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April 22, 2021

Via Electronic Filing

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

Re: Pike County Light & Power Company 2020 General Base Rate Increase (Electric)
Filing; Docket No. R-2020-3022135; **PCLP REPLY COMMENTS**

Dear Secretary Chiavetta:

Enclosed you will find Pike County Light & Power Company's (PCLP) Reply Comments in the above-referenced proceeding.

Copies have been served in accordance with the attached Certificate of Service. Should you have any questions, please feel free to contact me directly.

Respectfully submitted,

/s/ Thomas J. Sniscak

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Counsel for Pike County Light and Power Company

BRB/das

Enclosures

cc: Honorable Mary D. Long (malong@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2020-3022135
	:	
Pike County Light and Power Company	:	
(Electric)	:	

**REPLY COMMENTS OF
PIKE COUNTY LIGHT AND POWER COMPANY TO COMMENTS
OF OFFICE OF SMALL BUSINESS ADVOCATE**

On April 20, 2021, the Office of Small Business Advocate (“OSBA”) submitted comments to the April 16, 2021 Joint Petition for Settlement on Rate Structure and Rate Design by Pike County Light and Power Company (“Pike”), the Bureau of Investigation and Enforcement (“I&E”), and the Office of Consumer Advocate (“OCA”). As discussed below, the OSBA’s comments: 1) fail to recognize the significance that the settlement rate structure and design falls reasonably within the range of positions of the parties; 2) seeks that the Commission only accept the OSBA’s subjective litigation preferences for allocation of the black box increase which is not the standard for approval of a settlement; and 3) advocates for an erroneous standard for approval of settlements that ultimately discourages and prevents settlement and thus is contrary to the Commission’s express policy “to encourage settlements.” 52 Pa. Code § 5.231.

I. REPLY COMMENTS

1. **The settlement rate structure and design proposed by Pike, I&E, and the OCA is a just and reasonable allocation of the settled black box revenue requirement and is a negotiated compromise containing give and take from the range of allocation testimony and positions submitted in this case by the parties.**

The rate structure and design proposed by Pike, I&E, and the OCA represents a compromise born out of thoughtful and extensive negotiations by the parties to this proceeding having competing interests and positions regarding the fairness of the design of rates under the black box revenue requirement that was agreed to by all statutory parties to this proceeding. The settlement rate structure and design results in a just and reasonable outcome of allocating the \$1.4 million black box settlement revenue requirement that falls within the range of the varying positions of the parties as provided in the multiple rounds of testimony in this proceeding. Indeed, while the OSBA attempts to discredit all other parties' testimony as reliant exclusively on technical issues in the Company's as-filed cost of service study, the OSBA admits that the settlement falls within the range of litigation positions of the parties to the proceeding.¹

As discussed by the OCA in its supplemental statement in support, the revenue allocation positions of the parties ranged significantly. OCA Supplemental Statement at 4. By comparison, regarding residential customers (SC1), the litigation positions assigned the residential class a range of 26% (OCA) to as high as 76% (OSBA). *Id.* The result of the rate structure settlement assigns \$580,394 of the \$1.4 million revenue requirement to the residential class, or 41.5% of the increase. *Id.* This is reasonable especially considering the public input testimony in this proceeding. The

¹ See page 7 of OSBA's Comments which states "The Company goes on to argue that the Non-Unanimous Settlement revenue allocation lies within the range of litigation positions of the parties to the proceeding. Non-Unanimous Settlement Appendix C at 4. **While this may be true**, the OSBA respectfully submits that simply because a party has taken a litigation position does not necessarily imply that the position is reasonable or must be considered in a settlement." (emphasis added) (see also OSBA's f.n. 3 "OCA makes a similar argument. Appendix E at 4.").

settlement allocation falls within the range of the positions of the parties, and approval of the rate structure settlement is not conditioned on the settling parties adopting the litigation position of OSBA.

As stated in Pike's Supplemental Statement in Support, the proposed rate structure and rate design was a product of compromise. As a starting point for the Rate Structure Settlement, Pike, I&E, and the OCA agreed to begin with a rate structure compromise modeled after I&E's revenue allocation and scale back proposal as presented in I&E's testimony as both Pike and the OCA in their respective reply briefs, recognized I&E's position as a reasonable alternative to each parties' proposed allocation. See Pike Reply Brief at 3-4; OCA Reply Brief at 9. To that end, Pike, I&E, and the OCA started, as a baseline, with the scale back of rates proposed by I&E.² The Rate Structure Settlement recognized multiple principles and adjustments presented in I&E's moderate position, including a reduction to the private lighting class as the relative rate of return was well above cost to serve,³ and a targeted scale back to move the classes towards a relative rate of return of 1.0.⁴ The ultimate settlement rate structure and design, while modeled after I&E's proposal, is not a 1:1 alignment with I&E's position or scale back.

Given that the settlement rate structure and design represent significant give and take negotiations which ultimately produced a revenue allocation within the litigation positions of the parties, Your Honor and the Commission should find Pike, I&E, and the OCA's joint petition for settlement on rate structure and design is just, reasonable, and approval of the settlement is in the

² I&E St. No. 3, pp. 32-34.

³ I&E St. No. 3, pp. 32.

⁴ I&E St. No. 3, pp. 33-34, and I&E Ex. No. 3, Sch. 8.

public interest. This reasonable outcome furthers the Commission's policy on encouraging settlement.

2. The OSBA's argument that its revenue allocation method is the only method or factor which the Commission can consider embodies OSBA's subjective preference and opinion of its favored method, and ignores that other methods were proposed by other parties and that cost of service studies are only one of many considerations in structuring and designing rates.

In its comments, the OSBA argues, as if it were an absolute rule which it is not, that any revenue allocation evidence other than what was submitted by the OSBA is inappropriate and cannot be considered. OSBA Comments at 3-5. The OSBA further argues that the Rate Structure Settlement allocation clearly did not use the Company's rebuttal ECOSS as a benchmark for the proposed rate structure as the settlement allocation is wholly inconsistent with the Pike's testimony. *Id.* at 6. While the OSBA indicated that it agrees with the Company's rebuttal ECOSS, that fact and the OSBA's arguments, ignores the outcome here – a compromise on rate structure and rate design not reflected by any one party's litigation positions in order to reach a settlement. *Id.* at 5.

The OSBA's arguments that only its cost of service study can be accepted lacks merit. While the OSBA relies on *Lloyd v. Pa. PUC*⁵ for the proposition that the Rate Structure Settlement allocation is inconsistent, in its view, with cost causation principles in cost of service studies, such arguments by definition rely on the OSBA's view that only its studies are correct and can be considered. OSBA Comments at 5-7. Further, *Lloyd* also held that the Commission may consider other factors, such as gradualism, while maintaining cost of service as the primary basis for allocating a revenue increase. *Id.* at 1020-1021. As OCA stated in its testimony, we are in a pandemic presently which OCA considers in its litigation position to be a factor. See OCA St. 2 at

⁵ *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006) *appeal denied*, 591 Pa. 676, 916 A.2d 1104 (2007)

4-12; OCA Supplemental Statement at 4. The rate structure settlement allocation, as discussed in paragraphs 9-15 petition, reach a balanced result that falls within the range of the cost of service studies and cost causation testimony presented by all parties in this matter which reflects a just and reasonable settlement that is, by definition, a product of mutual concessions by Pike, I&E, and the OCA to reach an agreement.

Further, even if the OSBA's cost of service studies were entirely accurate, which they are not, the Commission has repeatedly recognized that the cost-of-service study is a guide to designing rates and is only one factor to be considered in the rate setting process. *See, e.g., Pa. P.U.C. v. Aqua Pa. Inc.*, Docket No. R-00072711, 2008 Pa. PUC LEXIS 50 (Order dated July 17, 2008); *Pa. P.U.C. v. West Penn Power Co.*, Docket Nos. R-901609, et al., 1990 Pa. PUC LEXIS 142, 73 Pa. PUC 454, 119 P.U.R.4th 110 (Order dated Dec. 13, 1990); *Pa. P.U.C. v. Pennsylvania Power & Light Co.*, 55 PUR 4th 185, 249 (Order dated Aug. 19, 1983). Cost allocation studies require a considerable amount of subjective judgment and are described as more of an accounting/engineering art rather than science. *Application of Metropolitan Edison Co.*, R-00974008 (Order dated June 30, 1998); *Pa. P.U.C. v. Pennsylvania Power & Light Co.*, 55 PUR 4th 185 (Order dated Aug. 19, 1983). There is no single methodology for performing a cost of service study, and such studies are imperfect guidelines for allocating revenue requirements:

While the Commission recognizes that cost-of-service is always an important and normally the primary basis of pricing, it is not the only consideration. In the first place, even though the cost-of-service studies may be done in a craftsman like manner, this does not mean that they can be blindly relied upon. Judgment and some assumptions must be made in cost-of-service studies; costs-of-service studies are not perfect or precise.

Pa. P.U.C. v. Philadelphia Elec. Co., 31 PUR 4th 15, 84 (1978).

As argued in Pike's reply brief, the OSBA's cost of service studies are in-fact imperfect, are biased toward the constituency OSBA represents, and rely on unsupported and arbitrary assumptions that are not technically correct or supported by the record in order to achieve the OSBA's desired result – specific benefits to the commercial class that distort OSBA cost of service studies to not accurately reflect the cost of service.⁶ This creates biases, especially in the OSBA ECOSS II, which ultimately taints the OSBA's argument that only its revenue allocation proposals on record can be supported and that nothing else of record by the other parties can result in a just and reasonable allocation.

The OSBA's subjective preference and opinion of its favored method simply ignores that other methods were proposed by other parties with competing viewpoints in this proceeding and would seek to have the Commission only consider the OSBA's record evidence. The OSBA's request cannot be supported as Pike, I&E, and OCA presented significant cost of service testimony, albeit not to the OSBA's liking or desired outcome, which shows that the range of positions in this case support the rate structure settlement. Settlements are a product of compromise, and so long as the compromise leads to a just and reasonable revenue allocation that balances the competing positions, the result can and should be found in the public interest.

3. The Commission's policy at 52 Pa. Code § 5.231 is to encourages settlement of competing positions as opposed to OSBA's incorrect argument that its competing position is the only outcome that may be adopted as a matter of law.

Pike, I&E, and the OCA did not enter settlement on rate structure and design lightly. Pike vigorously represented its positions in this proceeding by answering extensive formal and informal discovery, preparing multiple rounds of testimony, drafting main and reply briefs on rate structure and design, attending countless settlement negotiations among all parties that ultimately failed to

⁶ See Pike Reply Brief at 2-3.

reach an all-party settlement. After significant resources were expended on the above by all parties, and after the ALJ's further order to reconvene on settlement on remaining issues in the case, Pike, I&E, and OCA were able to resolve their differences and to enter into the Rate Structure Settlement.

It is the policy of the Commission to encourage settlements. 52 Pa. Code § 5.231. The Commission's policy statement recognizes that settlement terms, even those partial among the parties, are often preferable to the results achieved in fully litigated proceedings:

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402—69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases. A partial settlement is a comprehensive resolution of all issues in which less than all interested parties have joined. A stipulation is a resolution of less than all issues in which all or less than all interested parties have joined.

52 Pa. Code § 69.401. The Commission has also stated:

A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. **A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.**

...

Rate cases are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by

any appeal of the Commission's decision, yielding significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Pa. PUC v. Hidden Valley Utility Service, L.P., Docket No. R-2018-3001306 *et al.*, Opinion and Order at 34-35 (Order entered March 29, 2019) (emphasis added).

The OSBA's argument that its competing position is the only proposal that may be adopted is incorrect as a matter of law, and disregards the fact that a settlement, as achieved by Pike, I&E, and OCA here, represents significant compromise and give and take within the range of the rate structure testimony submitted in this case. The Commission's policy is not to make settlements contingent on one party's position, such as the OSBA would have here, but rather to encourage settlements for the parties to come to a just and reasonable result. The OSBA's single focused drive that the Commission cannot accept any rate structure or rate design besides the OSBA's litigation position, which in itself has significant flaws and biased assumptions,⁷ would only discourage settlement and, if permitted, would allow one party to control and prevent settlement against the Commission's policy.

⁷ See Pike Reply Brief at 2-3.

II. CONCLUSION

WHEREFORE, Pike County Light and Power Company respectfully requests that the Commission dismiss the Office of Small Business Advocate's comments to the Joint Petition for Settlement on Rate Structure and Design and approve the Settlement as just and reasonable and in the public interest.

Respectfully submitted,

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Dated: April 22, 2021

Counsel for Pike County Light and Power Company

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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Dated: April 22, 2021