



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

May 27, 2021

Via Electronic Filing

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
I&E Reply Exceptions

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Reply Exceptions of the Bureau of Investigation and Enforcement (I&E)** for the above-captioned proceeding.

Copies are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

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CBW/ELM/ac
Enclosures

cc: Honorable Mary D. Long – Office of Administrative Law Judge (*via email*)
Office of Special Assistants (*via email* - ra-OSA@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY EXCEPTIONS
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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I. INTRODUCTION

On October 26, 2020, Pike County Light and Power Company (Pike Electric or Company) filed Supplement No. 82 to Pike's Electric Service Tariff – Pa. P.U.C. No. 8 in which, Pike Electric seeks an increase in annual distribution revenues of \$1,933,600 or a 24.7% increase, to become effective December 28, 2020.

On November 3, 2020, the Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. The Office of Consumer Advocate (OCA) filed a formal complaint on November 16, 2020, and the Office of Small Business Advocate (OSBA) filed a formal complaint on November 13, 2020.

On December 17, 2020, the Commission issued an Order suspending Pike Electric's filing by operation of law until July 28, 2021.

Administrative Law Judge Mary D. Long (ALJ Long) issued a Prehearing Conference Order scheduling a telephonic prehearing conference on January 11, 2021. The Parties agreed upon a procedural schedule in this matter which was approved by ALJ Long. ALJ Long issued a Prehearing Order that memorialized the agreed upon procedural schedule.

Two telephonic Public Input Hearings were scheduled to take place on February 8, 2021 at 1:00 p.m. and 6:00 p.m.

Pursuant to the procedural schedule set forth by the ALJ, the parties exchanged direct, rebuttal, surrebuttal, and written rejoinder testimony. I&E served the following statements of testimony and exhibits:

- I&E Statement No. 1, I&E Exhibit No. 1 (Proprietary), I&E Exhibit No. 1 (Non-Proprietary), I&E Statement No. 1-SR, the prepared direct and surrebuttal testimony and exhibits of I&E witness John Zalesky, who addressed the Company's operating and maintenance expenses, and overall revenue requirement;
- I&E Statement No. 2, I&E Exhibit No. 2, and I&E Statement No. 2-SR, the prepared direct and surrebuttal testimony and exhibit of I&E witness Anthony Spadaccio, who addressed the Company's rate of return request;
- I&E Statement No. 3, I&E Ex. No. 3, I&E Statement No. 3-SR, and I&E Ex. No. 3-SR the prepared direct and surrebuttal testimony of I&E witness Esyan Sakaya, who addressed the Company's rate base and rate structure requests.

All cross-examination was waived by the parties and the scheduled telephonic evidentiary hearings were cancelled. On March 12, 2021, the Parties filed a Joint Stipulation for the Admission of Testimony and Exhibits into the Evidentiary Record in which the Parties stipulated to the authenticity of the filings and exhibits that had been presented and requested that they be admitted into the record. On March 15, 2021, ALJ Long issued an Order granting the Stipulation and admitting the various testimonies and exhibits into the record. While most issues were resolved been settled between the Company, I&E, OCA and OSBA, the issues of revenue allocation and rate design remained outstanding.

Main Briefs addressing the unsettled issues were filed by Pike, OSBA, OCA and I&E on April 5, 2021. Reply Briefs were filed by the same Parties on April 9, 2021.

In addition to the Reply Briefs, on April 9, 2021, a Joint Petition for Partial Settlement was filed with the Commission which included, an agreement to increase the revenue requirement by \$1.4 million (the Revenue Settlement). The Company, I&E,

OCA and OSBA were signatories to the Revenue Settlement. On April 16, 2021, Pike, I&E and OCA filed a Joint Petition for Settlement on revenue allocation (the Rate Design Settlement) along with their respective Statements in Support.

OSBA opposed the revenue allocation contained in the Rate Design Settlement and filed comments opposing such on April 20, 2021. PCLP, I&E and OCA filed responsive comments on April 22, 2021.

On May 5, 2021, ALJ Long issued a Recommended Decision (RD) approving both the Revenue Settlement and the Rate Design Settlement. OSBA filed Exceptions to the ALJ's Recommendation approving the Revenue Allocation Settlement.

I&E now files this timely Reply Exception in response to the Exception raised by OSBA.

II. REPLY EXCEPTION

1. Reply to OSBA Exception No. 1: The ALJ Appropriately Concluded that the Revenue Allocation Set Forth in the Rate Design Settlement Results in Just and Reasonable Rates (RD, pp. 36-40).

In its Exceptions, OSBA grossly misstates ALJ Long's recommendation saying that ALJ Long limited her analysis to rejecting the OSBA electric class cost of service study (ECOSS).¹ OSBA goes on to state that ALJ Long misunderstood the record in this proceeding, and further, the OSBA criticizes the ALJ for not making a recommendation as to which cost of service study should be used.² As explained in further detail below, the OSBA criticisms are without merit.

¹ OSBA Exceptions, p. 5.

² OSBA Exceptions, p. 5.

As I&E has previously explained, it is well established that a public utility shall not establish or maintain unreasonable differences in rates among rate classes.³ While there may exist sound justification for some discrepancies in rates, this alone does not justify allowing one class of customers to subsidize the cost of service for another class of customers over an extended period of time. The revenue allocation set forth in the Rate Design Settlement not only reflects a compromise of the Joint Petitioners, but it also produces an allocation that moves each class closer to its actual cost of service.

As with the Revenue Increase Settlement, the Rate Design Settlement was presented as a black box settlement. The Commission has previously endorsed the use of black box settlements stating:

We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. *See, Pa. P.U.C. v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. P.U.C. v. Citizens’ Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company’s revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company’s cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases. For these reasons, we support the use of a “black box” settlement in this proceeding and, accordingly, deny this Exception.⁴

³ 66 Pa. C.S. § 1304.

⁴ *Pa. P.U.C. v. Peoples TWP LLC*, Docket No. R-2013-2355886, p. 28 (Order entered December 19, 2013).

Further, the prior Chairman of the Commission explained that black box settlements are beneficial in the context of rate proceedings precisely because of the difficulties in reaching an agreement on each component of a company's revenue requirement calculation, when he stated:

determination of a company's revenue requirement is a calculation that involves many complex and interrelated adjustments affecting revenue, expenses, rate base and the company's cost of capital. To reach an agreement on each component of a rate increase is an undertaking that in many cases would be difficult, time-consuming, expensive and perhaps impossible. Black box settlements are an integral component of the process of delivering timely and cost-effective regulation.⁵

The recommendation which served as the basis of the black box revenue allocation agreed upon in the Rate Design Settlement was I&E Witness Sakaya's recommended scale back of rates. In the instant proceeding, I&E Witness Sakaya conducted an analysis of the relative rates of return under proposed rates for the different rate classes.⁶ Witness Sakaya developed a schedule calculating the relative rates of return based upon revenue, expenses, taxes, net income, and rate base by class.⁷ While the rates of return for the Small Business and Large Commercial classes were slightly under the cost to serve, Witness Sakaya accepted the Company's COSS as the results were only slightly below the relative rate of return.⁸ As such, the revenue allocations agreed to as part of the Rate

⁵ See, Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Wellsboro Electric Company*, Docket No. R-2010-2172662. See also, Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Citizens' Electric Company of Lewisburg, PA*, Docket No. R-2010-2172665.

⁶ I&E St. No. 3, p. 22.

⁷ I&E St. No. 3, p. 22, and I&E Exh. No. 3, Sch. 5.

⁸ I&E St. No. 3, p. 31.

Design Settlement move all classes closer to each class's individual cost to serve.

ALJ Long correctly notes that there exists “substantial evidence in the record which suggests that it is not appropriate to rely on OSBA’s COSS to establish rates.”⁹ To that point, ALJ Long notes that Pike’s experts disputed the results of OSBA’s COSS, noting that OSBA’s assignment of a 30% customer component to primary plant is arbitrary and also grossly overstates the customer component.¹⁰ Further, it must be noted that OSBA’s COSS in some instances place upon residential customers more than the increase contained in the Company’s filing and the public notices that were issued in this proceeding. This factor alone presents sufficient justification to reject OSBA’s COSS, as customers should not be subjected to a larger increase in their rates under a settlement which mitigates the overall increase, than they would have been subjected to had the full increase gone into effect. The OSBA recommendation simply does not result in just and reasonable rates.

As part of a black box Settlement, the specific components of the amounts agreed to are necessarily not specified within the Settlement, just as they would not have been had OBSA been a signatory to the Settlement. As explained above, this Commission has expressed its approval for black box settlements. While OSBA criticizes ALJ for not specifying which COSS methodology should be approved, the criticism is without merit because this was simply not a requirement of the ALJ. ALJ Long was presented with a black box revenue settlement amongst all Parties, and a black box rate design settlement

⁹ RD, p. 37.

¹⁰ RD, p. 37.

amongst all Parties except for OSBA. As noted above, this Commission favors black box settlements. In this instance, the ALJ limited her analysis to whether the OSBA recommendation, or the Rate Design Settlement was the appropriate resolution of this base rate case. An analysis that was wholly appropriate. The ALJ thoroughly explained why OSBA's COSS was problematic and could not be approved.¹¹

ALJ correctly notes that OSBA's COSS 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's cost of service studies to not accurately reflect the cost of service. This creates biases, 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.¹²

ALJ Long further explains, that while the COSS forms the basis for revenue allocations, there are other factors that must be considered in setting rates.¹³ These other factors include things such as quality of service, gradualism, and rate affordability which is of particular import in this proceeding which is occurring in the midst of the COVID-19 pandemic. ALJ then, soundly, criticizes OSBA's COSS for not addressing these other factors and notes that the Rate Design Settlement takes into account other factors such as mitigating the impact of the COVID-19 pandemic.¹⁴

¹¹ RD, pp. 37-39.

¹² RD, p. 37.

¹³ RD, p. 39.

¹⁴ RD, pp. 39-40.

Therefore, as demonstrated above, ALJ Long’s analysis was not limited to simply rejecting the OSBA COSS. ALJ Long provided an explanation of why she believes the OSBA COSS was inappropriate and explained her reasoning for accepting the revenue allocation contained in the Rate Design Settlement. Further, ALJ Long’s analysis need not include a recommendation as to which COSS methodology should be approved as her recommendation concluded that the Rate Design Settlement should be approved. As this recommendation amounted to accepting a black box settlement to which the specific components that made up the various allocations were not provided there would be no way, or reason for her to recommend a specific COSS methodology be approved.

“The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest.”¹⁵ The Commission has recognized that a settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.”¹⁶ As a product of negotiation and compromise between the settling parties, this Non-Unanimous Settlement Agreement reflects concessions from the signatories. I&E submits that ALJ properly recommended the Commission accept both the Revenue Increase Settlement and the Rate Design Settlement as the rates resulting therefrom are just and reasonable and in the public interest.

¹⁵ *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

¹⁶ *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

III. CONCLUSION

For the reasons stated herein, the Bureau of Investigation & Enforcement respectfully requests that the Commission deny the Exceptions of the Office of Small Business Advocate and approve the Revenue Increase and Rate Design Settlements in the instant proceeding without modification as recommended by Administrative Law Judge Mary D. Long.

Respectfully submitted,



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Electric	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Exceptions** dated May 27, 2021, in the manner and upon the persons listed below:

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