

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2024-3052357
: :
v. : :
: :
Pike County Light & Power Company (Gas) :

Pennsylvania Public Utility Commission : R-2024-3052359
: :
v. : :
: :
Pike County Light & Power Company (Electric) :

ORDER
DENYING PETITION FOR INTERLOCUTORY REVIEW

This Order denies the March 31, 2025, Petitions for Interlocutory Review filed by the Commission’s Bureau of Technical Utility Services in the above captioned proceedings.¹

Procedural History

On December 30, 2024, Pike County Light & Power Company (“Pike”) filed a tariff supplement containing changes calculated to produce additional annual revenues for gas service. On January 23, 2025, the Commission suspended Pike’s proposed tariff supplement until October 15, 2025.

¹ We note that TUS’s Petition is directed to the Commission, not the undersigned presiding officers. However, as discussed in this Order, because TUS filed its Petition under Section 5.304 of the Commission’s regulations, we find that our Order granting the Application for Subpoena that TUS challenges in its Petition is not subject to interlocutory review pursuant to Section 5.304 of the Commission’s regulations unless interlocutory review is certified by the presiding officers in this case. Therefore, we find it necessary to make a ruling on TUS’s Petition through this Order.

On January 14, 2025, Pike filed a tariff supplement containing changes calculated to produce additional annual revenues for electric service. On February 6, 2025, the Commission suspended Pike's proposed tariff supplement until October 15, 2025.

On March 18, 2025, the Office of Consumer Advocate ("OCA") filed Applications for Subpoena pursuant to 52 Pa. Code § 5.421, at both the gas and electric dockets, to obtain workpapers from the Pennsylvania Public Utility Commission's ("Commission") Bureau of Technical Utility Services ("TUS") from its Quarterly Earnings Reports ("QERs") ("Application"). Specifically, OCA seeks workpapers relating to the "Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities for the Year Ended June 30, 2024" ("June 2024 QER"), available at Docket No. M-2024-3051104, and the "Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities for the Year Ended September 30, 2024" ("Sept 2024 QER"), available at Docket No. M-2025-3053025. OCA in its Applications also requested expedited treatment of the Application, requesting that TUS respond to the Applications within 5 days instead of the 10 days pursuant to the Commission's regulations. OCA attached a Notice to Plead on the Applications which also indicated an expedited time period for response within 5 days of the Applications. OCA indicated that this expedited treatment was necessary because Non-Company direct testimony was due to be submitted by April 3, 2025, and the witnesses would need time to review the documentation to incorporate it into their testimony.

On March 26, 2025, the Commission issued the Orders of the undersigned presiding officers granting the Applications ("Orders").

On March 28, 2025, TUS, through the Commission's Law Bureau ("Law Bureau"), filed Objections to the Applications for Subpoena ("Objections").

On March 31, 2025, OCA filed Affidavits of Subpoena, indicating that it served the subpoenas on TUS on March 26, 2025.

Also on March 31, 2025, TUS, through the Law Bureau, filed Petitions for Interlocutory Review (“Petitions”).

On April 1, 2025, Status Conference Notices were issued to the parties scheduling a status conference for April 1, 2025, at 1:00 p.m. The parties were informed through email that the purpose of the status conference was to hear arguments regarding the Applications and Objections thereto.

The status conference was held as scheduled. Attorneys representing Pike, OCA, Law Bureau, and the Commission’s Bureau of Investigation and Enforcement (“I&E”) were present. Pike and I&E did not take any position on the Applications, Objections, or the Petitions.

Discussion

We find TUS’s Petitions to be procedurally deficient.

The instant Petitions were made pursuant to Section 5.304 of the Commission’s regulations, 52 Pa. Code § 5.304, which concerns interlocutory review of discovery matters. However, the Petitions are not seeking the review of a discovery matter. In its Petitions, TUS is seeking review of our Orders which granted the applications for subpoena made by OCA pursuant to Section 5.421 of the Commission’s regulations, 52 Pa. Code § 5.421, wherein OCA seeks certain documentation from TUS. As TUS is not seeking review of a discovery matter, the Petitions should have been made pursuant to Section 5.302 of the Commission’s regulations, 52 Pa. Code § 5.302.²

² Also, to this point, see *Application of First Class Transportation, Inc.*, Docket Nos. P-2015-2501758, and A-2015-2466538 (Opinion and Order entered Feb. 25, 2016) (“*Application of First Class*”). In this matter, a Protestant to the Application filed a Petition for Interlocutory Review with the Commission, pursuant to Section 5.304 of the Commission’s regulations, seeking Commission review of the presiding officer’s denial of a request for the issuance of a subpoena for the attendance of a witness at an evidentiary hearing. The Commission in addressing the petition stated that the petition did not seek review of a discovery ruling and thus the petition should have been filed under Section 5.302 of the Commission’s regulations. *Application of First Class* at 5. Similarly, as a ruling denying an application for subpoena is not a discovery matter neither is a ruling granting an application for subpoena.

Assuming *arguendo* that the Petitions seek review of a discovery matter, Section 5.304 of the Commission's regulations clearly states that rulings of presiding officers on discovery are only subject to interlocutory review if one or more conditions are met. Those conditions are the following:

- (1) Interlocutory review is ordered by the Commission.
- (2) Interlocutory review is certified by the presiding officer.
- (3) The ruling has as its subject matter the deposing of a Commissioner or Commission employee.

See 52 Pa. Code § 5.304(a).

None of the three conditions by which a party can seek interlocutory review of a discovery ruling are met in this instance. TUS claims in its Petitions that Sections 5.304(a)(1) and (a)(3) have been met in this instance, however, the Commission has not ordered interlocutory review of our Orders, nor do either of our Orders have as its subject matter the deposing of a Commissioner or Commission employee.³ With neither of those two conditions having been met, our Orders would be subject to interlocutory review only if certified by us. 52 Pa. Code § 5.304(a)(2).

Furthermore, again assuming that the Petitions seek review of a discovery matter, the Petition is also deficient because it does not request that we certify a Material Question for interlocutory review. Instead, TUS proceeds directly to the Commission to seek interlocutory review of our Orders.

TUS does not request that we certify a Material Question to the Commission for interlocutory review because it believes that certification by the undersigned presiding officers is unnecessary in this instance, stating 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

³ Based on its Petition, and argument at the status conference, TUS is under the belief that providing the subpoenaed workpapers to OCA would pave the way for OCA to depose Commission staff. Petition ¶ 9. Our Order did not order the deposition of any Commission staff. Further, OCA at the status conference indicated that they were not looking to depose any Commission employee.

§ 5.304(a)(1) and (3).” *See* Petition, fn. 1. As we discussed above, we do not find that the conditions detailed in 52 Pa. Code § 5.304(a)(1) or (3) have been met here. As neither of those two conditions have been met, TUS must have requested certification of a Material Question for interlocutory review by the undersigned presiding officers, 52 Pa. Code § 5.304(a)(2). The Petitions contain neither a Material Question nor a request for certification of a Material Question for interlocutory review by the undersigned presiding officers. There is nothing in Section 5.304 of the Commission’s regulations that allows a party to bypass the certification of a Material Question by the presiding officers.⁴

For the above reasons, the Petitions will be denied in the Ordering paragraphs below.

THEREFORE,

IT IS ORDERED:

1. That the Petition for Interlocutory Review filed on March 31, 2025, at Docket No. R-2024-3052357, is denied.

⁴ Furthermore, the Commission’s regulations require that a petition for interlocutory review of a presiding officer's ruling on discovery must state the question to be certified. 52 Pa. Code § 5.304(c)(3). The Petition was made in compliance with the other requirements of 52 Pa. Code § 5.304(c) concerning the content of a Petition except for this requirement.

2. That the Petition for Interlocutory Review filed on March 31, 2025, at Docket No. R-2024-3052359, is denied.

Date: April 2, 2025

_____/s/
Marta Guhl
Administrative Law Judge

Alphonso Arnold III
Administrative Law Judge

**R-2024-3052357, R-2024-3052359 - PENNSYLVANIA PUBLIC UTILITY COMMISSION
v. PIKE COUNTY LIGHT & POWER COMPANY – (GAS & ELECTRIC)**

Revised: March 14, 2025

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