

COMMONWEALTH OF PENNSYLVANIA



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January 27, 2023

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

Re: Windstream Buffalo Valley, Inc. PSI/SPI Filing  
for Year 2018  
Docket Nos. R-2018-3001132  
C-2018-3001865

Windstream Buffalo Valley, Inc. PSI/SPI Filing  
for Year 2019  
Docket Nos. R-2019-3010106  
C-2019-3010150

Windstream Conestoga, Inc. PSI/SPI Filing  
for Year 2018  
Docket Nos. R-2018-3001135  
C-2018-3001864

Windstream Conestoga, Inc. PSI/SPI Filing  
for Year 2019  
Docket Nos. R-2019-3010097  
C-2019-3010148

Windstream D&E, Inc. PSI/SPI Filing  
for Year 2018  
Docket Nos. R-2018-3001133  
C-2018-3001870

Windstream D&E, Inc. PSI/SPI Filing  
for Year 2019  
Docket Nos. R-2019-3010100  
C-2019-3010149

Rosemary Chiavetta, Secretary

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Windstream Pennsylvania, LLC PSI/SPI Filing  
for Year 2018

Docket Nos. R-2018-3001150

C-2018-3001871

Windstream Pennsylvania, LLC PSI/SPI Filing  
for Year 2018

Docket Nos. R-2019-3010101

C-2019-3010152

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in above-referenced proceedings.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Barrett C. Sheridan

Barrett C. Sheridan

Assistant Consumer Advocate

PA Attorney I.D. # 61138

E-Mail: [BSheridan@paoca.org](mailto:BSheridan@paoca.org)

Enclosures:

cc: The Honorable Steven Haas (**email only**)  
Certificate of Service

\*340286

CERTIFICATE OF SERVICE

Windstream Buffalo Valley, Inc. PSI/SPI Filing : Docket Nos. R-2018-3001132  
for Year 2018 : C-2018-3001865  
:  
Windstream Buffalo Valley, Inc. PSI/SPI Filing : Docket Nos. R-2019-3010106  
for Year 2019 : C-2019-3010150  
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Windstream Conestoga, Inc. PSI/SPI Filing : Docket Nos. R-2018-3001135  
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for Year 2019 : C-2019-3010149  
:  
Windstream Pennsylvania, LLC PSI/SPI Filing : Docket Nos. R-2018-3001150  
for Year 2018 : C-2018-3001871  
:  
Windstream Pennsylvania, LLC PSI/SPI Filing : Docket Nos. R-2019-3010101  
for Year 2018 : C-2019-3010152

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 27<sup>th</sup> day of January 2023.

**SERVICE BY E-MAIL ONLY**

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**SERVICE BY E-MAIL ONLY (continued)**

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Dated: January 27, 2023  
\*340287

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Windstream Buffalo Valley, Inc. PSI/SPI Filing for Year 2018	:	R-2018-3001132
	:	C-2018-3001865
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	:	C-2018-3001864
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Windstream Pennsylvania, LLC PSI/SPI Filing for Year 2018	:	R-2018-3001150
	:	C-2018-3001871
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	:	C-2019-3010152

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**PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE**

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Pursuant to Section 333 of the Public Utility Code, 66 Pa.C.S. §333, and the Prehearing Order of Administrative Law Judge Steven K. Haas dated January 4, 2023, the Office of Consumer Advocate (OCA) hereby submits this Prehearing Memorandum in regard to the

individual Price Stability Mechanism filings of the four listed companies and the respective formal complaints filed by the OCA. The OCA will refer to Windstream Buffalo Valley, Inc., Windstream Conestoga, Inc., Windstream D&E, Inc., and Windstream Pennsylvania, LLC collectively as “Windstream” or “Companies.” The OCA acknowledges that each Company is subject to its own Chapter 30 Plan and rates.

## **I. PROCEDURAL HISTORY**

On April 30, 2018, each of the Companies filed their annual Price Stability Index (PSI) reports with the Commission. The Office of Consumer Advocate filed individual Formal Complaints with Public Statements against each of the Windstream PSI filings on May 14, 2018. Common to each of the OCA Formal Complaints is the position that the PSI filing made by each Company omitted an adjustment through the Company’s respective Price Stability Mechanism (PSM) formula to account for tax savings resulting from the enactment in December 2017 of the federal Tax Cuts and Jobs Act (TCJA).

The Office of Small Business Advocate entered Notices of Intervention and Public Statements in each Company’s PSI filing docket, on or about May 24, 2018.

The Commission issued Orders on July 5, 2018 regarding each Company’s 2018 PSI filing. The Commission determined that each Company’s 2018 PSI filing was procedurally consistent with the respective Chapter 30 Plan PSM, all subject to final resolution of the OCA Formal Complaints including possible refunds.

On June 22, 2018, the OCA, OSBA and the Companies filed a Joint Stipulation for Stay with the Commission. The Parties entered into the Stipulation to allow time for discovery, to be

followed by meetings among the Parties to discuss the possible resolution of one or more PSI filing and OCA Formal Complaint without further litigation.

On August 9, 2018, the Commission issued a Secretarial Letter in the Commission's Re: Tax Cuts and Jobs Act, Docket No. M-2018-2641242 proceeding and each the Companies' PSI filing dockets. The August 9, 2018 Secretarial Letter temporarily stayed the Commission's own inquiry in the Re: Tax Cuts and Jobs Act docket, pending "the parties' full litigation and the Commission's final adjudication" of the OCA complaints.

On August 24, 2018, Windstream and certain other incumbent local exchange carriers (ILECs) filed a Petition to Rescind the August 9, 2018 Secretarial and discontinue the Commission's stay of its inquiry in the Re: Tax Cuts and Jobs Act docket of the impact of the TCJA on each of the Companies' PSM and rates for non-competitive retail services.

The OCA filed an Answer to the ILECs' Petition for Rescind which deferred to the Commission.

On October 25, 2018, the Commission denied the Companies' Petition to Rescind the August 9, 2018 Secretarial Letter. The Commission confirmed the limited stay entered in the Re: Tax Cuts and Jobs Act docket as to the Commission's inquiry concerning the impact of the TCJA on the Price Stability Mechanism and rates for non-competitive retail services of all incumbent local exchange carriers (ILECs). The Commission stated that the pending OCA Formal Complaints should proceed to litigation.

On December 5, 2018, the Office of Administrative Law Judge issued a Notice of Prehearing, scheduling each Companies' PSI filing and corresponding OCA Formal Complaint for a Prehearing Conference on Friday, January 18, 2019.

On December 17, 2018, ALJ Haas entered a Prehearing Order in the dockets for each Company's PSI filing and corresponding OCA Formal Complaint.

The OCA filed a Prehearing Memoranda on January 16, 2019. The OCA Prehearing Memoranda noted that discovery was outstanding and that certain Windstream reports requested would not be available until April 2019.

The January 18, 2019 Prehearing Conference was cancelled by the Presiding Officer, at the request of the parties.

On April 30, 2019, each of the Companies filed their annual Price Stability Index (PSI) reports with the Commission. The Office of Consumer Advocate filed individual Formal Complaints with Public Statements against each of the Windstream PSI filings on May 28, 2019, similar to the OCA 2018 formal complaints. The OSBA entered a notice of intervention and public statement on June 7, 2019.

The Commission issued Orders on July 11, 2019 regarding each Company's 2019 PSI filing. The Commission determined that each Company's 2019 PSI filing was procedurally consistent with the respective Chapter 30 Plan PSM, all subject to final resolution of the OCA 2019 Formal Complaints including possible refunds. The July 2019 Orders took note of the OCA request to consolidate its 2018 complaint and 2019 complaint against the respective Company PSI filings.

On October 11, 2022, counsel for Windstream and certain other ILECs filed a Motion to Consolidate a series of PSI filings and related OCA Formal Complaints for purposes of hearing and disposition. Both before and after the filing of the Motion to Consolidate, Windstream, OCA, and OSBA engaged in settlement negotiations. The parties agreed to delay the deadline

for the filing of Answers to the Motion. Subsequently, the OCA and the OSBA filed Answers to the Motion to Consolidate on January 9, 2023.

By Order entered January 20, 2023, ALJ Haas ordered that the cases of the Companies' 2018 and 2019 PSI filings and respective OCA Formal Complaints be consolidated, based upon affiliate status, for hearing and adjudication.

## **II. ISSUES**

The OCA has identified the following list of issues which apply to each Windstream Company and their respective 2018 PSI and 2019 PSI filings:

1. Whether the rates charged by the Company are just and reasonable and in accordance with all applicable laws;
2. Whether the Company's PSI filing is consistent with the Company's Chapter 30 plan as well as applicable precedent;
3. The impact of the federal TCJA on the Company's annual tax expense;
4. Identification of the amount of any tax savings resulting from the enactment and implementation of the TCJA associated with the Company's intrastate, non-competitive services subject to the Commission's jurisdiction and the Company's Chapter 30 Plan PSM;
5. How to implement an exogenous adjustment to the Company's PSI filing(s) and rates, to adjust for a change in expense which is the result of the federal legislative changes affecting the Company's revenues and/or costs, to the extent not captured in GDI-PI; and
6. Allocation of any refunds or future rate reductions.

The OCA reserves the right to address or respond to whatever issues may be raised by other parties in these proceedings. If any additional issues arise as a result of this proceeding, the OCA will address them at that time.

### **III. WITNESSES**

The OCA's consultant and expert witness in these proceedings is Dr. Trevor Roycroft.

Dr. Roycroft's contact information is:

Trevor R. Roycroft, Ph.D.  
51 Sea Meadow Lane  
Brewster, MA 02631

508-415-7984  
[trevor@roycroftconsulting.org](mailto:trevor@roycroftconsulting.org)

Dr. Roycroft will address the issues articulated above as well as any other issues that may arise throughout these proceedings. In order to expedite the resolution of these proceedings, the OCA requests that copies of all interrogatories, testimony, and answers to interrogatories be served directly upon Dr. Roycroft, both in electronic and hard copy form, in addition to serving a copy of such documents on counsel for the OCA.

The OCA specifically reserves the right to call additional witnesses, as necessary. As soon as the OCA has determined whether an additional witness or witnesses will be necessary for any portion of its case, all parties of record will be notified.

### **IV. PROCEDURAL RULES**

The OCA does not request modification of the Commission's Rules of Procedure as to discovery matters, at this time. The Companies' respective annual PSI filings and tariff changes, if any, qualify as rate cases and so a 15-day time frame for discovery replies applies.

## **V. PROPOSED SCHEDULE**

The OCA does not have a proposed schedule to report, at this time.

The OCA expects to discuss scheduling issues with counsel for Windstream and OSBA prior to the January 31, 2023 Prehearing Conference.

An appropriate schedule will include time for the OCA to obtain updated information in discovery. That window of time for discovery will also accommodate the OCA's expert witness. Dr. Roycroft expects to be unavailable for up to two weeks, related to a medical treatment and recovery.

## **VI. MISCELLANEOUS**

The OCA will be represented in this case by Assistant Consumer Advocate Barrett C. Sheridan. The OCA requests one copy of all documents be served on the OCA as follows:

Barrett C. Sheridan, Assistant Consumer Advocate

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## VII. SETTLEMENT

The OCA, OSBA, and Windstream have engaged in settlement negotiations as recent as late 2022. The OCA is open to further settlement discussions.

Respectfully Submitted,

/s/ Barrett C. Sheridan  
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