



COMMONWEALTH OF PENNSYLVANIA

May 20, 2021

E-FILED

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

**Re: Pennsylvania Public Utility Commission, v. Pike County Light & Power Company
(Electric) / Docket No. R-2020-3022135**

Dear Secretary Chiavetta:

Enclosed please find the Exceptions to the Recommended Decision, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in these proceedings, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Sharon E. Webb

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures

cc: Brian Kalcic
Office of Special Assistants
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2020-3022135
	:	
Pike County Power & Light – Electric Division	:	

**EXCEPTION TO THE RECOMMENDED DECISION
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995**

**Office of Small Business Advocate
555 Walnut Street, 1st Floor
Harrisburg, PA 17101**

Date: May 20, 2021

I. Introduction

On October 26, 2020, Pike County Light and Power Company (“PCL&P” or the “Company”) filed Supplement No. 82 to Tariff Electric - Pa. P.U.C. No. 8 (“Supplement No. 82”) with the Pennsylvania Public Utility Commission (“Commission”) requesting additional annual distribution revenues of \$1,933,600 million per year, an increase of 17.3% on a total bill basis, or 36.9% on a base rate basis.¹

On December 17, 2020, the Commission suspended the proposed effective date of Supplement No. 82 and instituted an investigation into the justness and reasonableness of the PCL&P filing.

On November 13, 2020, the Office of Small Business Advocate (“OSBA”) filed a complaint against Supplement No. 82.

On January 11, 2021, a prehearing conference was held before Administrative Law Judge (“ALJ”) Mary D. Long.

On January 13, 2021, ALJ Long issued her Scheduling Order.

On February 2, 2021, the OSBA submitted the direct testimony of Robert D. Knecht. On February 22, 2021, the OSBA submitted the rebuttal testimony of Mr. Knecht. March 4, 2021, the OSBA submitted the surrebuttal testimony of Mr. Knecht.

Prior to the evidentiary hearings, all parties reached an agreement on a revenue requirement increase of \$1,400,000, or some 26.9% of future test year current rate revenues.

¹ See OSBA Statement No. 1 at 2.

Despite extensive negotiations, all parties were not able to resolve the issues of revenue allocation and rate design.

On March 29, 2021, counsel for the Company advised ALJ Long that the parties were at an impasse on revenue allocation and requested an extension of the time to file briefs on the issue. ALJ Long, via email to the parties on March 29, 2021, granted the request to defer the filing of Main Briefs until noon on April 5, 2021. After further negotiations, the parties were still unable to resolve the issue of revenue allocation.

Evidentiary hearings scheduled for March 9-12, 2021, were cancelled as all parties waived cross examination.

The OSBA submitted its Main Brief on April 5, 2021.

A Joint Petition for Partial Settlement (“Partial Settlement”) was submitted concurrently with Reply Briefs, which addressed revenue requirement and customer charge issues.

The OSBA submitted a Reply Brief on April 9, 2021.

A non-unanimous Joint Petition for Settlement on Rate Structure and Rate Design (“Non-Uniform Settlement”) was filed on April 16, 2021.

The OSBA submitted Comments addressing the Non-Uniform Settlement on April 20, 2021.

Reply comments were filed on April 22, 2021.

On May 5, 2021, ALJ Long issued her Recommended Decision (“RD”).

The OSBA files this Exception in response to the RD.

II. Exceptions

Exception No. 1: The RD incorrectly concluded that the revenue allocation set forth in the Non-Unanimous settlement results in just and reasonable rates. (RD, at 40)

The issue before the Commission is not the typical expert-witness debate about which cost of service methodology should be used in an electric utility rate case. The issue is much less complex: when a public utility fixes acknowledged errors in its cost of service study (“COSS”), should the “fixed” COSS be used for revenue allocation, or the original error-ridden COSS be used.

The ALJ correctly framed the issue of the development of rate structure by noting the Commission’s recent decision in Columbia Gas as follows:

When a utility files for a rate increase and the proposed increase exceeds \$1 million, the utility must include with its filing an allocated class cost-of-service study (ACCOSS or ACCOS Study) in which it assigns to each customer class a rate, based on operating costs that it incurred in providing service. 52 Pa. Code § 53.53; *Lloyd v. Pa. PUC*, 904 A. 2d 1010, 1015 (Pa. Cmwlth. 2006) (*Lloyd*). Cost allocation studies require a considerable amount of judgement and are described as more of an accounting/engineering art rather than a science. *Application of Metropolitan Edison Co.*, R-00974008 (Order dated June 30, 1998); *Pa. PUC v Pennsylvania Power & Light Co.* 55 PUR 4th 185 (Order dated August 19, 1983). Public utility rates should enable the utility to recover its cost of service (citation omitted) and should allocate this cost among its customers. These rates are *required* by statute to be just and reasonable and *non-discriminatory*. 66 Pa. C.S. §§ 1301, 1304. (*emphasis added*).²

² RD at 25, citing *Pa. PUC v Columbia Gas of PA, Inc.* R-2020-3018835 (Order entered February 19, 2021, at 186-7).

Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.”

The burden of proof to establish the justness and reasonableness of every element of the utility’s rate increase rests solely upon the public utility. 66 Pa. C.S. § 315(a). “It is well-established that the evidence adduced by a utility to meet this burden must be substantial.”

Lower Frederick Township. v. Pa. PUC, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

Although the burden of proof remains with the public utility throughout the rate proceeding, when a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Order entered July 17, 2008).

PCP&L originally submitted a revenue allocation proposal that was directionally consistent with the results of its *originally filed* electric class cost of service study (“ECOSS”). However, the Company’s originally filed ECOSS was riddled with errors.³ Specifically, the Company’s filed ECOSS, *by its own admission*, contained significant programming errors. Once those errors were corrected, a directionally consistent revenue allocation resulting from the fixed ECOSS demonstrates that the Non-Unanimous Settlement’s revenue allocation is unjust, unreasonable, and discriminatory. Simply put, the Non-Unanimous Settlement’s proposed revenue allocation conflicts with PCL&P’s corrected ECOSS.⁴

³ OSBA Main Brief at 14.

⁴ OSBA Main Brief at 15.

Curiously, the ALJ makes no recommendation as to which ECOSS methodology should be adopted in this proceeding but limits her analysis to rejecting the OSBA ECOSS. While the ALJ found that there is substantial evidence in the record which suggests that it is not appropriate to rely on the OSBA's ECOSS to establish rates, the ALJ appears to have misunderstood the record.

In this proceeding, the OSBA offered two alternative ECOSS evaluations in direct testimony, and two corresponding revenue allocation proposals.⁵ One of those ECOSS ("OSBA ECOSS I") analyses simply corrected for admitted errors in the Company's filed ECOSS. The Company *confirmed* that OSBA ECOSS I was essentially identical to the ECOSS filed by the Company in its rebuttal testimony.⁶ Thus, the ALJ is therefore wrong to assume that OSBA ECOSS I must be accepted in order to reject the Non-Unanimous Settlement. The OSBA respectfully submits that the ECOSS in the Company's rebuttal testimony represents is a potentially reasonable basis for cost allocation and revenue allocation in this proceeding.

The Company's rebuttal ECOSS corrected *admitted errors* in the Company's filed ECOSS. These errors are not related to a difference in professional judgment between experts – but are acknowledged programming errors which have substantial cost implications on all of the Company's customers.⁷ While no party has disputed the errors, none of the parties to the Non-Unanimous Settlement corrected those acknowledged errors in their respective litigation positions. Furthermore, the parties to the Non-Unanimous Settlement committed a serious error by incorporating those errors into the settlement, resulting in rates that are not cost based.⁸

⁵ OSBA Main Brief at 3, 9 and 4-5

⁶ OSBA Main Brief at 8.

⁷ OSBA Main Brief at 7.

⁸ OSBA Main Brief at 2, and 14.

While parties may have their respective opinions on what a proposed ECOSS methodology is, no party can rationally support an ECOSS that contains acknowledged errors.

In the alternative, OSBA submitted an alternative ECOSS (“OSBA ECOSS II”) that corrected for the admitted errors and made various methodological changes to the Company’s ECOSS to make the analysis more consistent with cost causation and Commission precedent. The technical arguments are detailed in OSBA’s testimony and briefs and are not repeated here.⁹ The OSBA respectfully submits that OSBA ECOSS II also represents a potentially reasonable basis for cost allocation and revenue allocation in this proceeding.

The OSBA submits that OSBA ECOSS I (essentially equivalent to the Company’s rebuttal ECOSS) and OSBA ECOSS II are the only two credible bases for cost and revenue allocation in this proceeding. The Company’s filed ECOSS, which served as the basis for I&E’s revenue allocation proposal, is irrelevant, as it was corrected by the Company in rebuttal.¹⁰ The only other ECOSS submitted in this proceeding was offered by OCA witness Pavlovic, and that ECOSS is flawed because (a) it contains the serious errors in the Company’s original filing, (b) it is inconsistent with the NARUC Electric Utility Cost Allocation Manual, and (c) is hopelessly inconsistent with Commission precedent.¹¹

Therefore, the OSBA respectfully submits that the Commission can only approve the revenue allocation in the Non-Unanimous Settlement if it is consistent with either: the Company’s rebuttal ECOSS (similar to OSBA ECOSS I), or the OSBA ECOSS II. Furthermore, both the Company’s rebuttal ECOSS and the OSBA ECOSS II demonstrate that the non-

⁹ OSBA Statement No. 1 at 2 and 6, OSBA Statement No. 1-S at 3, OSBA Main Brief at 8.

¹⁰ OSBA Comments on Non-Unanimous Settlement at 4.

¹¹ OSBA Comments on Non-Unanimous Settlement at 4 and 10.

residential SC2 classes exhibit class rates-of-return at *present rates* above system average, with the class rate-of-return for the SC2 Primary class at *present rates* exceeding the overall Company *proposed* rate of return.¹² Absurdly, the Non-Unanimous Settlement assigns a well-above-system-average rate increase to the SC2 Secondary class (34.5% compared to system average of 26.8%), and a rate increase only slightly below system average to the SC2 Primary class (24.%), where the cost basis would justify a rate decrease.¹³ Since the revenue allocation proposal in the Non-Unanimous Settlement is hopelessly inconsistent with both the Company's rebuttal ECOSS (similar to OSBA ECOSS I) and OSBA ECOSS II, it must be rejected.

The ALJ says she is not persuaded that the revenue allocation agreed to by the parties should be rejected because it is not consistent with the OSBA's COSS. The ALJ misses the point.¹⁴ The OSBA's argument against the proposed settlement revenue allocation is that it moves rates *away* from allocated costs, either using the Company's rebuttal ECOSS or the OSBA ECOSS II, contrary to *Lloyd*.¹⁵ Neither the Non-unanimous settlement, nor the ALJ, provide any justification for the discriminatory treatment of commercial customers.

The Commonwealth Court's decision in *Lloyd* dealt with a rate increase that unjustly discriminated against small business customers in favor of residential customers. While *Lloyd* did not hold that the results of a cost of service study was the only factor the Commission could consider in setting rates, the Commonwealth Court did find that allocated cost of service is the *polestar criterion* for revenue allocation and rate design in Pennsylvania. While other factors may be considered, cost of service cannot be ignored. The only mitigating factor that the ALJ offers is

¹² OSBA Main Brief at 8; OSBA Statement No. 1 at 23.

¹³ OSBA Comments on Non-Unanimous Settlement at 6.

¹⁴ RD at 36.

¹⁵ OSBA Main Brief at 15, OSBA Reply Brief at 7.

the impact of Covid-19 Pandemic. The OSBA does not dispute the impact that the pandemic has had on all classes of ratepayers, but those impacts are not limited to residential customers.¹⁶ Small commercial customers have also been devastated by the pandemic and to exacerbate that by refusing to correct a substantial *admitted error* in the proposed revenue allocation discriminates against small commercial rate classes. This is not a just or reasonable result and is a clear violation of *Lloyd*.

¹⁶ OSBA Comments on Non-Unanimous Settlement at 10.

XI. Conclusion

Wherefore, the OSBA respectfully requests that the Commission adopt the OSBA Exception as set forth above and reject the Recommended Decision on this issue as inconsistent with *Lloyd* and the statutory requirement that rates be just, reasonable, and non-discriminatory.

Respectfully Submitted,

/s/ Sharon E. Webb

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Dated: May 20, 2021

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION :

v. :

Docket No. R-2020-3022135

PIKE COUNTY LIGHT AND :
POWER COMPANY (ELECTRIC) :

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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