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January 27, 2023

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Windstream Buffalo Valley, Inc. et al., PSI/SPI Filing for Year 2018  
Docket Nos. R-2018-3001132; R-2018-3001135; R-2018-3001133; R-2018-3001150;

Office of Consumer Advocate v. Windstream Buffalo Valley, Inc., et al.,  
Docket Nos. C-2018-3001865; C-2018-3001864; C-2018-3001870; C-2018-3001871

Windstream Buffalo Valley, Inc. et al., PSI/SPI Filing for Year 2019  
Docket Nos. R-2019-3010106; R-2019-3010097; R-2019-3010100; R-2019-3010101

Office of Consumer Advocate v. Windstream Buffalo Valley, Inc., et al.,  
Docket Nos. C-2019-3010150; C-2019-3010148; C-2019-3010149; C-2019-3010152

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Windstream Buffalo Valley, Inc., Windstream Conestoga, Inc., Windstream D&E, Inc. and Windstream Pennsylvania LLC's ("Windstream") Prehearing Memorandum with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Sarah C. Stoner*  
Sarah C. Stoner, Esq.

SCS/lww

Enclosure  
cc: Cert. of Service w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of Windstream's Prehearing Memorandum upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email Only**

Hon. Steven Haas  
Administrative Law Judge  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[sthaas@pa.gov](mailto:sthaas@pa.gov)

Steven C. Gray, Esq.  
Sharon E. Webb, Esq.  
Office of Small Business Advocate  
Forum Place Building  
555 Walnut Street, 1st Floor  
Harrisburg, PA 17101  
[sgray@pa.gov](mailto:sgray@pa.gov)  
[swebb@pa.gov](mailto:swebb@pa.gov)

Barrett C. Sheridan, Esq.  
Office of Consumer Advocate  
Forum Place Building  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
[bsheridan@paoca.org](mailto:bsheridan@paoca.org)

Dated: January 27, 2023

*/s/ Sarah C. Stoner*  
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Sarah C. Stoner, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Windstream Buffalo Valley, Inc. PSI/SPI Filing for Year 2018	:	Docket Nos. R-2018-3001132
	:	
Office of Consumer Advocate	:	
Complainant	:	
v.	:	C-2018-3001865
Windstream Buffalo Valley, Inc.	:	
Respondent	:	
	:	
	:	
Windstream Conestoga, Inc. PSI/SPI Filing for Year 2018	:	R-2018-3001135
	:	
Office of Consumer Advocate	:	
Complainant	:	
v.	:	C-2018-3001864
Windstream Conestoga, Inc.	:	
Respondent	:	
	:	
	:	
Windstream D&E, Inc. PSI/SPI Filing for Year 2018	:	R-2018-3001133
	:	
Office of Consumer Advocate	:	
Complainant	:	
v.	:	C-2018-3001870
Windstream D&E, Inc.	:	
Respondent	:	
	:	
	:	
Windstream Pennsylvania, LLC PSI/SPI Filing for Year 2018	:	R-2018-3001150
	:	
Office of Consumer Advocate	:	
Complainant	:	
v.	:	C-2018-3001871
Windstream Pennsylvania, LLC	:	
Respondent	:	
	:	
	:	
Windstream Buffalo Valley, Inc. PSI/SPI Filing for Year 2019	:	R-2019-3010106
	:	



Windstream Buffalo Valley, Inc. (“Windstream Buffalo Valley”), Windstream Conestoga, Inc. (“Windstream Conestoga”), Windstream D&E, Inc. (“Windstream D&E”), and Windstream Pennsylvania, LLC (“Windstream Pennsylvania”), (collectively, “Windstream” or the “Companies”) hereby submit this Prehearing Memorandum pursuant to 66 Pa. C.S. § 333 and the Prehearing Conference Order dated January 4, 2023.

## **I. PROCEDURAL HISTORY**

In 2018 and 2019, the Companies filed their Annual Price Stability Index (“PSI”) and Stability Price Index (“SPI”) Reports pursuant to their applicable Chapter 30 Plans, which contain language regarding operation of their price cap form of regulation.

The Office of Consumer Advocate (“OCA”) subsequently filed formal complaints in the above-captioned dockets. The OCA’s complains claimed that the PSI Report did not include a “Z factor” adjustment as part of the Price Stability Mechanism (“PSM”) formulas to account for the savings in tax expense resulting from the federal Tax Cuts and Jobs Act (“TCJA”), which was signed into law on December 22, 2017.

The Office of Small Business Advocate (“OSBA”) also filed Notices of Intervention, Public Statements, and Notices of Appearance in these proceedings.

In 2022, several informal discussions were held with Administrative Law Judge Steven Haas (“ALJ Haas”) and the parties regarding these proceedings.

The Companies now submit this Prehearing Memorandum in accordance with the Prehearing Conference Order issued by ALJ Haas on January 4, 2023.

## **II. BURDEN OF PROOF**

As a proponent of a rule or order, OCA has the burden of proof in these matters pursuant to 66 Pa. C.S. § 332(a). The Companies submitted their 2018 and 2019 PSI/SPI filings in

compliance with their applicable Chapter 30 Plans.<sup>1</sup> Through its complaints, OCA is seeking a rate decrease, and as the proponent of this rule or order, it has the burden of proof. OCA must prove its case by a preponderance of the evidence;<sup>2</sup> that is, by presenting evidence more convincing than that presented by the other party.<sup>3</sup> Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.<sup>4</sup> More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>5</sup>

### **III. ISSUES**

In this proceeding, the Companies anticipate addressing the impact (or lack thereof) of the TCJA on their 2018 and 2019 PSI/SPI filings. The Companies are not currently able to fully identify issues in this proceeding as we are not aware of other issues the OCA or OSBA may raise. However, the Companies will respond to any other issues raised by the advocates as necessary.

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<sup>1</sup> For each of the above-captioned filings, the Commission has found that “the PSI/SPI calculations and the banked revenue calculations are procedurally consistent with the terms of [the Company’s] Chapter 30 Plan,” and accepted the report. Windstream Buffalo Valley 2018 Annual PSI/SPI Report Filing, Order entered July 5, 2018 at 6; Windstream Conestoga 2018 Annual PSI/SPI Report Filing, Order entered July 5, 2018 at 6; Windstream D&E 2018 Annual PSI/SPI Report Filing, Order entered July 5, 2018 at 6; Windstream Pennsylvania 2018 Annual PSI/SPI Report Filing, Order entered July 5, 2018 at 6; Windstream Buffalo Valley 2019 Annual PSI/SPI Report Filing, Order entered July 11, 2019 at 6; Windstream Conestoga 2019 Annual PSI/SPI Report Filing, Order entered July 11, 2019 at 6; Windstream D&E 2019 Annual PSI/SPI Report Filing, Order entered July 11, 2019 at 6; Windstream Pennsylvania 2019 Annual PSI/SPI Report Filing, Order entered July 11, 2019 at 6.

<sup>2</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

<sup>3</sup> *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>4</sup> *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Commw. Ct. 1982); *Edan Transp. Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Commw. Ct. 1993); 2 Pa. C.S. § 704.

<sup>5</sup> *Norfolk & W.Ry. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep’t of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Commw. Ct. 1984).

**IV. PROPOSED LITIGATION SCHEDULE**

The Companies’ proposed the litigation schedule for this proceeding is below. This schedule is under discussion with OCA and OSBA.

<b><u>Item</u></b>	<b><u>Proposed Schedule</u></b>
Advocate(s) Direct Testimony	March 17, 2023
Rebuttal Testimony	May 16, 2023
Surrebuttal Testimony	June 6, 2023
Rejoinder Testimony	June 20, 2023
Evidentiary Hearings	June 27-28, 2023
Main Briefs	July 26, 2023
Reply Briefs	August 9, 2023

**V. DISCOVERY**

In order to investigate the OCA’s claims in this proceeding, the Companies request the following modifications to the Commission’s rules for discovery to be in effect after service of the Advocate(s) Direct Testimony. The Companies do not oppose other reasonable discovery modifications.

1. Answers to written interrogatories or requests for production of documents will be due within ten (10) calendar days of service.
2. Objections to written interrogatories or requests for production of documents will be communicated orally within three (3) business days of service, and unresolved objections will be served in writing within five (5) business days of service.
3. Motions to dismiss objections and/or compel responses will be filed within three (3) business days of service of the objections.
4. Responses to motions to dismiss objections and/or compel responses will be filed within three (3) business days of service of such motions.

**VI. WITNESSES**

At this time, Windstream has not yet identified the witness(es) it intends to present in this proceeding. Once Windstream has identified its witness(es), timely notice will be provided to the ALJ and the parties.

**VII. SERVICE OF DOCUMENTS**

Windstream requests that all documents be served on:

Deanne M. O'Dell, Esquire  
Sarah C. Stoner, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
717.237.6000; Fax 717.237.6019

Lauren M. Burge, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219  
412.566.6000; Fax 412.566.6099

The Companies also agree to receive service of documents electronically in this proceeding. To the extent that materials are available electronically, it is requested that copies be served upon:

Deanne M. O'Dell – [dodell@eckertseamans.com](mailto:dodell@eckertseamans.com)  
Sarah C. Stoner – [sstoner@eckertseamans.com](mailto:sstoner@eckertseamans.com)  
Lauren M. Burge – [lburge@eckertseamans.com](mailto:lburge@eckertseamans.com)

For purposes of the January 31, 2023 Prehearing Conference, Sarah C. Stoner will be the representative speaking on behalf of the Companies. Additionally, Ms. Stoner will be the primary contact for service in this proceeding.

## VIII. SETTLEMENT

The parties have previously discussed potential settlement of these matters. The Companies remain willing to work with the parties to attempt to reach a resolution of some or all of the issues in these dockets.

Respectfully Submitted,

*/s/ Sarah C. Stoner*

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Dated: January 27, 2023

*Counsel for Windstream Buffalo Valley, Inc.,  
Windstream Conestoga, Inc., Windstream D&E, Inc.,  
and Windstream Pennsylvania, LLC*