

COMMONWEALTH OF PENNSYLVANIA



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March 18, 2025

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 -
Gas
Docket No. R-2024-3052357

Dear Secretary Chiavetta:

Attached for electronic filing, please find the Office of Consumer Advocate's Notice to Plead, Application for the Issuance of Subpoena, and Subpoena in this proceeding.

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

Respectfully submitted,

/s/ Jacob Guthrie
Jacob Guthrie
Assistant Consumer Advocate
Pa. Attorney I.D. # 334367
JGuthrie@paoca.org

Enclosures

cc: The Honorable Alphonso Arnold III (email only: alphonarno@pa.gov)
The Honorable Marta Guhl (email only: mguhl@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :
v : Docket No. R-2024-3052357
Pike County Light & Power Company :

I hereby certify that I have this day served a true copy of the following documents, the Notice to Plead, Application for the Issuance of Subpoena, and Subpoena of the Office of Consumer Advocate, 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 18th day of March 2025.

SERVICE BY E-MAIL ONLY

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Counsel for:
Darryl A. Lawrence
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
717-783-5048

Dated: March 18, 2025

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
v	:	Docket No. R-2024-3052357
Pike County Light & Power Company	:	
(Gas)	:	

NOTICE TO PLEAD

You are hereby advised to file a written response or objection within 5 days to the attached Office of Consumer Advocate's (OCA) Application for Issuance of Subpoena in the captioned proceeding. If you do not file a written response to OCA's Application, the presiding officers may rule in favor of OCA as to the attached Application.

All pleadings, such as responses or objections to applications, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

All pleadings, such as responses or objections to applications, must be served on all persons identified on the attached certificate of service, as well as the assigned presiding officers for this proceeding:

Hon. Marta Guhl, Administrative Law Judge
Hon. Alphonso Arnold III, Administrative Law Judge
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
801 Market Street, Suite 4063
Philadelphia, PA 19107
mguh@pa.gov
dheep@pa.gov

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket No. R-2024-3052357
v	:	
Pike County Light & Power Company	:	
(Gas)	:	

APPLICATION OF THE OFFICE OF CONSUMER ADVOCATE
FOR THE ISSUANCE OF SUBPOENA

Pursuant to 52 Pa. Code Section 5.421, the Office of Consumer Advocate (OCA) hereby files this Application for issuance of a subpoena to obtain workpapers from the Pennsylvania Public Utility Commission’s (Commission) Bureau of Technical Utility Services (TUS) from its Quarterly Earnings Reports (QERs), specifically the reports titled “Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities” both “for the Year Ended June 30, 2024” (*June 2024 QER*)¹ and “for the Year Ended September 30, 2024” (*Sept 2024 QER*),² available at Docket Numbers M-2024-3051104 and M-2025-3053025, respectively. The OCA hereby requests that Administrative Law Judges (ALJs) Marta Guhl and Alphonso Arnold III issue the subpoena order, attached hereto as Exhibit A, pursuant to the provisions of 52 Pa. Code Section 5.421, and in support thereof provides the following:

I. INTRODUCTION

1. On December 30, 2024, Pike County Light & Power Company (Pike or the Company) filed Supplement No. 127 to Tariff Gas – Pa. P.U.C. No. 6, with the Pennsylvania Public Utility Commission, to become effective on February 28, 2025.

¹ Available at: <https://www.puc.pa.gov/pcdocs/1852340.pdf>.

² Available at: <https://www.puc.pa.gov/pcdocs/1865077.pdf>.

2. On January 8, 2025, the OCA filed a Formal Complaint and Public Statement to protect the interests of consumers in the Company's service territory and to ensure that the Company is permitted to implement only a level of rates that is just and reasonable and in accordance with sound ratemaking principles.

3. On January 17, 2025, Pike filed Supplement No. 128 to Tariff Gas – Pa. P.U.C. No. 6 with the Commission to voluntarily postpone the effective date of the tariff filing to March 15, 2025. Pike filed the suspension postponement so the gas tariff case can run concurrently with a request for increase in rates from the Company's gas customers.

4. On February 6, 2025, the Commission issued an Order that initiated an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase and the Company's existing rates, rules, and regulations, assigned this matter to the OALJ for further proceedings as appropriate, and suspended the effective date of the tariff until October 15, 2025.

5. The presiding ALJs, The Honorable Marta Guhl and Alphonso Arnold III, held a duly noticed Prehearing Conference on February 14, 2025.

II. GROUNDS FOR SUBPOENA

6. The Company proposes to increase rates to produce additional annual operating revenues of \$905,900 per year or an overall increase of 35.8% in total gas revenues, based on a proposed return on equity of 10.20% for an overall rate of return of 8.59% on its requested rate base balance.

7. Pike supported its requested claimed ROE by stating: “[f]or revenue requirement purposes, we rounded the [ROE] from the Gas Distribution System Improvement Charge (DSIC) Eligible Utilities Return on Equity Summary, as published for September 18, 2024. The Company

is willing to accept the generic ROE return made by the [C]ommission in order to minimize rate case costs to its customers.” Pike St. 2 at 23:14-21; *see also* Exh. G-2, Sch. 3.

8. Based on discovery conducted in this proceeding, the OCA believes the Gas Distribution System Improvement Charge (DSIC) Eligible Utilities Return on Equity Summary referenced in Pike St. 2 is the *June 2024 QER*.

9. In the *June 2024 QER*, the Commission included a “market indicated common equity cost rate range” which “consists of data used from the barometer groups and is based on a series of calculations to average the DCF methods.” Based on its analysis, the QER provides a Commission-authorized ROE for DSIC purposes of 10.15% for gas distribution companies. In support of this calculation, the QER provides a current Discount Cash Flow (DCF) result, 52-week average DCF result, average of the current and 52-week average DCF result, a market-indicated range within one standard deviation of the mean of 16 DCF observations, and a Capital Asset Pricing Model (CAPM) check of DCF reasonableness. *June 2024 QER*, Att. G, p. 23.’

10. Pursuant to 52 Pa. Code Section 5.222(d), the OCA submitted a pre-hearing memorandum which included a list of presently identified issues to be analyzed and presented by the OCA with the assistance of its expert witnesses. Section II, A. Rate of Return, of the OCA Prehearing Memo included the following:

- A. The OCA will perform a detailed analysis of the cost of common equity claimed by the Company as well as the overall rate of return as claimed by the Company.
- B. The OCA will examine whether the capital structure proposed by the Company is representative of the period in which rates will be in effect and is otherwise appropriate for ratemaking purposes.
- C. The OCA will examine the embedded cost of debt claimed by the Company to determine whether it is reasonable and appropriate for ratemaking purposes.

- D. The OCA will examine the impact of Company's proposed alternative ratemaking mechanisms on its risk profile.

OCA Prehearing Memorandum at 3.

11. In its Prehearing Memorandum, OCA provided notice to parties that it intended to submit expert testimony on issues pertaining to rate of return. OCA Prehearing Memorandum at 8.

12. On February 20, 2025, the OCA propounded its Fifth Set of Interrogatories to the Company's gas division. OCA-5-4 read as follows: "Referencing Lenns and Lenns Direct Testimony at 23:11-21 and Exhibit E-2, Schedule 3, provide support for the Company's proposed return on equity of 10.20%. Include relevant case numbers and PUC decisions in your response, along with copies of all supporting PUC decisions and all filed rate of return testimony." OCA-5-4.

13. On March 3, 2025, Pike provided the following response to OCA-5-4:

Refer to the "DSIC Charge Return on Equity" attachment provided.³ The Company stated in the testimony that the 10.20% is the rounded return on equity from the Gas Distribution System Improvement Charge ("DSIC") Eligible Utilities Return on Equity Summary, which is included on page 15 of 30 on the PDF file. The return on equity published is 10.15%. This report is published on the Pennsylvania Public Utility Commission's website under the "Filing & Resources" section, then under the "Reports" you will see "Quarterly Earnings Summary Reports." This report is published every quarter with the commission approved return on equity number.

14. On February 20, 2025, the OCA also propounded OCA-5-5, which reads as follows: "Referencing Lenns and Lenns Direct Testimony at 23:11-21, explain past PUC precedent for

³ The referenced attachment is the TUS Quarterly Earnings Report for the year ended June 30, 2024, at Docket No. M-2024-3051104.

determining ‘the generic ROE return made by the commission’. Also provide all relevant PUC decisions or orders.”

15. On March 3, 2025, Pike provided the following response to OCA-5-5:

Counsel notes that as a legal matter, PUC decisions do not constitute precedent. Pike’s counsel will address this as a legal matter in briefing. Accordingly, Pike provides the basis for the proposed use of the Commission’s published quarterly return on equity:

The Company has used the Commission’s published quarterly return on equity as an attempt to save rate case expense for rate payers. As previously explained, the Company will provide a rebuttal expert if other parties deem it necessary to present rate of return expert witnesses.

16. Pike did not provide workpapers or other documents which support its proposed ROE of 10.20% because it provides no analysis to support its recommendation; rather, Pike merely points to the analysis performed by TUS in the *June 2024 QER* as support for its recommendation without providing the documents utilized in TUS’s analysis.

17. Pursuant to Section 5.421 of the Commission’s regulations, a party may apply for a subpoena duces tecum by setting forth in writing the relevance, materiality, and scope of the evidence sought as well as the information which the party is seeking from the subpoena in order to indicate necessity. 52 Pa. Code Section 5.421.

18. To fully investigate the just and reasonableness of Pike’s proposed return on equity, the OCA files this Subpoena to compel TUS to provide its workpapers used to develop the *June 2024 QER*. Specifically, the OCA is seeking the Excel files, in native format with links and formulae intact, supporting the DCF and CAPM results which are provided in Attachment G of the *June 2024 QER*.

19. Without this information, the OCA will be unable to perform a fully detailed analysis of the Company’s cost of equity proposal. The OCA will be unable to fully determine

whether the Company's overall requested rate of return is appropriate and reasonable for use in establishing Pike's revenue requirement and resultant rates.

20. Attachment G, p. 23 of the *June 2024 QER* includes information which indicates that 16 DCF observations, and at least one CAPM observation, are made in support of the DSIC Return of 10.15%. Further, there is no indication in the *June 2024 QER* how the value of 10.15% was selected from the "Market Indicated Common Equity Cost Rate Range."

21. Based on the *June 2024 QER*, the OCA's expert witness in rate of return is unable to determine how the Commission authorized ROE for DSIC purposes was calculated and, therefore, is unable to assess the reasonableness of Pike's proposal to use that ROE in its rate filing.

22. If the OCA is unable to address Pike's proposed ROE, it will not be able to effectively advocate on behalf of consumers with respect to the determination of an appropriate ROE for ratemaking purposes in this proceeding. 71 P.S. Section 309-4(a).

23. The OCA is unable to obtain the workpapers which support Pike's proposed ROE because they are in the possession of TUS, which is not party to this proceeding, through normal means of discovery and, therefore, the OCA must make its request through a subpoena. 52 Pa. Code Section 5.343(a) ("A person who is not a party is not required to appear [for a deposition] unless subpoenaed."); 52 Pa. Code Section 5.343(d) (a notice of deposition may include a request for the production of documents); 52 Pa. Code Section 5.421.

24. On February 6, 2025, the Commission posted its latest QER titled "Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities for the Year Ended September 30, 2024" (*Sept. 2024 QER*), filed under docket number M-2025-3053025. The OCA will incorporate the most up-to-date data provided in the *Sept. 2024 QER* to provide a fully detailed analysis of the Company's cost of equity proposal. In order to investigate the just and

reasonableness of Pike’s proposed return on equity, the OCA files this Subpoena to compel TUS to additionally provide its workpapers to used to develop the *Sept. 2024 QER*. Specifically, the OCA is seeking the Excel files, in native format with links and formulae intact, supporting the DCF and CAPM results which are provided in Attachment G of the *Sept. 2024 QER*.

25. The workpapers are within the scope of discovery because they relate to the claim of Pike that it is entitled to an ROE of 10.20%. In a proceeding wherein a utility supports its ROE request through the use of a cost of capital witness, the OCA routinely requests the workpapers of that witness in order to understand the basis for the witness’s recommendation. In this proceeding, the OCA seeks to understand the basis for TUS’s selection of 10.15% as the Commission approved DSIC ROE and, therefore, must request TUS’s workpapers. 52 Pa. Code Section 5.321.

26. The OCA submits that the requested workpapers are not privileged and are public documents under the Right to Know Law, not subject to any exceptions. *See* 65 P.S. Section 67.708(b) (providing the exceptions to the Right to Know Law, none of which apply to the requested documents).⁴ Additionally, the requested subpoena would not cause TUS an unreasonable burden or require TUS to make an unreasonable investigation in order to procure the requested workpapers. 52 Pa. Code Section 5.361(a) (discovery is not permitted which would cause an unreasonable burden or the making of an unreasonable investigation by a deponent, person, or party). Furthermore, TUS providing the OCA with the requested workpapers imposes the least burden on all parties, including TUS, by eliminating the need for parties to reproduce TUS’s analysis in the quested workpapers to verify the veracity of Pike’s ROE request and by

⁴ The OCA notes that, to the extent a party may claim that the requested are workpapers are “predecisional deliberations” within the meaning of that term under the Right to Know Law, that exception does not apply to the requested workpapers. Only confidential deliberations of law or policymaking which reflect opinions, recommendations, or advice are exempt under the “predecisional deliberations” exceptions; purely factual material is not includable as “predecisional deliberations.” *Pa. PUC v. Nase*, 302 A.3d 264, 272 (Pa. Cmwlth. 2023). The requested workpapers contain financial data and related information which is purely factual.

forgoing a request for the workpapers under the Right to Know Law. Therefore, the issuance of the requested subpoena is within the scope of discovery. *Id.*

III. REQUEST FOR EXPEDITED TREATMENT

27. The deadline established by the Prehearing Order in this proceeding, issued February 26, 2025, as corrected on March 14, 2025, for non-Company Direct Testimony, which includes the OCA's direct testimony, is April 3, 2025.

28. The OCA's expert witness on rate of return and cost of capital issues plans to present a comprehensive analysis of the Company's requested ROE and the witness' analysis would be incomplete without the *June 2024 QER* and *Sept. 2024 QER* workpapers.

29. The OCA will suffer prejudice if it is unable to present a comprehensive analysis of the Company's requested ROE.

30. On March 10, 2025, the OCA contacted and conferred with counsel for the Commission to find the best approach for requesting the *June 2024 QER* and *Sept. 2024 QER* workpapers. Counsel for the Commission indicated that if the OCA were to receive copies of the requested workpapers, it should apply for a subpoena to procure the requested workpapers, pursuant to 52 Pa. Code Sections 5.343 and 5.421. As a result, counsel for the Commission has had over one week's notice that the instant Application would be filed.

31. Therefore, the OCA requests that the response period to this application be shortened from ten (10) days to five (5); the OCA requests that the Honorable ALJs issue the Subpoena Order within two (2) days after the close of the response period; and TUS by and through its counsel provide the requested material to the OCA within three (3) days thereafter, pursuant to the issued Subpoena Order. 52 Pa. Code Sections 5.421(f) (providing a 10 day response period for the filing of objections to an application for a subpoena), 5.344(b) (an application for a subpoena

will be granted unless objected-to within 10 days), 5.343(a)(d) (a subpoenaed witness is given 20 days' notice prior to the taking of an oral deposition and/or request for the production of documents).

IV. CONCLUSION

32. Pursuant to 52 Pa. Code Section 5.343(e), the OCA hereby names the Pennsylvania Public Utility Commission's Bureau of Technical Utility Services as the subject of the OCA's subpoena. Based upon the OCA's knowledge, information, and belief, the address of TUS is as follows:

Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor, Room-N201
Harrisburg, PA 17120

A proposed subpoena to be delivered to TUS is attached to this Application. Upon approval of this Application, the OCA will effectuate service of the subpoena upon TUS by and through its counsel, the Commission's Law Bureau.

WHEREFORE, for the aforementioned reasons, the OCA submits that it is appropriate to issue a subpoena compelling the disclosure by TUS of the workpapers underlying its DCF and CAPM analyses pertaining to the market-based return on equity for natural gas distribution companies in the Quarterly Earnings Report for the Second Quarter of 2024, found at docket number M-2024-3051104, Attachment G and in the Quarterly Earnings Report for the Third Quarter of 2024, found at docket number M-2025-3053025, Attachment G. If such workpapers are not provided, the OCA will not be able to adequately represent the interests of ratepayers by addressing Pike County's claimed return on equity for its gas operations. As such, the OCA respectfully requests Administrative Law Judges Guhl and Arnold to issue the attached subpoena duces tecum directed to the Commission's Bureau Technical Utility Services.

Respectfully Submitted,

/s/ Jacob Guthrie

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Dated: March 18, 2025

Exhibit A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
v : Docket No. R-2024-3052357
Pike County Light & Power Company :
(Gas) :

SUBPOENA

To: Paul Diskin, Director
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services.
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Pursuant to the authority of this Commission under Sections 309, 331(d)(2), and 333(j) of the Public Utility Code:

YOU ARE ORDERED by the Commission to provide within the next three (3) calendar days to the Office of Consumer Advocate (OCA):

1. Workpapers used to develop the report titled “Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities for the Year Ended June 30, 2024,” including the Excel files, in native format with links and formulae intact, and all linked Excel files, supporting the DCF and CAPM results which are provided in Attachment G of the Report on the Quarterly Earnings of Jurisdictional Utilities for the Year Ended June 30, 2024.

2. Workpapers used to develop the report titled “Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities for the Year Ended September 30, 2024,” including the Excel files, in native format with links and formulae intact, and all linked

Excel files, supporting the DCF and CAPM results which are provided in Attachment G of the Report on the Quarterly Earnings of Jurisdictional Utilities for the Year Ended September 30, 2024.

This subpoena is issued subject to the provisions of 52 Pa. Code Section 5.421 (with regard to the issuance, notice, service and witness fees).

BY THE COMMISSION

Date: _____

Marta Guhl
Administrative Law Judge

Date: _____

Alphonso Arnold III
Administrative Law Judge