

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PETITION FOR INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL QUESTIONS

Pursuant to 52 Pa. Code § 5.302, the Bureau of Technical Utility Services (TUS) of the Pennsylvania Public Utility Commission (Commission), by the Law Bureau, hereby petitions the Commission for interlocutory review of the presiding Administrative Law Judges’ (ALJs) effective denial of TUS’s Objections to the Applications of the Office of Consumer Advocate (OCA) for Issuance of a Subpoena (Applications) and avers as follows.

The material question to be answered:

Did the ALJs err in granting OCA’s request for issuance of a subpoena on TUS in order to obtain TUS’s workpapers that support the information and calculations set forth within the Commission’s published Quarterly Earnings Reports (QERs) when those workpapers are (i) not relevant to the underlying rate proceeding; (ii) protected from disclosure by the deliberative process privilege; and (iii) exempt from discovery as the product of Commission advisory staff?

1. On March 18, 2025, OCA filed its Applications, requesting that the ALJs issue subpoenas to TUS, a non-party to the rate case litigation in which OCA is involved, to provide its “workpapers used to develop the QERs for years ending June 30, 2024 and September 30, 2024.” OCA notified TUS that they had five (5) days to file a written response or objection, even though the Commission’s regulations clearly require that parties be given ten (10) days, which in the instant matter was until March 28, 2025, to file objections to OCA’s Applications. 52 Pa. Code §§ 5.421(b)(3) and (f).

2. As mentioned above, according to the applicable Commission regulation at 52 Pa. Code § 5.421(f), TUS had until March 28, 2025 to file timely objections. However, on March 26, 2025, before TUS had filed timely objections in accordance with the 10-day responsive timeframe prescribed in 52 Pa. Code § 5.421(f), the ALJs issued Orders granting OCA’s Applications (Subpoena Orders) that were never served on TUS and that issued by the ALJs absent any prior order notifying TUS that the applicable responsive 10-day timeframe was being waived. Rather than taking official action and issuing an order that modified and abbreviated the applicable 10-day responsive timeframe to an application for a subpoena and then issuing an order notifying the requisite parties of this

determination, the ALJs allowed OCA's mere request for an abbreviated response period to act as a waiver that automatically shortened the regulatorily prescribed response period. This action was simply procedurally deficient and violative of TUS's due process rights.

3. On March 28, 2025, in accordance with the 10-day response timeframe, TUS filed timely objections to the Applications (Objections), arguing that the Applications should be denied based on relevance, scope, and because TUS's workpapers are protected by the deliberative process privilege. In addition, TUS requested that the ALJs rescind the Subpoena Orders because they were issued prematurely because 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).

4. Subsequently, on March 28, 2025, OCA served the subpoenas on TUS, requiring TUS to provide the workpapers to OCA by March 31. Given the outstanding matters, and the inability to undo the harm caused by improperly releasing the workpapers, the workpapers have not been provided to OCA.

5. Concomitantly, on March 31, 2025, TUS filed a Petition for Interlocutory Review of Discovery Matters pursuant to 52 Pa. Code § 5.304 seeking review of the ALJs' Subpoena Orders (Petition for Interlocutory Review. To be clear, TUS was NOT seeking review of a material question. Rather, TUS was seeking review of the allegedly errant Subpoena Orders, which in essence, was the means by which OCA was attempting to obtain pre-deliberative work product documents that are within the control of Commission advisory staff, i.e., TUS.

6. On April 1, 2025, the ALJs held a telephonic hearing on the Applications, Objections, and TUS's Petition for Interlocutory Review. By Order issued April 2, the ALJs denied TUS's Petition for Interlocutory Review after finding that (i) TUS should have petitioned for interlocutory review under 52 Pa. Code § 5.302 and (ii) it failed to meet the conditions for interlocutory review under Section 5.304 in any event. However, to date, the ALJs have failed to rule on TUS's Objections even though they were required to issue a ruling no later than April 7, 2025. 52 Pa. Code § 5.421(f).

Compelling Reasons for Interlocutory Review

7. First, TUS serves in an advisory role to the Commissioners in preparing the published QERs and to the OALJ in rate proceedings.

8. Second, Pike County Light & Power Company's reliance on the Commission's QERs in its requested base rate increases does not make TUS's calculation of the distribution system improvement charge (DSIC) return on equity (ROE) relevant to a base rate proceeding.

9. Third, the workpapers OCA seeks are part of the Commission's deliberative process with respect to the derivation of the DSIC ROEs that appear in the QERs and are, therefore, exempt from disclosure under the deliberative process privilege.

10. Fourth, the Subpoenas were issued not to elicit testimony at hearing, but rather to elicit the production of documents from a non-party during the discovery phase of the litigation. Parties to litigation are not permitted to obtain materials which are the product of or within the control of Commission advisory or adjudicatory staff and since TUS serves in an advisory role to the Commission in rate proceedings such as these, compelling TUS to provide its workpapers conflicts with the prohibition on using ALJ discovery against Commission advisory staff. *See* 52 Pa. Code §§ 5.321(d) and 5.349(e).

11. The presiding ALJs have failed to timely rule on the TUS objections, in violation of 52 Pa. Code § 5.421(f) and not only TUS, but the Commission itself will be harmed by the release of the sensitive and privileged material sought by OCA. This harm is not reparable through the normal procedural avenues because, once the material is disclosed, the harm cannot be undone. As such, the Commission should grant TUS its requested relief now to prevent substantial prejudice to TUS's and the Commission's interests from disclosure of the workpapers at issue.

12. For the reasons cited above, TUS avers that interlocutory review will prevent substantial prejudice by preventing OCA from obtaining TUS' sensitive and privileged workpapers and respectfully requests that the Commission reverse the ALJs' Subpoena Orders and rescind the subpoenas. Alternatively, TUS requests that the Commission issue an Order on its timely filed Objections.

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: April 10, 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: April 10, 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 and Answer to Material Questions 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 West
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: April 10, 2025