

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FILED ELECTRONICALLY VIA E-FILE

Pennsylvania Public Utility Commission, et	:	
al.	:	
Complainants	:	
	:	Docket Nos. R-2024-3052357
v.	:	R-2024-3052359
	:	
Pike County Light & Power Company,	:	
Respondent	:	

PETITION FOR INTERLOCUTORY REVIEW OF DISCOVERY MATTERS

Pursuant to 52 Pa. Code § 5.304, the Bureau of Technical Utility Services (TUS) of the Pennsylvania Public Utility Commission (Commission), by the Law Bureau, hereby petitions the Commission for interlocutory review¹ of the presiding Administrative Law Judges’ (ALJs) March 26, 2025 Orders (Subpoena Orders)² on two similar Applications for Issuance of Subpoena (Applications), which were filed in the above-captioned cases on March 18, 2025 by complainant Office of Consumer Advocate (OCA)³. TUS seeks interlocutory review of the ALJ Orders for the following reasons:

I. The presiding ALJs improperly granted OCA’s Applications without first allowing TUS time to respond to the Applications. The ALJ Orders were issued prior to the close of the ten-day period allotted for TUS to object to the Applications, as prescribed by 52 Pa.

¹ TUS notes that, where “[i]nterlocutory review is ordered by the Commission” or “[t]he ruling has as its subject matter the deposing of a Commissioner or Commission employee”, certification by the presiding officer is not necessary. 52 Pa. Code § 5.304(a)(1) and (3).

² R-2024-3052357, *Order Granting Application of the Office of Consumer Advocate for the Issuance of Subpoena* (March 26, 2025); R-2024-3052359, *Order Granting Application of the Office of Consumer Advocate for the Issuance of Subpoena* (March 26, 2025).

³ The Applications differ slightly in that one addresses Pike’s proposed electric tariff while the other addresses Pike’s gas tariff. However, they are identical in their reasoning relative to OCA’s request for TUS’ Quarterly Earnings Reports (QERs) workpapers, and in this filing, TUS shall refer to the Applications interchangeably.

Code § 5.421(f). TUS had no notice that the presiding ALJs were adopting a truncated response period and had no effective chance to respond to the Applications.

II. The presiding ALJs incorrectly ruled that TUS should be required, by subpoena, to provide copies of internal workpapers TUS generates as part of the deliberative process through which the Commission votes on and issues Quarterly Earnings Reports (QERs) at Public Meeting.⁴

Background

1. On Tuesday, March 18, 2025, OCA filed the Applications, which asked the ALJs to issue subpoenas requiring TUS to provide its workpapers in connection with the QERs for years ending June 30, 2024 and September 30, 2024.

2. On Wednesday, March 26, 2025, the presiding ALJs issued the Subpoena Orders granting OCA's Applications. In so doing, the ALJs failed to provide TUS sufficient opportunity to file timely objections, which were not due until Friday, March 28, 2025. 52 Pa. Code § 5.421(f).

3. TUS was not served with a copy of the ALJ Subpoena Orders and did not receive them until OCA emailed them the day after they were issued.

4. On Friday, March 28, 2025, TUS timely filed objections to the Application (Objections). In its Objections, TUS argued that the Applications should be denied on the basis

⁴ After reviewing the financial data filed by jurisdictional utilities pursuant to 52 Pa. Code, Chapter 71 (Financial Report), §§ 71.1 – 71.9 and other publicly-available data, TUS prepares a draft QER for consideration at a Commission public meeting. The publicly released QER includes the Commission-determined return on equity (ROE) for Distribution System Improvement Charge (DSIC) purposes in the electric, gas and water industries. It appears that Pike County is attempting to use the DSIC ROE in lieu of presenting its own rate case, which is not consistent with the purpose of the QERs or the DSIC ROE.

of relevance, scope and because TUS' workpapers are protected by the deliberative process privilege.

5. Additionally, in its Objections, TUS requested the presiding ALJs to rescind the Subpoena Orders, since those Orders were issued prematurely, in blatant disregard of Commission regulations and TUS' right to procedural due process. Again, the ALJs failed to provide any notice to TUS that they were waiving the regulatory 10-day response period. 52 Pa. Code § 5.421(f).

6. Also on Friday, March 28, 2025, OCA served the subpoenas on TUS.

7. The subpoenas on their face require TUS to provide the workpapers to OCA by Wednesday, April 2, 2025.

8. As of the date and time of this filing, the presiding ALJs have not ruled on TUS' Objections and have not rescinded the errant Subpoena Orders.

9. If TUS is required to provide privileged workpapers to OCA, that will pave the way for OCA to seek further discovery into the derivation of the QERs, to include depositions of Commission staff.

10. Based on the exigencies and substantive implications presented by the ALJs' Subpoena Orders, as well as the ALJs' failure to address TUS's timely filed Objections, TUS respectfully requests that the Commission reverse those orders, rescind the subpoenas, and direct the presiding ALJs to issue a new ruling, after considering TUS's timely filed Objections to the OCA's Applications for Subpoenas.

11. For these reasons, TUS avers that interlocutory review will prevent substantial prejudice by preventing OCA from obtaining TUS' sensitive, privileged workpapers.

Respectfully submitted,

/s/ Christopher F. Van de Verg
Christopher F. Van de Verg
Deputy Chief Counsel
Law Bureau
PA Attorney ID No. 330088

Pennsylvania Public Utility Commission
400 North St.
Harrisburg, PA 17120
(717) 783-3459
cvandeverg@pa.gov

Date: March 31, 2025

VERIFICATION

I, Paul Diskin, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

A handwritten signature in cursive script that reads "Paul Diskin". The signature is written in black ink and is positioned above a horizontal line.

Paul Diskin
Director, Bureau of Technical Utility Service
Pennsylvania Public Utility Commission

Dated: March 31, 2025

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Petition for Interlocutory Review of the Bureau of Technical Utility Services, which was filed electronically via E-File, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party), in the manner and upon the persons listed below:

SERVICE BY E-MAIL ONLY

Melanie Joy El Atieh, Esquire
Darryl A. Lawrence, Esquire
Jacob Guthrie, Esquire
Ryan Morden, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor Forum Place
Harrisburg, PA 17101
melatieh@paoca.org dlawrence@paoca.org
jguthrie@paoca.org
rmorden@paoca.org
Counsel for Office of Consumer Advocate

Carrie B. Wright, Esquire
Michael Podskoch, Esquire
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
P. O. Box 3265
Harrisburg, PA 17105-3265
carwright@pa.gov
mpodskoch@pa.gov
Counsel for Bureau of Investigations & Enforcement

Whitney E. Snyder, Esquire
Thomas J. Sniscak, Esquire
Erich W. Struble, Esquire
HMS Legal LLP
501 Corporate Circle, Suite 302
Harrisburg, PA 17110
wesnyder@hmslegal.com
tjsniscak@hmslegal.com
ewstruble@hmslegal.com
*Counsel for Pike County Light & Power
Company*

Rebecca Lyttle, Esquire
Steven C. Gray, Esquire
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
relyttle@pa.gov
sgray@pa.gov
*Counsel for Office of Small Business
Advocate*

Hon. Marta Guhl, ALJ
Hon. Alphonso Arnold, ALJ
Office of Administrative Law Judge
Commonwealth Keystone Building
400 North Street, 2nd Floor
P. O. Box 3265
Harrisburg, PA 17105-3265
mguhl@pa.gov
alphonarno@pa.gov

/s/ Christopher F. Van de Verg
Christopher F. Van de Verg

Dated: March 31, 2025