND STREET	296-4000	[illegible]
Dutch Country Treas	Cindy Hostetter	316 E Harford St	296 6755	Cindy Hostetter
The Perfect Pan		305 E. Harford St	296-1151	Marcia Van Gelder

RESIDENT PETITION

296 3539

We the undersigned residents live in the Pike County Light & Power (PCL&P) territory. Not only are our electric rates way out of line, but the service and infrastructure provided by PCL&P is inadequate. Furthermore, PCL&P has no employees in Pennsylvania, nor do they have offices in Pennsylvania. We want the Pennsylvania Utility Commission (PUC) to Revoke PCL&P's license, and we want PCL&P to be sold to another utility that is not related to PCL&P or its present owners.

(Please print all information and sign)

Name	Address	Phone	Signature
Audrey Lanham	122 Chiggy Cole Rd.	570-296-8352	
Angela Mlearn	115 Deep Brook Rd.	296-7717	Angela Mlearn
Naomi Daly	149 Moon Valley Road	296-9155	Naomi Daly
Hope Blauvelt	101 Hunters Hill Rd Matamoras	491-5836	
Burma Sadigoni	106 Vasuvius Lane	296-6786	Burma Sadigoni
Ruth Cut	106 E Harford St	296 7717	
	400 W. Harford St.	820 2428	T Gorman

2005 SEP -7 PM 4:07

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Richard Snyder	PO Box 927 Milford Pa 18337	296 6249	Richard Snyder
Wendy Kaplan	139 Foster Hill Road	917-6898597	Wendy Kaplan
Anthony Cucalli	107 W Ann St Milford PA 18337	296 2488	Anthony Cucalli

BUSINESS OWNER PETITION

We the undersigned business owners operate our businesses(s) in the Pike County Light & Power (PCL&P) territory. Not only are our electric rates way out of line, but the service and infrastructure provided by PCL&P is inadequate. Furthermore, PCL&P has no employees in Pennsylvania, nor do they have offices in Pennsylvania. We want the Pennsylvania Utility Commission (PUC) to Revoke PCL&P's license, and we want PCL&P to be sold to another utility that is not related to PCL&P or its present owners.

(Please print all information and sign)

Name	Business	Address	Phone	Signature
Sr/Ken Wool		305 E. Harford St	409-1109	S.C.
[illegible] Lacava Sutters		215 E Harford St	296-6200	
Dominick Fiorentino	Steakhouse	101 E Harford	296-4021	
Yuchi Dawson	Tanning	201 Water St	573 383-8061	
Waterwheel Cafe		150 Water St.	296-2383	
Samuel Pinguicio		Box 927 Milford Pa	296 6249	Richard S. Pinguicio

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
A. SABELLA	117 GREENWOOD HILLS	296-6320	Angela Sabella
W EVANS	203 Christian Hill Rd Milford PA	2768013	W Evans

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
DONNA ECKMAN	208 Penna. Ave		Donna Eckman
Rick Roy	1190 Delaware Drive		Rick Roy
Albert Helms	203 AVE. F		
CHRIS Cook	605 AVE G		
Virginia Slawschuk	101 Ave N		Virginia Slawschuk
[illegible]	169 Bluestone Blvd		
Dave Sheard	307 Ave M Matamoras PA		Dk Sheard
Joyce Paulison	109 ave o Matamoras PA		Joyce Paulison
HENRY COTTARELLI JR	118 POND DR MATAMORAS PA		
[illegible]	100 Penna Ave. [illegible]		
Natasha Wallace	102 Ave K, Matamoras, PA		NF Wallace
Roger Howard	215 6TH ST. MATAMORAS. PA		Roger Howard
JOSEPH J SCHAFER	507 Front St Matamoras PA		Joseph J Schafer

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Sandra M. Paul	4018 Circle Court Milford	570-491-2038	Sandra M Paul
THOMAS FRANCE	115 William PENN MILFORD	570 296 2658	
Donna Morrison	122 William Penn MILFORD	296 6573	D Morrison

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Dan Pecoriello	145 Highview Rd	296-4628	DPecoriello
Jim Daley	1472 W MARKET ST	622-7116	Jim Daley
Chris Comer	409 Ave E	4919863	C. Comer
T Mowday	112 Big Pines Rd	296-3061	T. Mowday
[illegible]	206 E CHERRY ST Milford PA	296-5574	[illegible]
Mary M Williams	130 Moon Valley Rd, Milford, PA	2968301	M. Williams
John Daly	149 Moon Valley RD Milford PA		John + Mona Daly

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Raymond A. Willis	241 Fire Tower Rd Milford	296-4802	
Kevin Craft	124 Schocopene Ct.	296-2706	
John Casey	154 Roberts Lane	296 2455	
	Brocket Court	434 293-8733	

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Ken Recchia	205 W. Catherine St. PO Milford	296-6651	
Harry Forbes	506 Broad St., Milford, Pa 18337		
[illegible]	117 Pleasant Ave, Milford, PA 18337	296-5017	
[illegible]	207 Vandermark Dr Milford PA 18337	296-6218	
Ray Laquette	155 Pine Acres Lane	296 2985	
Derek R Minnerly	108 Laurel Ct. Milford		
Gunter Charles Muller	HC67 Box 33, Dingmans Ferry, Pa 18328-1237		
James McClain	POBox 1463 Milford PA	296-7778	
Ed Nikles	104 Bennett Ave Milford Pa	296-9200	
SEAN STRUB	POB 1233 Milford	2964857	
Dale Eck	Apple Alley Milford Pa.	296.2023	
Val Preston	114 W Ann St	2964136	
Peter R. Rushton	113 W. Ann St. Milford PA	570-296-9916	
[illegible]	[illegible] Circle Rd	296-2568	
[illegible]	[illegible]	296-5180	
Sarah Dillmuth	1260 Pond Dr. Matamoras PA	491-5676	
Steven Vitale	204 West High Street	8281785	
Patricia McCormack	107 8th ST	296-2597	
Edward Nancy Duvinski	116 Min Spring Rd Milford	570-296-4733	

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
PAVAGLIONE RYAN	104 ANN ST. MILFORD	570-296-8611	
Jan Schoenleber	111 W High St. Milford	570-296-5709	
Miriam Siegel	PO BOX 1154 132 PINE ACRES	570-296-6669	
James P. Emery	109 broad St. Milford, Pa	296-4309	James P. Emery
Frank D. Catt	1040 Dela Drive Matamoras Pa	570-491-4472	
Andy Lam	299 Sunset Lake Dr Milford Pa	570-296-2962	
Babette Smith	103 Wyckoff Lane Milford PA	296-7387	
Marie Lamb	103 Wyckoff Lane Milford Pa	296-7387	
Olive M. Albright	106 Wyckoff Lane Milford, Pa	296-6642	
[illegible]	301 EAST Harford St Milford PA	347-524-3857	
Chris Sutton	2031 East Ann St Milford, Pa	570-228-6868	
DAYNE COSEE	302 DELAWARE Dr. MATAMORAS PA	570 491-4588	
CAROL LOSEE	302 Delaware Drive Matamoras PA	570-491-4588	
Lea Boisvert	169 Christian Hill Rd, Milford	296-8393	
ED Rymsza	401 W. High ST MILFORD	296-8434	
Donna Williams	209 1/2 Ave C MATAMORAS, PA	570-491-5831	
[illegible]	133 VANDERMARK DR. MIL. PA.	296-2964	
H. R Potter	312 W. Harford St. Milford, PA	296-6408	
Jean Mary	305 W Catherine ST	Milford	

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
William G. Ellis	Crawford Park Rd, Milford, PA	—	
Lora Lawson	156 Highview Rd, Milford PA	570-296-4015	
David Lawson	156 Highview Rd, Milford PA	0298-4535	
Patricia Moroon	521 Rt. 6 Milford Pa	570 2916645	
William Moroon	521 Rt. 6 Milford Pa	570 296 6645	
Joan Haralambopoulos	108 East George St Milford PA	570 296-2193	
E. Haralambopoulos	108 East George St Milford PA	570-296-2193	
Kathleen Hodgins	106 Wheatfield Ct. Milford, PA	296-7034	
Joseph Matrangelo	124 Green Acres Lane Milford	296 4300	
Leon Spencer	603 4th St Milford PA	296-4417	
Jeff Chapkin	1292 Hemlock Farms PA	775-2770	
Gertrude Smith	909 Ave L Matamoras, Pa	570-491-4454	
Cynthia R Smith	909 Ave L Matamoras Pa	570 491-4454	
Eric Pikus	143 Hillview Place Shohola PA	570 561 7801	
Anne Zimmerman	607 1st ST matamoras PA	5704915216	
Frank Giovi	4061 Circle Court Milford PA	570 491-5277	
Josh Wasserluh	P.O. Box 1 Milford Pa 18337	828-6041	
John Heidenstrom	510 3rd St. Milford, Pa	296-6881	
Judy Reuter	220 Broad St. Milford PA	296-8626	

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
JORGENSON	211 E HIGH ST	570 296-6024	
RAY PROULX	114 Moon Valley Rd. Milford	570-296-7645	
Patricia Phillips	702 Sixth St Milford Pa	570-296-6626	Patricia R Phillips
Mary Jane Rhodes	Box W SHOHOLA	570 296 2418	
MARY JORGENSON	122-MILL CREEK CT.	570-296-4977	
Carol Proulx	114 Moon Valley Rd Milford PA	570-296-7645	
LOESCHORN	113 E. GEORGE ST MILFORD PA	5702966810	
Michael BILLIG	149 BENNETT AV UNIT C MILFORD PA	296-2742	
[illegible]	211 W. Harford St Milford PA	[illegible]	
Roberta Poe	PO Box 1116 Milford Pa		
Jeff Click	206 E CATHERINE ST MILFORD PA	570-296-5574	
KAREN CLICK	206 E CATHERINE ST	570-296-5574	
Meghan Featherstone	900 Ave. Q. Matamoras, PA. 18336	570.491.4465	
Michele Deffe	122 Dawes Ln Milford PA 18337	5702966593	
DAVID CLARK	110 Avenue L, Matamoras, PA 8936	491-5083	
Ruth Portsmouth	100 Meadow Brook Rd, Matamoras, PA	491-5499	

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Ronald C. Hall IV	101 Ave N Matamoras, PA	570-491-2408	Ronald C Hall IV
Kelly Delp-Dewitt	100 1st Street Matamoras PA	491-5775	Kelly Delp-Dewitt
Amy Tyler	100 Ave M 1st St Matamoras PA		Amy Tyler

RESIDENT PETITION

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Name	Address	Phone	Signature
B. O'Donnell	311 Old Milford Rd,	2965307	B. O'Donnell
Svetlana Kelfer	109 Keystone Ct Dingmans Ferry PA 18328	570 828 2359	SK
Deborah Ng	703 - Milford PA	570-828-8652	Deborah Ng
Liliana Bosque	2258 Gold Key States PA 1833	(570) 686-5147	Liliana Bosque
Stacey Tidridge	105 Chipmunk Lane Milford Pa 18337	(570) 296-6864	Stacey Tidridge
Sylvia Patel	3 Winona Lakes, E. Stroudsburg PA	18302 (570) 223-8252	Sylvia Patel
Jose Clemente	1201 pine Ridge Bushkill Pa	570/588-0124	Jose Clemente

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Carmelo Gregorio	316 Cummins Hill Rd, Milford PA 8336	296-4369	
Antoinette Salas	108 Castle Lane Milford PA 18337	203(644-0990.	Antoinette Salas
AL. ALBINSON	100 CASTLE CT MILFORD PA 18337	570-409-0270	A. Albinson
Bonnie Albinson	100 Castle Ct MILFORD Pa. 18337	570-409-0270	Bonnie Albinson
Gerard Blee Jr	442 Cummins Hill Rd Milford PA 18337	973-446-0519	Gerard Blee Jr
Rachael Blee	442 Cummins Hill Rd Milford PA 18337	973446-0519	Rachael Blee
MATT McDERMOTT	360 Cummins Hill Milford, PA 18337	646-243-9508	
Stephen Kraker	369 Cummins Hill MILFORD PA 18337	296-6622	Stephen J. Kraker
EVA KRAKER	369 Cummins Hill Milford, PA	296-6622	Eva Kraker
Mary Grossman	154 FIELDSTONE DR. MILFORD PA	409-8009	Mary Grossman
Linda Grossman	154 Fieldstone Dr.	409-8009	Linda Grossman
MARION OWENS	151 FIELDSTONE RD, MILFORD	409-1997	
RHONDA EVERS	"	"	Rhonda Evers
Lee J Tomassini	146 Fieldstone Drive	409-0489	Lee Tomassini
Jeff Pellegrino	138 Fieldstone Drive	296-2992	Jeff Pellegrino
Kristen Pellegrino	" " "	296-2992	Kristen Pellegrino
Bill Vealey	102 North Castle Dr. Milford 18337	296-2232	Bill Vealey
Pam Vealey	" " "	296-2232	Pam Vealey

RESIDENT PETITION

We the undersigned residents live in the Pike County Light & Power (PCL&P) territory. Not only are our electric rates way out of line, but the service and infrastructure provided by PCL&P is inadequate. Furthermore, PCL&P has no employees in Pennsylvania, nor do they have offices in Pennsylvania. We want the Pennsylvania Utility Commission (PUC) to Revoke PCL&P's license, and we want PCL&P to be sold to another utility that is not related to PCL&P or its present owners.

(Please print all information and sign)

Name	Address	Phone	Signature
Nellies Naturals Lumberyard			
Rita Flores	PO Box 934 Milford	5706863616	R. Flores
Valentine Flores	PO Box 934 Milford	5706863616	V. Flores
~~Joe Kennedy~~			
Eileen Hudson	112 Meadowbrook Rd Matamoras	491-2459	Eileen Hudson
Karen Wolff	101 8th St. Milford		Karen Wolff
Carol Stracco	[redacted] PO Box 24 Milford		Carol Stracco
Peter C Kenny	120 Elena Lane Milford PA 18337		Peter P. Kenny
Carmen M Kenny	120 Elena La Milford	409-8206	Carmen M Kenny

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Robert E. Stevens Jr.	14 Derwend Circle, Matamoras	570-491-5509	Robert E. Stevens Jr.
Mary Ellen Stevens	14 Derwend Cir, Matamoras	570-491-5509	M. Stevens
Alisa L. Garza	10 Derwend Cir Matamoras	570-504-9715	A. Garza
LEOCADIO GARZA	10 Derwend Circle Matamoras	570-504-9715	L. Garza
Melissa McLaughlin	9 Derwend Circle Matamoras	570 491 2703	M. McLaughlin
Pam Russell	7 Derwend Circle Matamoras	570-491-2716	P. Russell
Ann Powers	Same	Same	Ann Powers
Joyce Curtis	100 Ave P. MATAMORAS	570-491-4085	Joyce Curtis
Robert Curtis	Same	Same	Robert Curtis
	215 1st St Apt 3	570 226-6765	
William Yungling	10 Ave O, Matamoras, Pa	570-491-2493	W. Yungling
Mary Yungling	10 Ave O, Matamoras, Pa.	570-491-2493	M. Yungling
Frances Lemon	100 Ave O MATAMORAS PA	570-491-4903	Frances Lemon
KATHERINE S. LEMON	100 AVE O MATAMORAS, PA	570-491-4903	Katherine S. Lemon
[illegible] GAA	101 AVE O MATAMORAS PA	570 491 2097	[illegible]
Mary Gaa	101 Avenue O Matamoras Pa	570-491-2097	Mary Gaa
Madeline Mason	100 Ave N Matamoras Pa	570 49 14725	Madeline Mason
John Mason	100 Ave N Matamoras Pa	570 491 4725	John Mason
Betty Jean Halpin	101 Ave N. Matamoras PA	(570)491-2408	Betty Jean Halpin

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
ED LONGENDORFER	307 BROAD	296-0413	Ed Longendorfer
Edward Geehman	132 Fieldstone Drive	409-0101	Christina Hudman
Patricia Phillips	702 Sixth St	296-6626	P R Phillips
Carol Ann Sidar	315 W. Catharine St.	296-9614	
Martha A Shankle	608 Ave O Matamoras	491-5469	M Shankle
DAVID + MARYANN	RUBY 103 MILLCREEK DR MILFORD	296-8112	David E Ruby
	PO Box 467 Milnft PA 18340	/	
LOWELL	109 Bull Run	296-5899	
Deborah Fischer	106 Decker Lane Matamoras Pa	491-6306	
Paul C. Fischer	106 Decker Lane Matamoras Pa	491-6306	
Joan Wood	320 Broad St	296-1128	Joan Wood

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
David S. Gates	298 7th St. Milford PA. 18337	845-401-6720	
Cheryl McCarthy	108 Willow Lane Milford Pa 18337	(570) 296-4646	Cheryl McCarthy
Al Anvil Anvil	3089 SUNROSE LK.		
Steven Shoe	102 Highland Rd Milford 18337	296-9236	
Frank Emery	Post Rd	Dingmans Ferry 18328	
Ben Talbot	135 Sawkill Ave Milford Pa	570-228-3346	
Mike Burton	340 Route 6 Milford, PA 18337	570-296-4416	
Pat Culleny	259 Cummingsbill rd Milford PA	5704090691	
Jesse Gilpin	213 EAST CATHERINE ST. MILFORD 18337	(570) 296-6886	

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Beth Geimann	460 W. Harford, Milford PA	409-8762	Beth Geimann
Alan Blumenstein	110 Pear Alley, Milford Pa	570-409-1064	Alan Blumenstein
T.C. HOGAN	131 SENATE RD. MILFORD PA	296-6248	T.C. Hogan
Catherine Schaeffer	208 E GEORGE ST. MILFORD, PA.	296-6243	Catherine Schaeffer
Michael Ruben	203 E. Ann St Milford PA	296-8072	Michael Ruben
Pierlinde Phillips	203 E Ann St Milford PA	296 8072	Pierlinde Phillips
J. Williams	205 E Ann ST. MILFORD PA	296 6613	J. Williams
Rosalyn Williams	205 E Ann St, Milford PA 18337	570 296 6613	Rosalyn Williams
David A Repenning	208 E. Ann St Milford Pa 18337	296-7123	David A Repenning
Jennifer Bennett	209 E. Ann St MILFORD PA 18337	296-6208	Jennifer Bennett
Annie Isaacson	209 E. Ann St Milford Pa. 18337	2566208	Annie Isaacson
Ingrid Pinion	212 Third St Milford, PA 18337	570 371-4461	Ingrid Pinion
Halina Marinski	300 E. Ann St., Milford, PA 18337	570-296-7099	Halina Marinski
Christie Bilger	1 East Ann Milford PA		Christie Bilger
Janice Halsted	208 Second St Milford PA	296-7047	Janice Halsted
Derrick R. Betts	145 Moon Valley Rd Milford		Derrick R. Betts
Mark Gnau	300 E. Harford Milford		Mark Gnau
M. Worrall	108 W. High St. Milford		Michelle Worrall

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(Please print all information and sign)

Name	Address	Phone	Signature
Joe Fiesta	223 Broad St	570 296-3012	
[illegible]	109 E. Ann St Milford	570 296 3339	
Tony Grist	109 E ANN ST Milford	570 296 3539	
Sturla A Moyer	PO Box 426 Milford	570-296-1266	
Amy Eisenberg	437 W. Ann St. Milford PA	296-5062	
Hazel Lutz	101 Briggs Way Milford Pa	296 1113	
Margaret McKiernan	211 W. George St, Milford	296-0311	
Kay Vanaulte	804 E. Harford St. Milford, Pa.	296-9445	
Gillian Brannigan	111 Sawkill Ave. Milford, PA	296-6057	
Hannah Jennifer	c/o 6 mott st Milford PA	570-296-2814	
[illegible]	132 MOTT ST. MILFORD PA		
[illegible]	110 MOTT ST. MILFORD PA		
[illegible]	COUKLIN HG MOTT MILF PA		
Anthony ARESIN	315 FOSTER HILL RD Milford	296-6867	
[illegible]	409 1st St Milford PA	296-0414	
M. Tumminello	182 Sara Lane	559-7463	
E. Brannigan	309 W. Catharine St	296-1157	
ARNOLD GREEN	300 WATER ST MILFORD	296-5615	
[illegible]	300 Water St Milford pa	296-5475	

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Christine Montanaro	130 Vandermark Dr., Milford, PA	570-296-8742	Christine Montanaro
CHARLES A. LABOUNTY	304 SECOND ST MATAMORAS PA	570 491 4322	Charles A. Labounty
JEFFREY MAUCE	407 HAVEN MATAMORAS PA	570 491-4408	Jeffrey Mauce
LYNN PAUL GLUCK	1002 PENN AVE, MATAMORAS, PA	491-2768	Lynn Paul Gluck
Betty Jean Bonaguro	1 Derwend Circle Matamoras, PA	491-2521	Betty Jean Bonaguro
Thomas U Bonaguro	1 DERWENT Circle MATAMORAS PA	570-491-2521	Thomas U Bonaguro
Don Jost	#4 DERWENT CIRCLE MAT PA	516-672-5672	Don Jost
E. Schaffner	5 Derwent Circle, Matamoras PA	570-491-6314	E. Schaffner
F Young	101 Ave D Matamoras, PA	570 491-5122	F Young
DAVE WILSON	507 9TH ST. MATAMORAS PA	845-649-5288	Dave Wilson
Jill Mulloy	6 Avenue N Matamoras PA	570-491-4105	J Mulloy
Mary Gelormino	9 Avenue N. Matamoras, PA	570-491-4057	M. Gelormino
Dawn Maglio	2 Ave N. Matamoras PA	570-491-2822	Dawn Maglio
TAMMIE KLEIN	4 AVE N MATAMORAS PA	570-491-2066	T Klein
Michele DeGroat	401 Ave N Matamoras PA	570-491-4714	Michele DeGroat
Mari Koonce	10 Ave L Matamoras PA	570 491 6373	Mari Koonce
Tara Schmidt	100 AVE L Matamoras PA	570-491-5831	Tara Schmidt
Jennifer Smith	21 First St, Matamoras PA	717-672-4926	J Smith

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
CHUCK DOWD	PO BOX 547 MILLRIFT	570-491-2125	Chuck Dowd
John Edwards	PO Box 593 Mill Rift PA	491-4493	John Edwards
PATRICK BRENNAN	PO Box 484 Mill Rift PA	491-2726	Patrick Brennan
Robert Miller (USPS-PM)	PO Box 9998 Millrift PA 18340	491-4605	Robert Miller
JERRY KILLEEN	Box 505 MILLRIFT PA	491-2592	J Killeen

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Rose Lawrence	R.R. 2 Box 160 D.E. PA		Rose Lawrence
Mary Murray	112 Hemlock Circle, Milford		Mary Murray
Ted and Ellen Harrington	800 Locust St Milford		Ellen Harrington

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Maureen Killeen	PO Box 505 Mill Rift PA	491-2592	Maureen Killeen
Donna Edwards	PO Box 593 Mill Rift PA	491-4493	Donna Edwards

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Name	Address	Phone	Signature
Barbara Bachmann	309 W. Ann - Milford	296-7104	Barbara Bachmann
Albert Waldman	281 Foster Hill Rd Milford	296 9323	Albert Waldman
Eric Bufano	144 Sawkill Ave Milford	296-6096	Eric Bufano
Martha Lorin	144 Sawkill Ave, Milford	296-6096	Martha Lorin
Karen Nell	7th Street Milford	296-2906	Karen Nell
Cindy Schreyer	7th Street Milford	296-2906	
Andrew Repanning	208 E. Ann St, Milford	296-7123	Andrew Repanning
Jill Deal	206 Broad St. Milford	409-9276	Jill Deal
Diana A. Lacayo-Gray	100 Mountain Springs Rd	296-4159	Diana A. Lacayo-Gray
Brian Paulison	104 Stone Ridge Ln	296-6940	Brian Paulison
Hilary Paulison	104 Stone Ridge Ln	296-6940	Hilary Paulison
Justine Kresinski	105 Stone Ridge Ln Milford PA 18337	296-7808	Justine Kresinski
John Albright	105 Stone Ridge Ln Milford PA 18337	2967808	John Albright
Mike Lamoreaux	108 Stone Ridge Ln Milford PA	18337 409-0844	Mike Lamoreaux
Gina Lamoreaux	108 Stone Ridge Ln Milford PA	409-0844	Gina M. Lamoreaux
Robin Waizenegger	118 Stone Ridge Ln Milford PA	409-9136	Robin Waizenegger
John C. Wall	117 Stone Ridge Ln Milford PA	570-296-2750	John C. Wall
Sharon T. Wall	117 Stone Ridge Ln Milford	570-296-	Sharon T. Wall
Meg Maskara	120 Stone Ridge Ln Milford	(570) 296-4148	Meg Maskara

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
James W. Bircher	110 7th St Milford PA. 18337	570 396 9945	
Jean Work	Milford Therapeutic Massage 311 W. Harford St. Milford, Pa.	570-296-5006	
Walter Dubary	133 Cheppy Cole Rd Milford PA	570-296-5627	
Rich Dubary	123 Cheppy Cole Rd Milford PA	570 296 8945	
Jill Mann	206 Apple Alley Milford PA	296-6568	
G.A.I.T.	314 Foster Hill Rd, Milford, PA	409-1140	
Bob Stewart	110 Myer Lane, Milford, Pa	296-6979	
Barbara Myer	590 Rt. 6 & 209	2966380	
Clifford L Myer	590 Rt 6 + 209	296-6380	
	546 Rt 6/209	296-6657	
	441 Rt 6 & 209 Milford, PA	296-1022	
	102 GLEN CREST RD. MILFORD	296-9483	
	217 Hudson Rd Milford PA	296-5993	
	56 Wylie Rd	281-4135	
	103 Bush Dr. Milford	296 5999	
Spiro Mihail	112 WHEATFIELD Ct.	296-4137	
	121 Deer Brook Ln	296 4230	
BARBARA LEWIS	111 FIELDSTONE DR	296277	
Howard Rumaine	115 Stone Ridge Lane	—	

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RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Francis Flansburg	P.O. Box 641 Millrift, PA 18340	491 4766	Francis Flansburg
Robert J Coughlin	PO Box 586 Millrift PA 18340	491 2373	Robert J Coughlin
KATHERINE HILD	Po Box 522 MILLRIFT PA 18340	491 4808	Katherine Hild
PAUL HILD	PO Box 522 MILLRIFT PA 1834c	491 4805	Paul C Hild
Joe Price	Box 504 Millrift Pa 18340	491-2787	
Jerry Doty	Box 583 Millrift PA 18340	491-2044	
CHARLES NARDIELLO	BOX 556 MILLRIFT PA 18340	491 5729	
Joseph Sevek	Box 536 Millrift PA 18340	491-5335	Joseph Sevek
Douglas N. Hay	P.O. Box 481 Millrift PA 18340	491-2250	Douglas N. Hay
Lorna Valdez	PO Box 337 Millrift PA 18340	491 2620	
Gary & Joann Dellmore	476 PO Box PA Mill Rift	491-2309	
Michael Fiorillo	PO Box 526 Millrift PA 491	9161	
Jorge Rios	PO Box 526 Millrift PA	491 9161	
Lynn Williams	PO Box 515 Millrift, PA 18340	491-2378	
G Hinshalwood	PO Box 566 Millrift, PA 18340	491 5431	
Jennifer Wagner	PO Box 537 Millrift Pa 1834	4912714	
Donald Wagner	PO Box 537 Millrift Pa 18340	4912714	
Beulah Hanley	PO Box 554 Mill Rift PA 18340		
Mac Steel	P.O. Box 591, MILLRIFT, PA	18340	Mac Steel

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Glenice Ciccipa	101 Fieldstone Dr.	570-296-6970	Glenice Ciccipa
Michael Ciccipa	" " "	"	Michael Ciccipa
Joseph Ciccipa	" " "	"	Joseph Ciccipa
G T Moore	410 Cummins Hill Rd Milford	570-409-8558	G T Moore
Brenda Moore	" " "	" "	Brenda Moore
LINNE Miller	407 CUMMINS HILL RD MILFORD	570-296-2502	Linne Miller
Jim HANAK	428 Cummins Hill Rd. Milford	570-296-0423	Jim Hanak
Kathleen Hanak	428 Cummins Hill Rd. Milford	570-296-0423	Kathleen Hanak
PAM LAWLESS	433 Cummins Hill Milford	5702962578	Pam Lawless
ROBERT MEYER	125 N. CASTLE DR MILFORD	570.296.5490	Robert Meyer
SANDRA MEYER	125 N. CASTLE DR. MILFORD	570-296-5490	Sandra Meyer
Jason Roeder	424 Cummins hill Rd	570-409-9259	Jason Roeder
Geraldine Roeder	424 CUMMINS HILL Rd.	570-409-0259	Geraldine Roeder
Alice Selneck	106 Shale Ridge Rd Milford	570 296-4238	Alice Selneck
Milford	107 Tom Rd Milford	296-6232	Milford
Diane Harr	108 Wild Turkey Ct.	296-5926	Diane Harr
GARY HARR	108 N. 10 Turkey Ct. Milford	296-5926	Gary Harr
Jim Schermerhorn	120 SHALE RIDGE ROAD Milford PA	296-8373	Jim Schermerhorn
Muriel Gargano	316 Cummins Hill Rd Milford PA	296-4369	Muriel Gargano

RESIDENT PETITION

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(Please print all information and sign)

Name	Address	Phone	Signature
Jeri Ey	437 Cummins Hill Rd Milford PA	296-6883	Jeri Ey
Michael Ley	437 Cummins Hill Rd "	296-6883	
Rita Brock	472 Cummins Hill Rd "	845 6525668	
Tina Mahoney	460 Cummins Hill Rd "	(845) 536-3254	Tina Mahoney
Michael Mahoney	460 Cummins Hill Rd "	(845) 536-3254	
Carl Sabatini	463 Cummins Hill Road Milford PA	570-296-3753	Carl K. Sabatini
Frank MacDonald	452 cummins Hill Milford		Frank MacDonald
Carol MacDonald	452 Cummins Hill Milford PA	296-8083	Carol MacDonald
Edward T. Herbert	132 Field Stone Ridge Milford	409-0101	Edward T. Herbert
Chris Cerretani	132 Field Stone Ridge Milford	409-0101	Chris Cerretani
[illegible] Lossemore	113 Rod & Gun Club Rd	2961775	
Russell Bloomer	225 10th St Matamoras PA	491-5754	Russell Bloomer
IRENE LOSSEMORE	113 ROD & GUN CLUB RD, MILFORD, PA.	296-1775	Irene Lossemore
June Mecca	116 Elena Lane Milford PA	409 1904	June Mecca
James Mecca	116 Elena Lane Milford	409 1904	James Mecca
Lee Buccakowski	459 Cummins Hill R.D Milford PA	570-2963384	Lee Buccakowski
Jim Goetzman	454 Cummins Hill RD. MILFORD	570-296-7884	Jim Goetzman
Deborah Lemire	449 Cummins Hill Rd Milford	570-296-1754	D Lemire
Ed Lemire	" " "	"	E Lemire

RESIDENT PETITION

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Name	Address	Phone	Signature
DERYL NENEC	319 CUMMINS HILL RD, MILFORD	296-3332	Deryl Nenec
EDWARD NENEC	319 CUMMINS HILL RD, MILFORD	296-3332	Edward Nenec
JASON Zimmerman	326 cummins Hill RD milford PA 18337	2965858	Jason Zimmerman
marlene Zimmerman	326 cummins Hill Rd milford PA 18337	296 5835	marlene Zimmerman
Victoria Mayer	325 Cummins Hill Rd, Milford PA	296-4046	Victoria Mayer
Robert Connelly	325 Cummins Hill Rd, Milford PA 18337	296-4046	Robert Connelly
MARGARET FULLER	434 CUMMINS HILL RD, MILFORD PA	296-7466	Margaret Fuller
Michael Trenner	492 Cummins Hill Rd Milford PA	296 6376	
Maleyne Syracuse	492 Cummins Hill Rd Milford, PA	296 6376	
Michele Storms	103 N Castle Dr Milford Pa 18337		Michele Storms
SONNY MATHES	106 ROD + GUN CLUB RD	MILFORD	SONNY MATHES
SANDRA MATHES	" " " "	"	Sandra Mathes
LOUIS MAZZARELLO	471 CUMMINS HILL Milford PA		
John Chandler	477 Cummins Hill Rd. Milford PA	18337	
Katherine	" "	"	
ROGER BOWERS	487 CUMMINS HILL RD MILFORD	18337 296-6251	
* FAWN BOWERS	487 Cummins Hill RD. Milford	18337 296-6251	Fawn Bowers
Bob Haggland	468 Cummins Hill Rd milford	18337 570 409-0669	
Denise Haggland	468 CUMMINS HILL RD MILFORD	570 409-0669	Denise Haggland

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(Please print all information and sign)

Name	Address	Phone	Signature
Nina Whtel	449 Cummins Hill Rd. Milford	570-296-1754	Nina Whtel
Tom McKeon	418 Cummins Hill Rd Milford	570 296-2427	Tom McKeon
Denise McKeon	418 Cummins Hill Rd Milford	296-2427	Denise McKeon
WILLIAM STREETER	416 CUMMINS HILL RD MILFORD	296-6616	William Streeter
STEPHANIE STREETER	416 CUMMINS HILL RD MILFORD	296-6616	Stephanie Streeter
* WM. MAZZARIELLO	380 Cummins Hill RD Milford	569-5741	Wm. Mazzariello
DOUGLAS T. KLEE	373 Cummins Hill Road Milford	570-296-4028	Douglas Klee
Linda Klee	" " " " "	" "	Linda Klee
Jim STEWART	368 Cummins Hill Rd. Milford	570 296 8763	Jim Stewart
Jane Stewart	" " " " "	"	Jane Stewart
BILL MORGAN	108 LAUREL ACRES RD. MILFORD	296-8310	Bill Morgan
Geri Morgan	108 Laurel Acres Rd Milford	296-8310	Geri Morgan
Margaret Bachelder	112 Laurel Acres Rd Milford	296-8353	Margaret Bachelder
Norman E Bachelder	112 Laurel Acres Rd. Milford Pa.	296-8353	Norman Bachelder
Alan R Carey	359 Cummins Hill Rd. Milford PA	296-6029	Alan R Carey
Marla Carey	359 Cummins Hill Rd. Milford PA	296-6029	Marla Carey
TONY BIELAUSKI	354 CUMMINS HILL MILFORD PA	296-7775	Tony Bielauski
LINDA BIELAUSKI	" "	"	Linda Bielauski
Tim & Barbara Wisniewski	355 Cummins Hill Rd	409-1424	Barbara Wisniewski

RESIDENT PETITION

We the undersigned residents live in the Pike County Light & Power (PCL&P) territory. Not only are our electric rates way out of line, but the service and infrastructure provided by PCL&P is inadequate. Furthermore, PCL&P has no employees in Pennsylvania, nor do they have offices in Pennsylvania. We want the Pennsylvania Utility Commission (PUC) to Revoke PCL&P's license, and we want PCL&P to be sold to another utility that is not related to PCL&P or its present owners.

(Please print all information and sign)

Name	Address	Phone	Signature
Ellen Bowers	102 Brook Hill Road Milford, PA	(570)409-0194	Ellen
Tina Larkin	109 Chippy Cole Rd Milford PA 18337	570-296-7448	Tina
Peter Larkin	109 Chippy Cole Rd Milford PA 18337	570-296-7448	Peter Larkin
Helen Sirica	20 1 St Matamoras PA 18336	570 491 0035	Helen Sirica
Zgulee Sirica	20 1 St Matamoras PA 18336	570 222 8299	Zgulee Sirica
LeighAnn Magee	109 Chippy Cole Rd Milford PA 18337	(570) 296-7448	LeighAnn Magee
Leo Boisvert	169 Christian Hill Rd Milford, PA	(570) 296-4333	Leo Boisvert
Kathleen Boisvert	169 Christian Hill Rd Milford, PA	(570) 296-4333	Kathleen Boisvert

ORIGINAL

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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 document, the Office of Consumer Advocate Interrogatories Set 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 18th day of September 2006.

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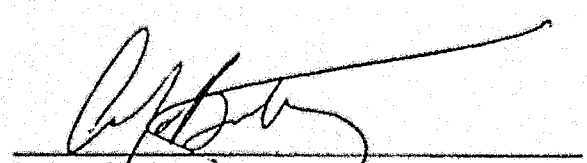

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STACEY BEECHER CHELAK, ESQUIRE
ASSISTANT COUNTY SOLICITOR

DOCUMENT FOLDER

September 25, 2006

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

RE: ***County of Pike v. Pike County Light & Power Company***
No. C-20065942

Dear Secretary McNulty:

Enclosed herewith for filing please find an original and one (1) copy of the Withdrawal of Appearance for Jay R. Rose, Esquire, and Shelli L. Whitmer, Esquire, in the above captioned matter, together with a Certificate of Service for same.

Thank you for your kind attention to this matter.

Very truly yours,
COUNTY OF PIKE

By: _____
Shelli L. Whitmer, Esquire

/slw
Enclosures
cc: The Honorable Ember S. Jandebeur, ALJ
Aron J. Beatty, Esquire
Tanya J. McCloskey, Esquire
James A. Mullins, Esquire
William R. Lloyd, Jr., Esquire
Daniel G. Asmus, Esquire
John J Gallagher, Esquire
Edward G. Lanza, Esquire
Bruce V. Miller, Esquire
John L. Carley, Esquire
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Michael Weinstein, Esquire

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Jay R. Rose, Esquire, Solicitor
Attorney I.D. No. 8189

Shelli L. Whitmer, Esquire, Asst. Solicitor
Attorney I.D. No. 78274

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE	:	
v.	:	
PIKE COUNTY LIGHT & POWER COMPANY	:	**No. C-20065942**
	:	

WITHDRAWAL OF APPEARANCE

Kindly withdraw our appearance on behalf of **THE COUNTY OF PIKE** in the above captioned matter.

Respectfully submitted,
COUNTY OF PIKE

Date: September 25, 2006

By: _____
Jay R. Rose, Esquire, Pike County Solicitor
Attorney I.D. No. 8189

By: _____
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SEP 29 2006

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Attorney I.D. No. 78274

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COUNTY OF PIKE	:	
v.	:	
PIKE COUNTY LIGHT & POWER COMPANY	:	**No. C-20065942**
	:	

CERTIFICATE OF SERVICE

I, Shelli L. Whitmer, Esquire, Assistant Solicitor for the County of Pike, hereby certify that a true and correct copy of the Withdrawal of Appearance for the County of Pike was served on the individuals and entities set forth in the attached Exhibit "A" on the dates and in the manner indicated therein.

Respectfully submitted,
COUNTY OF PIKE

Date: September 25, 2006

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EXHIBIT "A" TO CERTIFICATE OF SERVICE

Service by U.S. First Class Mail on September 25, 2006:

The Honorable Ember S. Jandebeur, Administrative Law Judge
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IRWIN A. POPOWSKY
Consumer Advocate

ORIGINAL

October 5, 2006

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

DOCUMENT FOLDER

RE: County of Pike
v.
Pike County Light & Power Company
Docket No. ~~C-20006594~~2, et al.
C-20065942, et al

Dear Secretary McNulty:

Enclosed for filing, please find an original and nine (9) copies of the Joint Brief of the Office of Consumer Advocate and County of Pike in Response to Material Question, 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

Enclosures
cc: Honorable Ember S. Jandebeur
Parties of Record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

JOINT BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE AND
THE COUNTY OF PIKE
IN RESPONSE TO MATERIAL QUESTION

DOCUMENT FOLDER

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SECRETARY'S BUREAU

Dated: October 5, 2006

DOCKETED
OCT 10 2006

I INTRODUCTION

On September 26, 2006, the Office of Administrative Law Judge (OALJ) issued the Order of Administrative Law Judge Ember S. Jandebeur (ALJ) certifying a material question for Commission review. The question certified for review reads as follows:

> Should the OALJ process be stayed pending final action by the Commission on Recommendation 3 of the Law Bureau's Report [Report on Competitive Market Conditions Regarding the Pike County Light & Power Company]?

Order at 4. Recommendation 3 of the Report, which was issued by the Commission on June 22, 2006, states:

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

Based on Recommendation 3, ALJ Jandebeur reasoned that:

> [I]t is possible that the Commission is acting or plans to act on whether sale of the assets of PCL&P is warranted. Recommendation 3 is the same as part of the requested relief asked by the County and OCA in the matter pending before me and is raised in PCL&P's preliminary objection D. The potential for prejudicial and/or inconsistent results on this specific issue is a compelling reason to certify to the Commission whether the OALJ process should be stayed pending Commission action on Recommendation 3.

Order at 6. As explained below, the Office of Consumer Advocate (OCA) and the County of Pike (County) respectfully submit that the Commission should answer the material question

posed by ALJ Jandebeur in the negative The Complaints filed by the Pike County Commissioners and other Pike County residents, businesses and government entities regarding Pike County Light & Power Company should be permitted to go forward. The process to consider these Complaints and to address the concerns of the people of Pike County should not be delayed

II ARGUMENT

It is important to note that the question certified by ALJ Jandebeur is a narrow and procedural one That is:

> SHOULD THE OALJ PROCESS BE STAYED PENDING FINAL ACTION BY THE COMMISSION ON RECOMMENDATION 3 OF THE LAW BUREAU'S REPORT?

The OCA and the County respectfully submit that the answer to this question is "no." There is no reason to stay the present proceeding at this time.

The basis for the ALJ's question is her very proper concern that she does not wish to run the risk of parallel Commission investigations reaching potentially inconsistent results regarding the potential sale of Pike County Light & Power Company (PCL&P). That is: 1) if in fact the Commission has directed its Staff to issue a Request for Proposals or commence an independent investigation to examine the potential sale of PCL&P to another utility, and 2) if in fact such a study is underway, there is a risk that the simultaneous examination of this issue in the present complaint proceeding might produce an inconsistent result. Moreover, the ALJ notes, the duplication of effort in such parallel investigations would not be an efficient use of resources.

To OCA and the County's knowledge, however, the Commission has not ordered such an independent investigation as of this time, and the risk of inconsistent results or duplication of effort, therefore, is not present. On the contrary, the OCA and the County submit that the

development of the record in the present complaint case could help inform Commission action in this regard in the future. In other words, the present proceeding provides the Commission with an appropriate and timely vehicle in which to address the pressing issues identified in the Report. Based on the record of this case, the Commission may conclude that such a sale is an appropriate remedy for the concerns identified by the County and other complainants. Alternatively, the Commission may determine that some alternative form of relief is appropriate. The record developed in this proceeding may provide the Commission with the factual information needed to decide those questions.

As of the filing of this Brief, public input hearings have already been held in Matamoras. The OCA expects to submit expert written testimony in engineering, finance, and regulatory policy later this month to address the issues raised in the Complaint. The large customer group will present four witnesses on behalf of governmental and business customers at the evidentiary hearings as well. The Company will have an opportunity to file rebuttal testimony, and technical and evidentiary hearings are scheduled for January, 2007. The OCA and the County urge the Commission to allow this schedule to go forward so that the people of Pike County can have an opportunity to have their concerns heard and dealt with by the Commission in a timely manner.

If the Commission wishes to ensure that certain matters are addressed on the record of the present complaint proceeding, it can issue a list of directed questions to which the parties can respond, or the Commission could assign Law Bureau Prosecutory Staff to participate in the proceeding as a formal party. In either case, the OCA and the County are prepared to move forward with their testimony addressing a number of the recommendations that were included in the Commission staff report and that were specifically incorporated in the Amended Complaint

filed by the Pike County Commissioners in this case. Those recommendations include, but are not limited to, the sale of the company to another electric utility or electric cooperative.

If, on the other hand, the Commission already has issued an RFP or has directed its staff to begin an independent investigation of the potential sale of the company, then the OCA and the County would respectfully urge that such an investigatory process be consolidated with the ongoing complaint case. Again, the OCA and the County would urge the Commission not to stay the present proceeding in which the Pike County Commissioners and numerous other residential, business, and government parties from Pike County are seeking long-term solutions to their concerns. As demonstrated by the vivid testimony presented by numerous witnesses at the October 4th Public Input hearings, the issues raised in the County Commissioners' Complaint are of vital interest to the people of Pike County. These people should not be asked to endure any further delay to have these issues addressed.

As noted above, the ALJ's question is a narrow one. The question raised by the ALJ does not go to the merits of the Company's Preliminary Objections. The ALJ rejected certain of the Company's Preliminary Objections, while granting certain others.[1] The OCA and the County accept the ALJ's determinations on the merits of those objections and are prepared to go forward with the litigation of the remaining issues with the parties and the schedule that has been established by the ALJ.

The OCA and the County would also urge the Commission to reject any suggestion by the Company, as presented in the Company's Preliminary Objections, that by failing to order an

---

[1] In a separate Interim Order Re: Preliminary Objections and Outstanding Motions (Order signed September 19, 2006), ALJ Jandebeur granted the Company's Preliminary Objection regarding the County's standing to raise billing issues that affected certain business customers but not the County itself. Order at 11. The ALJ rejected the Company's Preliminary Objections that the Commission lacked the jurisdiction or authority to order the sale of the company, Order at 7, and that the County's request for prospective rate relief was barred by the filed rate doctrine, Order at 8. The ALJ also found that, while Direct Energy should be added as an "indispensable party" in this case, the failure to join Direct Energy as a party in the complaint was not a grounds for dismissal. Order at 11. As noted above, these substantive determinations are not before the Commission as a part of this Material Question.

immediate independent investigation of the potential sale of PCL&P at the time it released the Staff Report, the Commission was somehow tacitly rejecting that option. The Company argued in its Preliminary Objections that: "The Commission's decision to release the Report without an order is a tacit rejection even to consider the relief requested in the County's Amended Complaint and renders the issue moot." Preliminary Objections, Paragraph 69. The Report speaks for itself, but the OCA and the County submit that it is wholly inappropriate to suggest that the Report either implicitly or explicitly prejudged the issues raised in the County's Complaint. There is nothing in the Report to suggest that it was intended to preclude any party from raising or seeking to implement any of the recommendations of the Report through separate formal proceedings at the PUC.

Indeed, in a Press Release issued by the Commission upon the release of the Report, Commissioner Bill Shane stated:

> Issuing this report for public consumption does not represent the end of Commission action on this matter, but rather we will continue to move forward because as I have said before I am not willing to abandon these customers.

PUC Press Release, June 22, 2006.

The present Complaint proceeding provides the Commission with an opportunity to address the pressing issues identified in the Staff's fact-finding report and specifically incorporated in the Complaint of the Pike County Commissioners. Certainly, the issuance of this report cannot be used as a shield to prevent the very type of investigation that the report calls for. To the extent that it is relevant to the present Material Question, the Company's argument that the issuance of the Staff Report rendered the present complaint moot must be rejected.

III. CONCLUSION

For the reasons set forth above, the OCA and the County respectfully submit that the material question should be answered in the negative.

Respectfully submitted,

James A. Mullins
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Counsel for: County of Pike

Dated: October 5, 2006
0099089

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, Joint Brief of the Office of Consumer Advocate and County of Pike in Response to Material Question, 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 5th day of October 2006.

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

IN REPLY PLEASE REFER TO OUR FILE

October 3, 2006

(SEE REVISED LIST ATTACHED)

C-20065922 Delaware Valley School District
C-20065942 Pike County
C-20066194 Joseph Fretta
C-20066260 Samall Properties, Inc.
C-20066264 Samall Properties, Inc.
C-20066261 Three Lane Utilities, c/o Richard Snyder
C-20066262 Three Lane Utility Corporation
C-20066263 Richard Snyder
C-20066264 Samall 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 and Further Evidentiary Hearings on the above-captioned case previously scheduled for October 5 & 6, 2006 have been canceled.

DOCUMENT FOLDER

DOCKETED
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#391096 rev 11/03

The hearing has been rescheduled as follows:

Type, Date: Initial Hearing, Tuesday, January 9, 2007
Further Hearing, Wednesday, January 10, 2007

Time: 10:00 a.m. both days

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

Presiding: Administrative Law Judge Ember S. Jandebeur
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

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

SAUL EWING
Attorneys at Law
A Delaware LLP
Celebrating 85 years of service.

ORIGINAL

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October 5, 2006

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2006 OCT -5 PM 3:51
PA PUC
SECRETARY'S BUREAU

BY HAND

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

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 § 5.305(c) and in accordance with Administrative Law Judge Ember S. Jandebeur's Interim Order II (as amended), in the referenced matter, enclosed for filing please find an original and nine (9) copies of the Brief of Pike County Light & Power Company. A Certificate of Service is also attached.

Please call if you have any questions.

Sincerely,

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

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

127431.1

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 OCT -5 P 3:51
PA PUC
SECRETARY'S BUREAU

COUNTY OF PIKE, Complainant	:	
V.	:	Complaint Docket No. C – 20065942
PIKE COUNTY LIGHT & POWER COMPANY, Respondent	:	

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OCT 10 2006

BRIEF OF PIKE COUNTY LIGHT & POWER COMPANY ON THE QUESTION CERTIFIED TO THE COMMISSION BY ALJ EMBER S. JANDEBEUR

INTRODUCTION

On September 21, 2006, Administrative Law Judge Ember S. Jandebeur ("ALJ"), in response to Preliminary Objections filed by Pike County Light & Power Company ("PCL&P" or "the Company") denied certain of the Company's objections, sustained one objection and certified a material question to the Commission. The ALJ provided in her order certifying the question that parties would have to file a brief within seven days of service[1] of the Order certifying the question to the Commission. Without waiving its right to take an interlocutory appeal of the ALJ's partial denial of the Company's Preliminary Objections, PCL&P hereby responds to the certified question as to whether the matter of a forced sale of the Company is properly before the ALJ.

PCL&P will demonstrate that it is entirely inappropriate for the ALJ to entertain proceedings involving this question. First, the matter is already before the Commission, and it is

[1] Judge Jandebeur subsequently notified the parties that responses to the Request for Certification would be due seven days from September 28, 2006, i.e., on October 5, 2006.

a usurpation of the Commission's prerogatives to permit a complainant to force action on a matter that is under the Commission's deliberations. Second, the Commission has already rejected the relief sought. Third, under the circumstances of this case, a forced sale would not be warranted even if the Commission had the power to order such a sale. And fourth, even considering such a remedy would violate PCL&P's right to procedural due process.

BACKGROUND

The Request for Certification involves Recommendation 3 in a fact-finding report by the Commission's Law Bureau that was issued on June 22, 2006.[2] Recommendation 3 states, in relevant part:

> The Commission should consider having an independent study performed regarding the costs and benefits of the sale of the Company to another Pennsylvania EDC or rural electric cooperative. The Commission should consider issuing an RFP to solicit parties to perform this study.

On July 14, 2006, the County of Pike amended its complaint, *inter alia*, to force consideration of this recommendation. On August 4, 2006, PCL&P filed its Preliminary Objections and Answer to the County of Pike's Amended Complaint. In its Preliminary Objections, the Company sought the dismissal of the Original Complaint, Amended Complaint and all of the consolidated Complaints (together the "Complaints") on the grounds that, *inter alia*, (1) the Commission lacks jurisdiction to grant the relief requested, (2) the filed-rate doctrine bars the claims in this case, (3) the Commission has considered and rejected the requested relief, (4) this matter is moot or not ripe for adjudication, and (5) the County lacks standing and failed to join a necessary party.

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[2] Report on Competitive Market Conditions Regarding Pike County Light & Power Company. The Law Bureau's report is a 20 page fact finding report with 140 pages of Appendices. Appendix A: Responses to Fact-Finding Investigation, Appendix B: 2006 Pike-PJM Transmission Interconnection Investigation, Appendix C: October 4, 2005 Pike County Light & Power Request-for-Proposals: Financial Swap for the Period January 1, 2006 through December 31, 2007, Appendix D: Pike County Light & Power draft PowerSwitch proposal.

With respect to the Law Bureau's Recommendation 3, the Company pointed out that the Commission had previously considered and rejected the very same recommendation made by Office of Consumer Advocate ("OCA") in a proceeding under the same Docket as the Law Bureau report.[3] Moreover, PCL&P explained that the Commission had taken no action on the recommendation contained in the Law Bureau's June 22nd report. Accordingly, the Company reasoned, it would be highly improper for this proceeding to consider the very matter that had once been placed before the Commission and rejected, and has been placed before the Commission again in the Law Bureau report, and to date, is still before it.

On August 15, 2006, the OCA and the County of Pike ("County") filed a Joint Answer to the Preliminary Objections. On August 22, 2006, PCL&P filed a reply to the Joint Answer. On August 24, 2006, OCA and the County filed their Reply.

On September 21, 2006, the ALJ denied the Company's claim that Recommendation 3 should not be considered because it was pending before the Commission. Instead, the ALJ has certified to the Commission the question of whether the OALJ formal hearing process should be stayed pending Commission action on Recommendation 3.

As demonstrated below, the Commission should rule that the OALJ process should be stayed pending final action by the Commission on Recommendation 3. Moreover, for a myriad of reasons, this proceeding should not merely be stayed; rather, the relief requested in the Amended Complaint - to force the sale of PCL&P- should be dismissed as an improper interference with the Commission's procedures.

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[3] Order adopted August 25, 2005, entered on September 23, 2005, at Docket No. P-00052168, Order at 24.

ARGUMENT

I. AT THE VERY LEAST, THE OALJ COMPLAINT PROCEEDING SHOULD BE STAYED PENDING FINAL ACTION BY THE COMMISSION ON THE LAW BUREAU REPORT

The adjudication of Recommendation 3 in this proceeding is not an efficient use of administrative resources, is not ripe for adjudication in this case, and may result in potentially inconsistent and conflicting determinations.

The ALJ concedes that,

> I am completely unaware of what the Commission or the Commission's Law Bureau may be pursuing with regard to the Report. My concern is that it is possible that this hearing process and any action the Commission takes with regard to the Report could result in inconsistent outcomes.

Interim Order II Certification of Question to the Commission at 4. As the ALJ concedes, the adjudication of Recommendation 3 in this proceeding may result in potentially inconsistent or prejudicial results. *Id.* at 6. For that reason, alone, it should be stayed. It is also an inefficient use of administrative resources to have simultaneous proceedings reviewing the same question. In fact, the ALJ concedes that, "It is clear from Recommendation 3 that it is possible that the Commission is acting or plans to act on whether sale of the assets of PCL&P is warranted." *Id.* Given that possibility, the ALJ should not entertain this matter because of its obvious potential for interference with the Commission's processes.

Moreover, the Complaints contemplate a serious usurpation of the Commission's control of its dockets. By Order adopted January 27, 2006, entered on February 14, 2006, under Docket No. P-00052168, the Commission stated:

> This Order will serve to initiate an investigation into the competitive electric market in the Pike County Light & Power Company ("Company") service territory. The Commission seeks comments from all interested parties on the issues identified in this Order. **At the conclusion of this investigation, the Commission's Law Bureau will issue a report on this matter to the Commission. The Commission will review this report and consider**

additional measures for protecting the interests of the Company's ratepayers.

Initiation of a Fact Finding Investigation of the Competitive Market Conditions Re: Pike County Light & Power Company, Order at 1 (emphasis added). The Commission further noted that:

> This investigation is being assigned to the Law Bureau, and will not involve on-the-record evidentiary hearings at this time. 66 Pa.C.S. §331(b)(4). Therefore, the report resulting from investigation does not represent an adjudication.

Id. at 4.

The Commission released the Law Bureau report on June 22, 2006. It is noteworthy that the County filed its original complaint in this docket on February 24, 2006. The original complaint did not mention the forced sale of the Company. On July 14, 2006, however, three weeks after the Commission released the Law Bureau's report, the County filed its substantially altered Amended Complaint. The time sequence is not coincidental. The County's Amended Complaint was intended to force action on the Law Bureau's report.

Lest there be any doubt that the purpose of the Amended Complaint was to upset the Commission's careful deliberations and analysis of the Law Bureau report, on page 2 of their Joint Answer, the OCA and the County concede the true purpose of the Amended Complaint:

> The County seeks to have the Commission take actions that were specifically detailed in the Commission's own "Report..." prepared by the Law Bureau and released by the Commission at its Public Meeting held June 22, 2006.

Moreover, in their Joint Answer, the County and OCA concede that the Amended Complaint was filed to force the Commission into procedures that suit OCA and the County, not the Commission's deliberative process or the public interest. The County and OCA acknowledge (Joint Answer at 20) that the purpose of their Amended Complaint is to force the implementation of the recommendations contained in the Law Bureau report:

> The County and OCA submit that the purpose of the Report was not to gather dust on the Commission file shelf, and certainly was not to preclude active parties

from seeking to implement the recommendations of the Report through public proceedings at the PUC.

The Joint Answer (at 21) goes on to concede that:

> The present Amended Complaint provides the Commission with a vehicle in which to address the pressing needs identified in the Staff's fact finding report.

The County's and OCA's Complaint is simply a device to force action on a report that is pending before the Commission and thereby usurp control of the Commission's docket.

The Commission, however, explicitly stated in its February 14, 2006 Order that "The Commission will review this report and consider additional measures for protecting the interests of the Company's ratepayers." The Order, therefore, reserved the right to the *Commission* – not OCA and the County - to determine what to do with the Law Bureau's report and its recommendations.

The Commission legally speaks only through its orders. The Commission's decision to release the report without an Order was obviously intentional. The Commission clearly expressed its intent in its previous order to "review this report and consider additional measures for protecting the interests of the Company's ratepayers." Recommendation 3 remains under consideration by the Commission. Many of the issues identified in the Law Bureau report are currently being considered and addressed in other proceedings pending before the Commission.[4]

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[4] See e.g., *Policies to Mitigate Potential Increases in Electricity Prices* at Docket M-00061957 (On May 19, 2006, the Commission initiated a proceeding on the issues and possible policy actions that could mitigate potential future significant price increases in electricity prices.) See also, *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. § 2807(e)(2)* at Docket No. L-00040169 (The Electricity Generation Customer Choice and Competition Act ("Competition Act"), 66 Pa. C.S. §§ 2801-2812, requires the Commission to promulgate regulations defining the obligation of electric distribution companies (EDCs) to serve retail customers at the end of the restructuring transition period, *i.e.*, the default service procurement obligation. 66 Pa. C.S. § 2807(e)(2). The Commission has drafted and is in the process of developing and implementing, with input from all of the stakeholders, a complete and comprehensive default service regulatory scheme for all jurisdictional EDCs.); See also, *PA PUC v. PCL&P* Opinion and Order adopted June 22, 2006, entered June 28, 2006, at Docket No. P-00062205. (..."we encourage Pike County to work with the Commission in developing an appropriate default service plan commencing June 1, 2009, and beyond..." *Id.* at 5); See also, *PA PUC v. PCL&P.* Opinion and Order adopted August 25, 2005, entered

The Commission, however, has not yet seen fit to take action on Recommendation 3. It would be highly improper for this proceeding to consider a matter that had been placed before the Commission and already rejected once, and that has been place before the Commission again, and to date, is still before the Commission. The Commission envisioned a very different, methodical, and deliberative process for consideration of this matter than the complaint proceeding initiated by the County. Prior to the completion of such a process by the Commission, even the contemplation of a forced sale of PCL&P is grossly premature for adjudication in this case.

The Commission controls its dockets; not individual litigants, who through the filing of complaints on the very matters the Commission is considering, impermissibly seek to force the Commission's hand. The adjudication of Recommendation 3 in this proceeding is not an efficient use of administrative resources, is not ripe for adjudication in this case, and may result in potentially inconsistent and conflicting determinations. Accordingly, the Commission should reject this attempt to force the Commission to take precipitous action on the Law Bureau's report Recommendation 3 and stay the proceedings before the ALJ.

II. THE COMMISSION SHOULD FORECLOSE THE COUNTY AND OCA FROM PURSUING THE ISSUES OF A FORCED SALE OF PCL&P OR THE REVOCATION OF PCL&P's CERTIFICATE OF PUBLIC CONVENIENCE IN THIS COMPLAINT PROCEEDING AS NOT RIPE FOR ADJUDICATION

A. The Commission Would Not Even Claim the Power to Order a Sale of the Company in the Present Circumstances Because the Issue of a Forced Sale Is Premature for Adjudication in This Case

Save a reference to a decades old case involving a small telephone company (discussed infra), neither the Law Bureau report nor the ALJ has identified any language in the Public

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September 23, 2005, at Docket No. P-0005218 "...we are exempting Pike from complying with AESPA until January 1, 2008..." *Id* at 25.

Utility Code which gives the Commission the jurisdiction, power, or authority to order the forced sale of PCL&P. The Company would be fully prepared to demonstrate that the Commission lacks the statutory power to force the sale of the Company were such a demonstration necessary at this time. It is not. Neither the power to order the sale nor the power to terminate the Company's certificate is even ripe for consideration at this juncture.

The Commission concededly has the power under 66 Pa.C.S. §§ 1501 and 1504 to determine if a public utility is providing safe and adequate service at just and reasonable rates. If the Commission were to determine that such is not the case, the Commission could then prescribe the rates and services the utility should provide its customers and direct the Company to take the appropriate remedial measures necessary to correct any service deficiencies.

Only if the Company were to violate such an order, made after a hearing, would the Commission then order further remedial action. Here, not only has there has been no finding that the PCL&P is not providing safe and adequate service at just and reasonable rates, but the County has not even made a *prima facie* showing that such is the case.

Furthermore, if the Commission were to find that PCL&P was not providing safe and adequate service at just and reasonable rates, its *only* remedy authorized under the Public Utility Code would be to order PCL&P to provide specific service at specific rates. 66 Pa.C.S. §1504. Only after PCL&P violated such a directive, would the Commission have a basis even to consider exercising a claimed power to order the Company to be sold. Because none of that has been done and PCL&P has fully complied with *every* Commission order, the Commission would have no basis to exercise a claimed power to order the Company to be sold. There is simply no lawful basis to consider the forced sale of the Company – either now or even at the conclusion of a hearing where, assuming *arguendo*, the Company was shown to be violating rate and service

standards. Again, the only permissible remedy would be the issuance of a remedial order. The Complainants, therefore, should not be permitted to force action upon the Commission in violation of the Commission's own procedures.

The Complainants and the ALJ hang the possibility of a forced sale of PCL&P on the slender reed of the Big Run Telephone Case. *Big Run* itself, whatever its legal merits, still proves that the mere contemplation of a forced sale would be completely improper here.[5] That case involved a telephone company with an "unconscionable number of service problems." Big Run RD at 2, 10. Nevertheless, the case took nearly five years to resolve and, in the end, while the Commission ordered the publication of bids, Big Run reached an agreement with Bell of Pennsylvania to transfer its assets to them and abandon service. In other words, even with a demonstration that Big Run Telephone Company had "unconscionable service problems," the forced sale issue was never actually tested because the transfer was voluntary. Here, the existence of *any* service problems has not been demonstrated let alone an "unconscionable" level of service problems.

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

[5] As the ALJ noted, the Big Run decision was never appealed. Interim Order I at 6.

additional action of a sale. Therefore, even if one were to credit the assumption in the Certification that the Commission has the inherent power to order the sale of the Company, Section 529 demonstrates that elementary due process considerations provide that it can do so only (1) after a proceeding where it was demonstrated that rates and service were statutorily inadequate, (2) the Commission ordered the company to take remedial action, and (3) the company failed or refused to take the appropriate remedial action.

Based on the elementary due process protections that were afforded small water and sewer companies, the forced sale of PCL&P cannot lawfully be contemplated. As the complainants here have not proved, let alone made out a prima facie case that PCL&P has failed to meet its obligations under the Public Utility Code, even the consideration of a forced sale of the Company is grossly premature and inappropriate.

By following the careful course it has charted, the Commission signaled that it is well-aware that a forced sale may not lawfully be contemplated here. Because the Amended Complaint was filed in an attempt to force the sale of PCL&P, the Amended Complaint should have been dismissed by the ALJ, or its scope should have been limited. The Commission should, therefore, declare that the County and OCA are foreclosed from investigating or seeking the forced sale of PCL&P in this proceeding.

B. Due Process Forbids Revocation of PCL&P's Certificate of Public Convenience

The Certification alludes to the possibility that the Commission may consider the forced sales *or the revocation of PCL&P's Certificate of Public Convenience* in the hearings. *Interim Order II, pp.* 4, 6. We have already demonstrated why even consideration of a sale is improper at this time. Revocation of the Company's certificate would be equally improper.

The Joint Answer had argued that the Commission has the power to force a sale because Section 1103 of the Public Utility Code provides the Commission with the implied power to revoke a certificate of public convenience. Joint Answer at 5-6. The ALJ mistakenly credited that contention, ignoring the fact that neither the County nor the other complainants ever asked the Commission to revoke PCL&P's certificate.

Accordingly, any claim to consider a revocation of PCL&P's certificate is procedurally infirm. Procedurally, the Commission generally exercises its powers under Section 703(g) in response to a *petition* to rescind or amend an order or a *petition* for reconsideration. No Complaint in this consolidated proceeding has sought revocation of a certificate. No Complaint sought a revision to an existing order.

Moreover, PCL&P was not on notice that the Complainants were seeking either a revocation of a certificate or rescission or modification of a prior Commission order.[6] The issue was not even raised until the OCA and the County constructed this "rationale" in their Joint Answer to the Company's Preliminary Objections in an attempt to shore up their legally infirm position. If this proceeding were to be expanded exponentially into a battle over the Company's certificate of public convenience (based upon either Section 703(g) or 1103), the failure of the complainants to give notice to PCL&P that they are seeking revocation of its certificate would violate the Company's due process rights. Any attempt by the parties to make this a case about the revocation of its certificate must be rejected by the Commission. *See, ARIPPA v. Pa. PUC*, 792 A.2d 636 (Pa. Cmwlth. 2002) *appeal denied* 815 A.2d 635 (reasonable notice is a basic due process right in administrative proceedings).

---

[6] Interestingly, in the *Big Run* case that is cited repeatedly in the Joint Answer and discussed below, the OCA filed a "Petition to Issue A Show Cause Order Directing Big Run Telephone Company to Show Cause Why Its Certificate of Public Convenience Should Not Be Rescinded." (Big Run RD at 3, 12). Undoubtedly, that filing put the company on notice that the OCA was seeking rescission of its certificate.

In any event, as discussed above, if the parties were to prove that the Company was violating the requirements of the Public Utility Code as to rates and service – a highly doubtful possibility – the only remedy available would be for the Commission to find the appropriate levels of rates and service. Only if the Company were then to be in violation of those remedial orders, could further action, such as one involving the Company's certificate, be contemplated

CONCLUSION

The Commission controls its dockets, not individual litigants. It should be clear that the very matters that the Complainants seek to place before the ALJ are under direct consideration by the Commission. The solution in this circumstance is both clear and simple. The Commission should state that any consideration of the sale of PCL&P is both premature and is an inappropriate attempt to usurp the Commission's control of its cases and procedures. The ALJ should be directed to (1) stay this proceeding to the extent that the County's and OCA's claims seek to implement the recommendations in Law Bureau report and (2) foreclose the complainants from pursuing the issues of a forced sale of PCL&P or the revocation PCL&P's Certificate of Public Convenience.

Respectfully submitted,

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Counsel for
Pike County Light & Power Company

Date: October 4, 2006

[illegible]

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).

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

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SECRETARY'S BUREAU
2006 OCT -5 P 3:51

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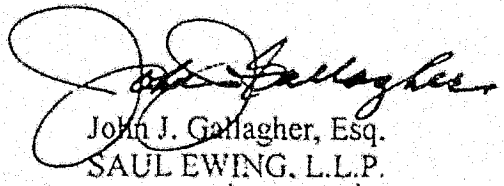
Sherri L. Whitmer, Esq.
402 Broad Street
Milford, PA 18337-9998



John J. Gallagher, Esq.
SAUL EWING, L.L.P.
2 North 2nd Street, 7th Floor
Harrisburg, PA 17101

Counsel for PCL&P

Date: October 5, 2006

125964.2

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
October 5, 2006

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IN REPLY PLEASE
REFER TO OUR FILE

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KEVIN J MOODY ESQUIRE
WOLFE BLOCK SCHORR AND
SOLIS-COHEN LLP
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HARRISBURG PA 17108-0865

DOCUMENT
FOLDER

RE:

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

BTL

Please find the following attachments on the above referenced case.

Interim Orders I, II and III

Samall, and Snyder and Three Lane letter joining County of Pike and OCA's Joint Answer to Preliminary Objections. 8/9/06

PCL&P's Answer to Amended Complaint and New Matter and Preliminary Objections 8/4/06

County of Pike and OCA's Joint Answer to PCL&P's Preliminary Objections. 8/16/06

PCL&P Motion for Leave to File Responsive Pleading to County of Pike and OCA's Joint Answer dated 8/22/06

County of Pike and OCA's Reply to PCL&P's Motion for Leave to File Responsive Pleading dated 8/24/06

Reply of the County of Pike to PCL&P's Answer Raising New Matter 8/25/06

Hearing notices

Formal complaints:

C-20065922 Delaware Valley School District (Melia)
C-20065942 County of Pike and Amended Complaint dated 7/12/06 (Melia)
C-20066194 Joseph Fretta (pro se)
C-20066260 and 6264 Samall Properties, Inc. (Melia)
C-20066261 and 6262 Three Lane Utility Corporation (Melia)
C-20066263 Richard Snyder (Melia)
C-20066336 Altec Lansing, Inc. (Melia)
C-20066481 John Dalton, Jr. (pro se)
C-20066521 Carolina B. Harris (pro se)
C-20066546 Peter P. Kenny (pro se)
C-20066668 Joan Stohr (pro se)
C-20066722 Hotel Fauchere, LLC. (Melia)
C-20066725 Community Building Projects (Melia)
C-20066753 Dana Gobin (pro se)
OCA (Aron Beatty)
OSBA (Dan Asmuth)

PCL&P's Answer filed for each of the above complaints.

Up-to-date party list

If you have any questions, please contact Judge Jandebeur.

Sincerely,

Dawn Reitenbach

Dawn Reitenbach
ALJ Secretary

DOCUMENT FOLDER

CERTIFICATE OF SERVICE

2006 OCT -5 PM 3:44
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 Office of Consumer Advocate Interrogatories Set VII, 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 5th day of October 2006.

SERVICE BY E-MAIL and FIRST CLASS MAIL

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Counsel For: *Samall Properties, Inc., Three Lane Utility Corporation, and Richard Snyder*

BA

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Shelli L. Whitmer, Esquire
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506 Broad Street
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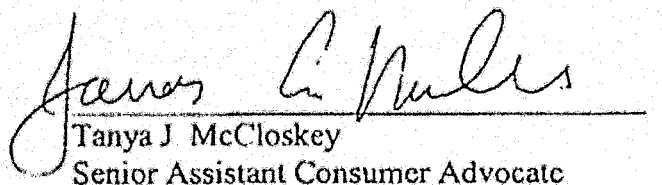
Counsel For: *County of Pike*



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00090030.DOC

COMMONWEALTH OF PENNSYLVANIA

OFFICE OF CONSUMER ADVOCATE
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consumer@paoca.org

IRWINA POPOWSKY
Consumer Advocate

ORIGINAL

October 6, 2006

DOCUMENT FOLDER

SECRETARY'S BUREAU

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 in the above-captioned docket, please find the original and three copies of additional signature pages of the Petition filed in this docket on September 7 2006. The additional pages contain the signatures of 27 residential and 9 business members of the Pike County Light & Power Company community. These additional signature pages supplement the 400 residential and 105 business customers of Pike County Light & Power Company who signed the same Petition, filed September 7, 2006.

The enclosed additional signature pages were provided to the Office of Consumer Advocate during the Public Input Hearings held in the above matter in Matamoras on October 4, 2006. In accordance with the attached Certificate of Service, copies are being provided to Administrative Law Judge Jandebeur and to counsel in this proceeding.

If you have any questions please do not hesitate to contact me.

Sincerely,

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

Enclosures
cc: Honorable Ember S. Jandebeur, Administrative Law Judge
Certificate of Service
0609108 3.DOC

BUSINESS OWNER PETITION

We the undersigned business owners operate our businesses(s) in the Pike County Light & Power (PCL&P) territory. Not only are our electric rates way out of line, but the service and infrastructure provided by PCL&P is inadequate. Furthermore, PCL&P has no employees in Pennsylvania, nor do they have offices in Pennsylvania. We want the Pennsylvania Utility Commission (PUC) to Revoke PCL&P's license, and we want PCL&P to be sold to another utility that is not related to PCL&P or its present owners.

(Please print all information and sign)

Name	Business	Address	Phone	Signature
Dawn Becker	State farm	505 W. Harford St	296-8691	Dawn Becker
Christine Schmidt	Karma Kleaners	601 D Harford St	296-4463	Christine Schmidt
Gregory Yetter	Yetter Ins.	102 US Rt 6	296-8329	Gregory Yetter
Ellen Dewalt	Ahead of Our Type	201 Water	296-3590	Ellen Dewalt
XENIA HELLER	GIFFARD & WHITE	150 WATER	296-5151	Xenia Lucy Heller
Darren Fowler	Water Wheel	150 water	296-2383	Darren Fowler
Dave Greenlaw	Woodturner	114 2nd St.	296 7373	Dave Greenlaw
Elizabeth Catterill	The Artery	210 Broad St Milford, PA	296-1234	Elizabeth Catterill
DAVIS CHANT	REALTOR	106 E HARFORD ST MILFORD	296-7717	Davis Chant

RESIDENT PETITION

We the undersigned residents live in the Pike County Light & Power (PCL&P) territory. Not only are our electric rates way out of line, but the service and infrastructure provided by PCL&P is inadequate. Furthermore, PCL&P has no employees in Pennsylvania, nor do they have offices in Pennsylvania. We want the Pennsylvania Utility Commission (PUC) to Revoke PCL&P's license, and we want PCL&P to be sold to another utility that is not related to PCL&P or its present owners.

(Please print all information and sign)

Name	Address	Phone	Signature
RON ADAMS	3D MILFORD TOWN GREEN LANE	(570)296-3959	Ron S. Ad
Betty Hague	1D Milford Town Green Lane	570-296-4069	Betty Hague
Wm Hague	1D MILFORD town Green LN	570-296-4069	Wm J Hague
Ruth Olsen	2D Milford Townsmen Lane	570-296-5092	Ruth Olsen
Christine Obser	2D milford TWN Gn. LANE	570-296-5092	Christine Obser
Judith Watson	3C Milford Town Green Lane	570 296-8314	Judith Watson
MARY CAFFREY	3A MILFORD TOWN GREEN LANE	570-296-3078	Mary Caffrey
BARBARA ADAMS	3D MILFORD TOWN GREEN LANE	570 296 3959	Barbara Adams
Mary Reynolds	4A Milford Town Green Lane	570 296 4230	Mary Reynolds
JOHN GALASSO	4B MILFORD TOWN GRN LN	570 296-6967	John Galasso
Patti Galasso	4B Milford Town Green	570-296-6267	Patricia Galasso
Richard Diamond	5A MILFORD TOWN GREEN LA.	570-296-5795	Richard Diamond
Doris Diamond	5A Milford town Green	570-296-5595	Doris Diamond
RITA SHEA	5C Milford Town Grn Ln.	570-296-6139	Rita Shea
DOLORES FITZSIMMONS	2B MILFORD TOWN GR LN	570 296-3824	Dolores Fitzsimmons
Duncan Brown	1A Milford Town Green Lane	570-409-8585	Duncan M Brown
DIXIE RICH	159 Foster Hill Rd Milford PA	5704690777	Dixie Rich
Barbara Silver	133 Lakeshore Rd Shohola PA 18337	570-296-2914	Barbara Silver
Joyce Z. Helms	311 W Catherine St Milford Pa	570-296-6293	Joyce Z Helms
AUDREY LAMAN	122 chippy Cabe Rd. Milford Pa	570-296-8352	Audrey Laman
LYNN P. BUSH	214 W. ANN ST. MILFORD, PA	570-296-6050	Lynn P. Bush
Judy Chant	106 E. HARFORD, Milford, PA	570-296-7717	Judy Chant

RESIDENT PETITION

We the undersigned residents live in the Pike County Light & Power (PCL&P) territory. Not only are our electric rates way out of line, but the service and infrastructure provided by PCL&P is inadequate. Furthermore, PCL&P has no employees in Pennsylvania, nor do they have offices in Pennsylvania. We want the Pennsylvania Utility Commission (PUC) to Revoke PCL&P's license, and we want PCL&P to be sold to another utility that is not related to PCL&P or its present owners.

(Please print all information and sign)

Name	Address	Phone	Signature
Dave Greenlaum	114 7th St Milford, PA	296-7373	
MATT LEVINE	PIKE MODERN GALLERY 113 7th ST MILFORD	205 7528	

RESIDENT PETITION

We the undersigned residents live in the Pike County Light & Power (PCL&P) territory. Not only are our electric rates way out of line, but the service and infrastructure provided by PCL&P is inadequate. Furthermore, PCL&P has no employees in Pennsylvania, nor do they have offices in Pennsylvania. We want the Pennsylvania Utility Commission (PUC) to Revoke PCL&P's license, and we want PCL&P to be sold to another utility that is not related to PCL&P or its present owners.

(Please print all information and sign)

Name	Address	Phone	Signature
Pete Hansen	4c Milford Town Green Lane	296-0323	Pete Hansen
EDWARD FERGUSON	5B MILFORD TOWN GRN LANE	409-1778	Edward Ferguson
Joan Ferguson	5B Milford Town Green Lane	409-1778	Joan Ferguson

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 and Petition Signatures, 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 6th day of October, 2006.

SERVICE BY FIRST CLASS MAIL

John J. Gallagher, Esquire
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SECRETARY'S BUREAU
2006 OCT -6 PM 2:54

SERVICE BY FIRST CLASS MAIL

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Counsel For: *Pike County Light & Power Company*

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Kirkpatrick & Lockhart
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Counsel For: *Samall Properties, Inc., Three Lane Utility Corporation, and Richard Snyder*

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Senior Assistant Consumer Advocate
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Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625
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James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066
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Fax: (717) 783-7152
91084

DOCUMENT FOLDER

ORIGINAL

CERTIFICATE OF SERVICE

2006 OCT 11 PM 3:42
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 VIII, 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 11th day of October 2006

SERVICE BY E-MAIL and FIRST CLASS MAIL

RJP

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Counsel For *Office of Small Business Advocate*

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Counsel For: *Samall Properties, Inc., Three Lane Utility Corporation, and Richard Snyder*

Shelli L. Whitmer, Esquire
County of Pike
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Counsel For: *County of Pike*

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

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Fax: (717) 783-7152
00090030.DOC

Wolf Block

213 Market Street, 9th Floor, P.O. Box 865, Harrisburg, PA 17108-0865
Tel: (717) 237-7160 ■ Fax: (717) 237-7161 ■ www.WolfBlock.com

DOCUMENT FOLDER

Direct Dial: (717) 255-3744
Direct Fax: (717) 237-7314
E-mail: dedeil@wolfblock.com

October 12, 2006

RECEIVED
2006 OCT 12 P 1:12:02
SECRETARY'S BUREAU

James McNulty
Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
2nd Fl., 400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCKETED
OCT 12 2006

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

Dear Secretary McNulty:

By Interim Order II dated September 19, 2006 in the above captioned case, a Material Question was Certified to the Commission with briefs due on October 5, 2006. By Interim Order III dated October 5, 2006, Direct Energy was joined as an indispensable party to this proceeding. Direct Energy was not aware of its potential joining in this case nor the final decision until it was served with pleadings related to this matter on October 6, 2006. Since this was one day after the due date for the filing of briefs regarding the Material Question, we respectfully ask that the Commission accept this late-filed response from Direct Energy regarding the Material Question.

Direct Energy does not express any position regarding the merits of the Material Question before the Commission. This is because Direct Energy supplies energy to customers in the service territory of Pike County Light and Power pursuant to an opt-out generation supply aggregation contract that was approved by the Commission.[1] As the Commission made clear in

---

[1] *Petition of Direct Energy Service, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company*, Docket No. P-00062205, Final Opinion and Order, (April 20, 2006).

10-11-06
49

its Order approving the contracting process, Direct Energy is not the Provider of Last Resort (POLR) or default service provider nor the POLR default service supplier in this situation.[2] Consequently, Direct Energy's involvement in Pike County as a supplier of generation service to customers is not dependent on what company owns the distribution facilities or provides POLR or default service. Presumably, if there were a change in ownership or in the POLR/default service provider or supplier during the time that the aggregation program was in place[3], Direct Energy's contracts would still be valid and Direct Energy would continue to have the opportunity to continue to supply energy services to Pike customers at a competitive rate.

Sincerely,

Deanne M. O'Dell

Deanne M. O'Dell
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

cc: Certificate of Service
Hon. Ember Jandebeur
Hon. Wendell Holland
Hon. James Cawley
Hon. Kim Pizzingrilli
Hon. Terrance J. Fitzpatrick
Cheryl Davis

---

[2] *Id.* at 14.

[3] The initial contract term expires on December 31, 2007 with a subsequent renewal term available from January 1, 2008 through May 31, 2009.

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.

VIA FIRST CLASS MAIL

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c/o Richard Snyder
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Milford, PA 18337

Three Lane Utility Corp
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RECEIVED
DEC 12 PM 12:02
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Dana Gobin
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Matamoras, PA 18336

Deanne M. O'Dell

Deanne M. O'Dell, Esq.

Dated: October 12, 2006

COMMONWEALTH OF PENNSYLVANIA

DATE: October 13, 2006

SUBJECT: C-20065942, et al

DOCUMENT FOLDER

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary KB

DOCKETED
OCT 12 2006

County of Pike, et al
v.
Pike County Light and Power

Attached is a copy of a Late Filed Response, filed by Direct Energy in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: Chairman and Commissioners
ALJ
OTS
LAW

ksb

SAUL EWING
Attorneys at Law
A Delaware LLP
Celebrating 85 years of service.

John J. Gallagher
Phone: (717) 257-7509
Fax: (717) 257-7591
jgallagher@saul.com
www.saul.com

October 16, 2006

BY HAND DELIVERY

ORIGINAL

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, et al. (Consolidated)

Dear Mr. McNulty:

Enclosed for filing please find an original and three (3) copies of our 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. Jandebeur as to the Burden of Proof in the above-referenced matter.

A Certificate of Service is also attached.

Please call if you have any questions.

Sincerely,

John J. Gallagher
Counsel for PCL&P

DOCUMENT FOLDER

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

DOCKETED
OCT 17 2006

ldo

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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. JANDEBEUR
AS TO THE BURDEN OF PROOF

INTRODUCTION

On September 21, 2006, Administrative Law Judge Ember S. Jandebeur ("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 matter.

In the Interim Order, Judge Jandebeur 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. PCL&P hereby petitions for interlocutory review of the ALJ's finding that PCL&P bears the burden of proof on the service issue.

QUESTION PRESENTED

Did Administrative Law Judge Jandebeur err as a matter of law by finding that "PCL&P bears the burden of proving their service and/or facilities are adequate, efficient, safe and reasonable?"

ANSWER: Yes.

BASIS FOR PETITION

The Commission's regulations provide, 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 be in writing with copies served on all parties and the presiding officer and state, in not more than three pages, the question to be answered and the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.

52 Pa. Code § 5.302.

The compelling reason why the Commission should review the question presented by the Company is that the ALJ's conclusion of law is contrary to the Public Utility Code.

The ALJ based her conclusion of law that PCL&P had the burden of proof on service issues on 66 Pa. C.S. § 315 (c). Neither that provision, nor any other provision of the Public Utility Code assigns the burden of proof to the Company in this instance. In fact, the provision of law cited by the ALJ 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.

66 Pa. C.S. § 315(c)(emphasis added).

This case was not brought "upon motion of the commission." The complainants herein are individual litigants. Neither the Commission nor its staff played any role in bringing about these proceedings. Therefore, section 332 applies to these proceedings. It states.

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

66 Pa. C.S. § 332.

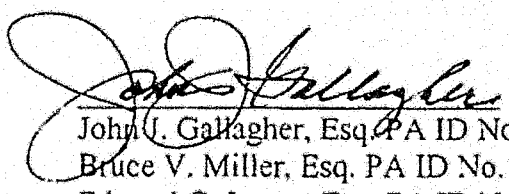
Inasmuch as complainants are clearly the proponent of an order finding that the Company's service is not adequate, efficient, safe or reasonable, the claimants here, and not the Company, have the burden of proof.

The proper application of the burden of proof here "will [both] prevent substantial prejudice [and] expedite the conduct of the proceeding." *See*, 52 Pa. Code § 5.302. PCL&P believes that its service is in all respects adequate, efficient, safe and reasonable. Requiring PCL&P to bear the burden of proof will unfairly require it to "prove the negative." Placing the burden of proof on the complainants, where it properly belongs, will expedite the conduct of this proceeding because then, and only then, will PCL&P have some idea of the gravamen of the charges against it.

RELIEF REQUESTED

The Commission should grant the Company's petition for interlocutory review and properly assign the burden of proof to the complainants in these proceedings.

Respectfully submitted,



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Bruce V. Miller, Esq. PA ID No. 201922
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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 Pike County Light & Power Company

Dated: October 16, 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).

James P. Melia, Esquire
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SEC... RECEIVED
2006 DEC ... P 3:45

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570-409-8206

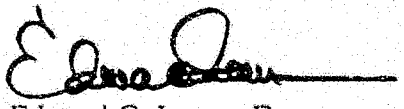
Joan Stohr
P.O. Box 1084
112 Mt. Spring Road
Milford, PA 18337
570-296-6365

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

Community Building Projects
Sean O. Strub
P.O. Drawer X
Milford, PA 18337
570-409-9999

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

Respectfully submitted,



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Counsel for PCL&P

Date: October 16, 2006

127647.2

COMMONWEALTH OF PENNSYLVANIA

DATE: October 17, 2006

SUBJECT: C-20065942 et al

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary JJM

County of Pike
v.
Pike County Light & Power Company

Attached is copy of a 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 to be placed on the Public Meeting Agenda within 30 days, pursuant to 52 PA. Code 5.301, et seq.

Attachment

BTL

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

ksb

DOCUMENT FOLDER

DOCKETED
OCT 17 2006