

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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May 28, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Windstream D&E 2019 PSI/SPI Filing
Docket No. R-2019-3010100

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Formal Complaint and Public Statement in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Barrett C. Sheridan".

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

Enclosures:

cc: Office of Special Assistants (email only: ra-OSA@pa.gov)
Office of Administrative Law Judge
Bureau of Technical Utility Services (email only)
Certificate of Service
*272765

FORMAL COMPLAINT
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

1. COMPLAINANT

Tanya J. McCloskey, Acting Consumer Advocate

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Dauphin County

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2. UTILITY NAME

Windstream D&E, Inc.

3. TYPE OF UTILITY

Telephone

4. COMPLAINT

- A. On May 15, 2019, the Office of Consumer Advocate (OCA) received the Windstream D&E, Inc. (Company) 2019 Annual Price Stability Index (PSI) and Stability Price Index (SPI) Reports. The Company made the filing pursuant to the Price Stability Mechanism (PSM) set forth in the Company's Amended Chapter 30 Plan (Chapter 30 Plan).
- B. The Company's PSI Report includes a calculation of the one-year change in Gross Domestic Product Price Index (GDI-PI) from 2017 to 2018 and applies that difference to total intrastate revenues from non-competitive service to determine the allowed revenue increase pursuant to the Company's PSM.

- C. The Company's Executive Overview states that the Company will not increase rates for non-competitive services. Instead, the Company will bank the allowed revenue increase, pursuant to the banking provisions as part of the Company's PSM.
- D. The Consumer Advocate is empowered to represent the interests of consumers before the Pennsylvania Public Utility Commission, pursuant to Act 1976-161 of the General Assembly, as amended. 71 Pa.Stat.Ann. §§ 309-1 et seq. (Purdon's Supp. 1990).
- E. The Company's PSM formula allows for a "Z factor" adjustment to recognize the effect of exogenous events. Exogenous events are positive or negative changes in the Company's revenues or expenses as defined in the Company's Chapter 30 Plan. Exogenous events include, but are not limited to, legislative changes (state & federal) which affect revenues and/or costs, to the extent not captured in GDI-PI. Exogenous expense events shall be flowed through dollar-for-dollar on the basis of review of that single expense item, utilizing the most recent per book level of such expense. See, Petition of Denver & Ephrata Telephone and Telegraph Company for Approval of An Alternative Form of Regulation, Docket No. P-00981430F1000, Amended Chapter 30 Plan, Part 3, Price Stability Plan for Non-Competitive Services (Company's Chapter 30 Plan).
- F. On December 22, 2017, the federal Tax Cuts and Jobs Act: Tax Reform Bill (TCJA) was signed into law. The TCJA makes sweeping changes to the federal tax laws, including reductions to federal income tax rates and other impacts. Additionally, a reduction in federal tax liability may have a corresponding reduction in state income tax liability.

- G. The Company's PSI Report does not include any "Z factor" adjustment to account for savings in tax expense resulting from this extraordinary, one-time change in federal law which is beyond the control of the Company and impacts the Company's revenues and/or costs.
- H. The omission of an adjustment for this significant exogenous event may result in the Company's calculation of its allowed annual revenue increase to be overstated. The omission of an adjustment for this significant exogenous event may result in the Company's tally of its banked annual increases to be overstated. As a result of the omission of an adjustment to account for this significant exogenous event, the Company's rates for non-competitive services may be unjust and unreasonable.
- I. The omission of an adjustment for this significant exogenous event may result in the Company's rates for non-competitive services providing revenues or expenses – including expense savings – which subsidize the Company's competitive services.
- J. After initial review of the Company's filing, the Acting Consumer Advocate files this Formal Complaint in order to ensure that the Company's calculation of its allowed annual revenue increase, changes to the Company's bank of allowed revenue increases, and proposed no change in rates for non-competitive services is consistent with the Company's Chapter 30 Plan PSM and in compliance with the Public Utility Code, Commission regulation or policy. The Public Utility Code provisions include Sections 1301, 1309, 1312, 3011, 3015(g), 3016(f), and 3019(b), (h). 66 Pa.C.S. §§ 1301, 1309, 1312, 3011, 3015(g), 3016(f), and 3019(b), (h).

Tanya J. McCloskey
Acting Consumer Advocate

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**PUBLIC STATEMENT
OF THE OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(E)**

Act 161 of the Pennsylvania General Assembly, 71 P.S. Section 309-2, as enacted July 9, 1976, authorizes the Office of Consumer Advocate (OCA) to represent the interests of consumers before the Pennsylvania Public Utility Commission (PUC or Commission). In accordance with Act 161, and for the following reasons, the OCA determined to file a Formal Complaint and participate in proceedings before the Commission involving Windstream D&E, Inc. (Windstream D&E or Company).

On May 15, 2019, the OCA received Windstream D&E's annual Price Stability Index (PSI) and Service Price Index (SPI) Reports, filed pursuant to Company's Chapter 30 Plan Price Stability Mechanism. The Company calculated an allowed increase in revenues based upon changes in the Gross Domestic Product Price Index (GDP-PI) between 2017 to 2018. The Company's PSI/SPI Reports calculation does not reflect any adjustment for reductions in the Company's tax expense resulting from the federal Tax Cuts and Jobs Act: Tax Reform Bill (TCJA). The Company has proposed to "bank" or defer for future implementation the full annual revenue increase calculated in the Company's PSI/SPI Reports.

The OCA has filed this Complaint with the Commission to ensure that the Company's calculation of its allowed annual increase in rates for non-competitive services is correct and that the Company's rates for non-competitive services are just and reasonable. The change in federal tax law effectuated by the TCJA is an exogenous event which is likely reducing the Company's tax expense. The OCA will seek to ensure that the Company's PSI/SPI Reports and rates for non-competitive services are adjusted as necessary to provide the Company's ratepayers with the

benefit of this significant and unusual change in federal tax law and reduction in the Company's tax expense.

CERTIFICATE OF SERVICE

Re: Windstream D&E 2019 PSI/SPI : Docket No. R-2019-3010100
Filing :

I hereby certify that I have this day served a true copy of the foregoing, the Office of Consumer Advocate's Formal Complaint and Public Statement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 28th day of May 2019.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Richard A. Kanaskie, Esquire
Bureau of Investigation & Enforcement
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SERVICE BY E-MAIL and FIRST CLASS MAIL, POSTAGE PREPAID

John R. Evans
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/s/ Barrett C. Sheridan
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Dated: May 28, 2019
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