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November 4, 2010

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: Pennsylvania Public Utility Commission v. Petition of PPL Electric Utilities Corporation; Docket No. R-2010-2161694

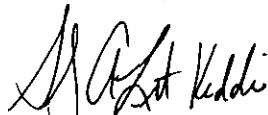
Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the original and nine (9) copies of the Exceptions of the PP&L Industrial Customers Alliance ("PPLICA") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document. Please date stamp the extra copy of this transmittal letter and Exceptions and kindly return them for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Shelby A. Linton-Keddie

Counsel to the PP&L Industrial Customer Alliance

SLK/km
Enclosures

c: Administrative Law Judge Susan D. Colwell (via E-mail and Hand Delivery)
Certificate of Service

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PA PUC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2010-2161694
	:	
PPL Electric Utilities Corporation	:	

**EXCEPTIONS OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

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Counsel to the PP&L Industrial Customer Alliance

Dated: November 4, 2010

I. INTRODUCTION

On March 31, 2010, PPL Electric Utilities Corporation ("PPL" or "Corporation") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") Supplement No. 83 to Tariff-Electric-Pa. P.U.C. No. 201 ("Supplement No. 83"), to become effective on June 1, 2010. Supplement No. 83 proposed to increase PPL's distribution rates by approximately \$114.7 million, or 16.5% over the Company's present annual distribution revenues. The Company stated that the requested distribution rate increase was necessary in order to attract capital, expand investment for its distribution system and maintain strong reliability for its customers. If approved as filed, the Company's distribution rate increase request would produce an overall rate increase of approximately 2.5%. In order to protect large customers' interests in the Company's service territory and in an attempt to prevent unreasonable distribution charges for large commercial and industrial ("C&I") customers as a result of this filing, the PP&L Industrial Customer Alliance ("PPLICA") filed a Complaint in this proceeding on May 13, 2010.

Pursuant to the procedural schedule established in this proceeding, PPLICA filed a Main Brief on September 2, 2010, and a Reply Brief on September 13, 2010. In general, PPLICA's Main and Reply Briefs addressed portions of Retail Energy Supply Association's ("RESA") proposal to expand the Company's current Purchase of Receivables ("POR") program, supported PPL's Cost of Service Study and proposed revenue allocation and established the basis and justification for PPL to institute Rate Schedule LP-4 SI in order to address the inequities of Donsco, Incorporated's ("Donsco") unreasonable distribution charges. On October 15, 2010, Administrative Law Judge ("ALJ") Susan D. Colwell issued a Recommended Decision ("R.D.") in this proceeding.

PPLICA generally supports the ALJ's well-reasoned R.D. with regard to issues of importance to PPL's large C&I customers. Specifically, the R.D. appropriately recognizes that, "as the most accurate, the Company's JMK-2A is the CCOSS [customer cost of service study] which should be used to allocate rates as it conforms most closely with the NARUC Manual." R.D. at 46. In addition, the ALJ has properly accepted the Company's proposed revenue allocation when stating, "the revenue requirement amount of \$77.5 million¹ should be allocated to the rate classes proportional to the Company's originally requested amount in order to bring their rates more closely in line with the costs incurred by the Company to serve them." R.D. at 58. Unfortunately, however, the R.D. denies PPLICA's request for the creation of Rate Schedule LP-4 SI, a negotiated contract-based tariff permissible pursuant to Section 2806(h) of the Public Utility Code. *See* R.D. at 102; *see also* 66 Pa. C.S. § 2806(h).

PPLICA files these limited Exceptions to address the R.D.'s conclusion that PPLICA's rate design proposal to modify Rate Schedule LP-4, which would partially alleviate the egregious increase in distribution rates incurred by Donsco since January 1, 2010, and going forward, "is essentially a rate discrimination claim," and that "PPLICA has not presented comparisons which support a finding of discriminatory rates. Accordingly, it has not sustained its burden."² R.D. at 102. As explained more fully below and in both PPLICA's Main and Reply Briefs, PPLICA has satisfied its burden of proof to show why a negotiated rate option under Section 2806(h) of the Public Utility Code is necessary and proper in order to address Donsco's specific needs. *See*

¹ Notably, the increase amount of \$77.5 million is a result of the Joint Petition for Partial Settlement that was submitted on August 26, 2010, by PPL, the Office of Consumer Advocate ("OCA"), Richards Energy Group, Inc. ("Richards"), and Office of Trial Staff ("OTS"). As the R.D. correctly notes that PPLICA did not oppose the Joint Petition for Settlement, PPLICA will not be submitting Exceptions to the ALJ's recommendation that the Joint Petition for Settlement be approved without modification.

² Rather than responding to every recommendation contained in the R.D., PPLICA's Exceptions only respond to issues necessitating an additional response. In addition, PPLICA affirmatively reserves the right to respond to file Reply Exceptions upon receipt and review of other parties' Exceptions in this proceeding.

PPLICA M.B. pp. 12-28; *see also* PPLICA R.B. pp. 10-26. Accordingly, PPLICA requests that the Commission order the creation of Rate Schedule LP-4 SI as part of this proceeding.

II. EXCEPTIONS

A. Exception No. 1: The R.D. Erred in Rejecting PPLICA's Recommendation for the Creation of Rate Schedule LP-4 SI, a Negotiated Contract-Based Tariff Schedule Pursuant to Section 2806(h) of the Public Utility Code. (R.D. pp. 94-102).

Throughout this proceeding, PPLICA has thoroughly explained the environmental and economic impediments that exist, namely Donsco's location across the Susquehanna River from the nearest PPL 69 kV substation, which prevent Donsco and PPL from converting Donsco to Rate Schedule LP-5 and, as a result, have increased Donsco's distribution rates by approximately 1100% since January 1, 2010. *See* PPLICA M.B. pp. 12-19. PPLICA reiterates and incorporates by reference the arguments in its Main and Reply Briefs regarding the appropriateness and necessity for creation of Rate Schedule LP-4 SI to address this situation. PPLICA recognizes that the Commission thoroughly reviews the testimony and briefs in considering important issues such as this. As such, and in consideration of the Commission's time, it will not repeat these arguments here. *See* PPLICA M.B. pp. 12-28; *see also* PPLICA R.B. pp. 10-26.

Although the R.D. provides a high-level summary of the background of Donsco's operations, the R.D. omits important elements regarding the existing impediments and numerous attempts by Donsco to convert its operations from Rate Schedule LP-4 to Rate Schedule LP-5. Importantly, the economic impediments that exist in this situation are not because Donsco is unwilling to make an investment to convert its facilities to Rate Schedule LP-5. *See* PPLICA St. No. 1 pp. 11-12; *see also* PPLICA St. No. 1-S at 5. Rather, the impediment exists because of the prohibitive costs associated with running a 69 kV line across the Susquehanna River, and the

resistance that PPL and Donsco would face to the transmission project due to economic development and environmental concerns. As explained more fully in PPLICA's Main Brief:

As previously noted, when Donsco converted its melting from cupola to electric in 1999-2000, it originally requested service at 69 kV, but was told by PPL that this option "was impractical because of environmental concerns and cost."

The problem lies in the absence of PPL transmission voltage facilities in proximity to Wrightsville, which is located on the west side of the Susquehanna River, but, in 1999, was served from PPL's North Columbia substation on the east side of the Susquehanna River. Although efforts have been undertaken by PPL to reinforce the 12 kV service that it provides to other customers in Wrightsville, to date those efforts have not resulted in the construction of transmission voltage facilities in close proximity to Donsco on the west side of the Susquehanna River. Thus, although Donsco's Wrightsville facility is within close proximity to the 69 kV facilities serving Columbia, the Susquehanna River acts as a geological impediment to Donsco converting to 69 kV service. PPLICA Exhibit CAB-3, Figures 1 and 2 provide maps illustrating the geography and PPL facilities in the area.

In 2010, when revisiting the idea of converting Donsco's Wrightsville facility to Rate Schedule LP-5, PPL provided four options: (1) build a new 69 kV line over the Susquehanna River; (2) bore under the Susquehanna River to install a 69 kV line underground; (3) run 69 kV submersible cables across the Susquehanna River; or (4) construct a new 13-mile 69 kV line from the Otter Creek 230/69 kV substation ("Otter Creek") on the west side of the Susquehanna River. According to PPL, building a new 69 kV line over the Susquehanna River would be the least cost option; however, due to environmental and other practical concerns, this option is not viable. As PPLICA witness Christopher Buck explained:

Because PennDOT will not allow us to run the line along the existing bridge, this new line would need to be a stand-alone project. As you can imagine, however, we would face substantial resistance to installing towers necessary to run the line across the river. In addition, this area of the Susquehanna River has experienced concerns recently with habitat issues for wildlife in the area, and also is part of the scenic panorama that is emphasized as a selling point for

the area in the River Towns Heritage Development Strategy for Marietta, Columbia and Wrightsville. As a result, installing an overhead line across the Susquehanna River is not a viable option.

The other three options suggested by PPL also contain significant flaws. Tunneling under the Susquehanna River was the second most likely route, but there was no assurance of success. When combined with the fact that this option would take between 5-6 years to complete and a cost of more than \$10 million, the second option was rejected. As for the viability of either submersing cables across the Susquehanna River or constructing a 69 kV line from Otter Creek, "[n]either option was practical from [an] engineering or an economic perspective. The PPL representatives that [Donsco] met with agreed with our assessment." Given PPL's estimate that it would cost \$11.93 million to add Donsco to the Red Front Project,³ it appears that there is no cost-effective way to address Donsco's situation.⁴ As a result, Donsco currently remains on Rate Schedule LP-4 and is receiving service at 12.47 kV, not the 69 kV it desires.

PPLICA M.B. pp. 17-18 (internal citations omitted). For the Commission's convenience, the maps from PPLICA Exhibit CAB-3 showing the location and configuration of the current facilities serving the Wrightsville Foundry are attached to these Exceptions as Attachment A. Notably, PPL's Main Brief also acknowledges the engineering and economic impracticability of crossing the Susquehanna River in order for Donsco to convert to Rate Schedule LP-5. *See* PPL M.B. at 47-48.

In an effort to overcome these obstacles, Donsco has offered the Company a number of alternatives to convert its Wrightsville facility to Rate Schedule LP-5, but has been consistently met with resistance. PPLICA M.B. at 18. As explained by PPLICA Witness Christopher A. Buck, Plant Manager for Donsco's Wrightsville Facility:

³ As explained more fully in PPLICA Cross Examination Exhibit No. 6, "Red Front 115/12 kV substation is a proposed new distribution substation that will serve 12 kV customers in the East Prospect/Wrightsville area." PPLICA Cross Examination Exhibit No. 6.

⁴ Note, however, that this estimate is for a 115 kV interconnection, not 69 kV. *See* PPLICA Cross Examination Exhibit No. 6.

We suggested that PPL could lease or sell the North Columbia 69 kV to 12 kV transformer to Donsco for a monthly fee, or allow us to rent space in the North Columbia substation to install a 69 kV to 12 kV transformer. PPL indicated that it would not lease or sell the equipment to us because it would limit future expansion and present possible reliability issues.

We also suggested that PPL could charge us at the Rate Schedule LP-5 rate plus a fee to recover the operations and maintenance expenses on the 12 kV lines from the North Columbia substation to our facility and the dedicated transformation equipment. PPL did not believe that it had the ability to do this under the tariff.

PPLICA M.B. at 19 (citing PPLICA St. No. 1 at 11-12). As a result of PPL's belief that its tariff did not provide flexibility to address Donsco's unique situation, PPLICA is proposing to explicitly provide PPL with the ability in its tariff to address this situation. PPLICA M.B. at 19.

As made clear in PPLICA's testimony and briefs, at current levels, Donsco's annual distribution rates for the Wrightsville foundry alone will total more than \$400,000, or approximately \$392,000 more than distribution rates paid by other foundries and other customers on Rate Schedule LP-5 or LP-6, that, prior to the creation of the Electricity Generation Customer Choice and Competition Act ("Competition Act") in 1996, were able to convert to 69 kV service at no cost. *See* PPLICA M.B. at 14, 16, 27; *see also* PPLICA R.B. at 16, 17. When combined with the distribution rate increase that will result from this proceeding, these results have detrimental impacts on Donsco's ability to effectively compete with other foundries in PPL's service territory and in other states, and already have resulted in layoffs. *See* PPLICA M.B. pp. 15-16. Considering that Donsco's Wrightsville Foundry is served by dedicated lines that are not integrated with the remainder of the PPL's distribution system, and therefore do not benefit other PPL customers, the distribution charges currently imposed as well as those proposed by PPL for Donsco (that will total approximately 2% of the LP-4 revenue requirement, despite the fact Donsco is 0.2% of the customers in the class) are unjust and unreasonable. *See* PPLICA M.B.

pp. 21-22 (citing PPLICA St. No. 1 at 13; PPLICA St. No. 1-S at 5; PPL Statement No. 8-R at 3).

The Commission has the power to order the creation of Rate Schedule LP-4 SI, if it so chooses. As noted in *Park Towne v. Pennsylvania Public Utility Comm'n*, 433 A.2d 610, 614 (Pa.Cmwlth. 1981), "Rate structure is a matter peculiarly within the Commission's flexible limit of judgment." (citing *U.S. Steel Corp. v. Pennsylvania Public Utility Commission*, 37 Pa. Cmwlth. 173, 390 A.2d 849 (1978)). In addition, as part of the Competition Act, Section 2806(h) of the Public Utility Code provides the PUC with an avenue to address and rectify the unreasonable rates that Donsco (and other similarly situated Rate Schedule LP-4 customers) are currently enduring. Specifically, Section 2806(h) of the Public Utility Code states:

(h) Flexible pricing. –In addition to the implicit authority of the commission under section 502 (relating to general powers), the commission has the authority to approve flexible pricing and flexible rates, including negotiated, contract-based tariffs designed to meet the specific needs of a utility customer and to address competitive alternatives.

66 Pa. C.S. § 2806(h).

As explained above, because of the rejection by PPL of numerous alternatives suggested by Donsco in an attempt to alleviate this situation prior to this proceeding, PPLICA has recommended the creation of a negotiated, contract-based tariff schedule that would meet the specific needs of Donsco's Wrightsville facility and have little effect on other LP-4 customers.⁵

As summarized in both PPLICA's Main and Reply Briefs, PPLICA outlined the recommendation for and criteria of a special industrial tariff Rate Schedule LP-4 SI to be incorporated as part of

⁵ As explained more fully in PPLICA's Reply Brief at 26-27, because PPLICA is seeking, pursuant to Section 2806(h) of the Public Utility Code, implementation of a negotiated rate option between PPL and Donsco that does not currently exist, PPLICA does not have a specific rate to include at this time. See PPLICA R.B. at 26-27. However, PPLICA's testimony explains how this rate would be determined. See PPLICA St. No. 2 at 7. As indicated by PPLICA's hypothetical calculation included on Page 25 of its Main Brief, while PPLICA's proposal would have an effect on other LP-4 customers, the effect would be minimal. See PPLICA M.B. at 25 (citing PPLICA St. No. 1-S at 4).

Rate Schedule LP-4. The specific factors enumerated by PPLICA witness Richard A. Baudino include the following:

- The customer's demand must be reasonably consistent with LP-5 (i.e., 4 MW or greater) compared to LP-4;
- Factors such as economic development, load retention and employment could be considered;
- The economic and/or environmental feasibility of converting the account to transmission voltage service in Rate Schedule LP-5 could be considered;
- The proximity to 69 kV (or higher) facilities and/or the ability to specifically identify the lines and equipment used to serve the facility could be considered; and
- If the customer paid a contribution in aid of construction or provided a guarantee for the line extension, they should be eligible for this negotiated rate option.

PPLICA M.B. at 22-23; *see also* PPLICA R.B. at 20-21. If any of these criteria were met (and the customer's demand exceeds 4 MW) the option would be available. PPLICA M.B. at 23. Obviously, a customer would be able to qualify under multiple criteria. *Id.* While the Company claims that it is not "special" for Rate Schedule LP-4 customers to have a demand of 4 MW or greater because 20 LP-4 customers currently have demand in this range (*see* PPL M.B. at 54), PPLICA notes that based on the number of LP-4 customers provided by the Company in this proceeding, a maximum of 1.8% of customers would be eligible for this rate, before considering PPLICA's other proposed factors. *See* PPLICA R.B. at 21.

Further, while the R.D. correctly notes that PPL has extended two 12,470 volt lines across the Susquehanna River from its North Columbia 69/12 kV substation and dedicated these lines solely to Donsco's Wrightsville facility, the R.D. also states that "Donsco guaranteed a total payment of \$914,000 for distribution service during the five-year period following this extension and due to renegotiation, paid approximately \$548,000 towards the extension, which was short of

the full amount." R.D. at 95. What the R.D. fails to explain, however, is that while Donsco and PPL renegotiated the line guarantee contract to remove the final two years of the annual guarantee, in exchange, Donsco agreed that PPL could use Donsco's dedicated lines, when necessary, for reliability purposes. *See* PPLICA M.B. at 14; *see also* PPLICA R.B. at 25. Moreover, when considering the \$548,000 already paid by Donsco for the line guarantee and the approximate \$400,000 that Donsco will pay annually under the current and proposed Rate LP-4 distribution rate, Donsco will more than compensate the Company for the cost of this extension. In fact, without relief, Donsco will pay nearly \$1 million every two years going forward for its distribution service at the Wrightsville foundry from dedicated lines, which, the Company freely admits, "offer little benefit to PPL Electric's entire distribution system." PPLICA M.B. at 24 (citing PPL St. No. 8-R at 3).

Although PPL originally claimed that the cost for the 1999 project to install the two dedicated 12,470 volt lines exceeded \$2.5 million (*see* Tr. at 416), when asked to confirm the elements that comprised that amount, the Company conceded that the cost was only approximately \$1 million. *See* PPLICA Cross Examination Exhibit No. 5. As noted above, Donsco will pay approximately \$1 million every 2 years at the standard Rate Schedule LP-4 rates. After paying \$584,000 on the line extension guarantee, enduring the potential service interruptions for two years to ensure reliable service for other customers in Wrightsville, paying over \$400,000 in 2010 for distribution service through two dedicated 12,470 volt lines that serve only the Wrightsville foundry, and being unable to avoid the higher distribution costs through a service voltage upgrade, Donsco has clearly established that relief in the form of a negotiated rate as described in Mr. Baudino's testimony is necessary. *See* PPLICA St. No. 2.

PPLICA acknowledges that the claim of a customer's "uniqueness" based solely on a customer's large volume of use has been rejected by the Commission in the past. *See* R.D. at 98; PPL M.B. at 44; PPLICA R.B. at 12. As explained more fully in PPLICA's Reply Brief, however, the characterization of Donsco's claims in this proceeding as being based solely on size is inaccurate and should be rejected:

Donsco has not limited its request for a negotiated rate based solely on its usage, but rather has argued that when considering (1) Donsco's usage (and attendant rates) under the LP-4 Rate Schedule; (2) the fact that conversion to 69 kV service is economically and environmentally impractical because of its location next to the Susquehanna River and (3) the fact that Donsco's dedicated facilities do nothing to enhance the PPL distribution system, Donsco needs relief.

PPLICA R.B. at 12. As clearly indicated above, PPLICA, on behalf of Donsco, has established numerous factors, in addition to Donsco's large volume of usage, to illustrate its "uniqueness" here. *See also* PPLICA R.B. at 14-15 (summarizing the Company's acknowledgement of the impracticability to convert Donsco to Rate Schedule LP-5 and the fact that, if Donsco has known, in 2000, of the dramatic change in distribution rates for Rate Schedule LP-4 as of January 1, 2010, it would never have agreed to be served on Rate Schedule LP-4). As a result, PPLICA has satisfied its burden to illustrate Donsco's "uniqueness" here.

In addition, while other LP-4 customers will be affected by the creation of Rate Schedule LP-4 SI, this factor alone is insufficient to justify denial of the proposed rate. Specifically, upon noting that "while Donsco would surely benefit from creation of a new schedule which reduces its rates, the same could be said of any customer," the R.D. reproduces a portion of the Company's Main Brief that can be summarized as follows-- Rate Schedule LP-4 SI would be unfair to other LP-4 customers for three reasons: (1) Rates for other LP-4 customers would be higher, despite the fact that these customers would not receive additional benefits; (2) this rate

would be unfair to the three customers who paid out of pocket expenses to convert to Rate LP-5 since 1996; and (3) a rate reduction for Donsco would be unfair unless other forges were also allowed to reduce rates, thus further burdening LP-4 customers. *See* R.D. at 101 (quoting PPL M.B. at 50).

PPLICA sufficiently rebutted all three of these arguments on Pages 15-18 of its Reply Brief, and therefore, will not reproduce its arguments in full here. *See* PPLICA R.B. pp. 15-18. In response, however, it is unfair to Donsco to pay such a large portion of distribution facilities (approximately 2%) for other Rate Schedule LP-4 customers when those facilities do not serve Donsco and Donsco has already provided a line extension guarantee for its dedicated lines. *See* PPLICA M.B. pp. 21-22; PPLICA R.B. pp. 15-16. Donsco has established why it qualifies for a negotiated contract-based tariff option, which is clearly endorsed by the Public Utility Code. Section 2806(h) clearly enables the Commission to look at the specific situation of one customer vis-à-vis other customers on the system. *See* 66 Pa. C.S. § 2806(h).

Further, and as made clear in PPLICA's Main and Reply Briefs, the practice of requiring customers to make actual upfront payments for a 69 kV extension changed since the adoption of the Competition Act, and, as a result, other customers on Rate Schedules LP-5, LP-6 and IS-T (at least one of which is Donsco's competitor) did not have to pay the costs to convert to Rate Schedule LP-5 that Donsco is being asked to absorb. *See* PPLICA M.B. pp. 26-27; *see also* PPLICA R.B. pp. 16-17. While not discounting the investments that other customers have made to convert to Rate Schedule LP-5 since 1996, as the record demonstrates, none of these projects had the geographic constraints that exist here. *See* PPLICA R.B. at 16 (citing PPLICA Cross Examination Ex. No. 3). In addition, and as explained above, the difference in annual distribution charges between Donsco and any competitor on Rate Schedule LP-5 (at

approximately \$400,000 annually) is staggering. When disputing the creation of this rate, the Company ignores the fact that without relief, Donsco will be paying approximately \$1 million every two years for distribution lines that benefit Donsco, but "offer little benefit" to PPL's distribution system. See PPL St. No. 8-R at 3. PPL has already recovered its \$1 million investment at the North Columbia Substation through Donsco's payments since 1999, and will continue to recover nearly \$1 million every two years in the future. Clearly, a properly designed, negotiated rate would enable PPL to recover only its operations and maintenance expenses going forward, rather than perpetuating Donsco's overpayment for the dedicated facilities installed to serve the Wrightsville Foundry. As Mr. Baudino explained, the rate for LP-4 SI could consist of the following elements:

The rates for LP-4 SI would consist of Rate Schedule LP-5's \$696 minimum charge plus a facilities charge to cover operation and maintenance of the distribution lines used to directly serve the customer. Depending on the nature of the facilities, the second component may be a fixed charge per month or a kW demand charge.

PPLICA St. No. 2 at 7.

Moreover, in regard to the Company's claim of "unfairness to other forges," and the Company's interpretation of Section 2806(h), PPLICA responds as follows:

Specifically, Section 2806(h) supports the use of negotiated contract-based rates to address both the specific needs of a customer and competitive alternatives. Although the rate requested here may assist in Donsco's competitiveness, that is clearly endorsed by Section 2806(h). Second, as proposed, Rate Schedule LP-4 SI would be available to all similarly-situated LP-4 customers, regardless of the type of business they perform. Accordingly, this rate would be made available to other forges as well as any LP-4 customer that is able to meet the factors enumerated by Mr. Baudino, which are listed on Page 23 of PPLICA's M.B. The Rate Schedule proposed by PPLICA provides these customers with the ability to show their specific needs or competitive alternatives justifying the negotiated rate.

Finally, as noted above, any forges that converted to Rate Schedule LP-5 "free of charge" prior to 1996 did so because the conversion was done prior to the enactment of the Competition Act. As a result, those customers will be paying a total of approximately \$400,000 less this year for the same distribution service that Donsco receives from PPL. That is not fair to Donsco, nor does it make Donsco competitive with other forges in the PPL territory as it would with lower distribution rates.

PPLICA R.B. at 17-18 (internal citations omitted) (emphasis in original).

When reviewing the R.D. with respect to PPLICA's recommendation for the creation of Rate Schedule LP-4 SI, the R.D. ultimately concludes:

As the Company points out, this is essentially a rate discrimination claim, and to prevail, the claimant must prove that its rates are unreasonably high and the rates of other customers are unreasonably low. PPLICA has not presented comparisons which support a finding of discriminatory rates. Accordingly, it has not sustained its burden.

R.D. at 102 (internal citations omitted).

PPLICA disagrees with the overall characterization by both the Company and R.D. that its claims are essentially for "rate discrimination" under Section 1304 rather than seeking a negotiated contract-based tariff per Section 2086(h) of the Public Utility Code, which was enacted after the cases cited by both the Company and ALJ. If Section 1304 were a sufficient and adequate remedy in all situations, then the General Assembly would have had no reason to create and approve Section 2806(h) as part of the Competition Act, which enables negotiated rates to address the "specific needs of a utility customer and to address competitive alternatives." 66 Pa. C.S. § 2806(h). This Section's existence is separate and apart from a rate discrimination claim under Section 1304, and should be treated as such.

Pennsylvania rules of statutory construction are clear that the plain language of a statute cannot be ignored and must be given effect.⁶ Because Section 2806(h) is unambiguous, the PUC's reliance on additional purported indicia of statutory intent is unnecessary in this situation.⁷ Further, to the extent the Commission determines that Sections 1304 and 2806(h) are irreconcilable, Section 2806(h), as the "latest in date of final enactment" will prevail.⁸ Significantly, there is no requirement that a claimant seeking to invoke Section 2806(h) must (1) complain against proposed rates; (2) complain of inadequate service; or (3) prove that its rates are unreasonably high and the rates of other customers are unreasonably low, as must be done for a claim of rate discrimination under Section 1304. Instead, the plain language of Section 2806(h) unambiguously states that Commission has the power to approve a negotiated contract rate "to meet the specific needs of a utility customer and to address competitive alternatives." 66 Pa. C.S. § 2806(h). PPLICA is requesting that the Commission exercise this power here, and order the implementation of Rate Schedule LP-4 SI, which would allow for a negotiated, contract-based tariff rate for Donsco to meet its specific needs created due to its location in comparison to PPL's 69 kV facilities.

However, to the extent the Commission agrees with the R.D.'s characterization of PPLICA's claims as a "rate discrimination claim," PPLICA notes that different charges to competitors (such as the difference in distribution rates between a Rate Schedule LP-4 customer and Rate Schedule LP-5 customer that are competitors) could satisfy a claim for rate discrimination. Specifically, in *U.S. Steel v. Pa. PUC*, when summarizing the Superior Court's

⁶ 1 Pa C.S. § 1921(a) ("The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.")

⁷ *Id.* § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit"). See also *Pennsylvania Power Co. v. Pa. Pub. Util. Comm'n.*, 932 A.2d 300, 306 (Pa. Commw. Ct. 2007) ("...where statutory language is clear, ...interpretive discretion ends and the agency must abide by the statute").

⁸ *Id.* § 1936. ("Whenever the provisions of two or more statutes enacted finally by different General Assemblies are irreconcilable, the statute latest in date of final enactment shall prevail.").

view of the applicable law on the subject of discrimination and unreasonable preferences, the Commonwealth Court stated in part:

Before a rate can be declared unduly preferential and therefore unlawful, it is essential that there be not only an advantage to one, but a resulting injury to another. Such an injury may arise from collecting from one more than a reasonable rate to him in order to make up for inadequate rates charged to another, or because of a lower rate to one of two patrons who are competitors in business. There must be an advantage to one at the expense of the other.

390 A.2d at 854 (internal citations omitted) (emphasis added). There are other customers and foundries in PPL's service territory that converted to Rate Schedule LP-5 prior to 1996 at no cost to the customer. As a result, those customers are now paying approximately \$400,000 less this year for the same distribution service that Donsco receives. Based on the above language, this in itself is arguably enough to satisfy a claim a rate discrimination. In addition, PPLICA's witness Mr. Baudino explained the differences in the LP-4 Class:

Donsco's load is unique in comparison to other members of the class. Donsco is a large industrial user of electricity whose maximum demands are in the range of 15 MW to 16 MW monthly at Wrightsville and approximately 5 MW at Mount Joy. Donsco has one of the highest peak demands, with a very large percentage of that peak demand occurring in the off-peak hours. Rate Schedule LP-4 is a diverse class, with commercial and other small industrial users that take service at PPL's primary voltage level. Based on the allocation factor data from Exhibit JMK-2, the LP-4 class has 1,109 customers. Attachment IV-C, Page 12 of 27, of the Company's filing shows that the total distribution billing demand for LP-4 was 13,666 MW. Thus, the average customer on Rate Schedule LP-4 had yearly billing demands of 12.3 MW, which on a monthly basis is approximately 1 MW a month.

Based on the Company's data, Donsco's billing demands are 15 to 16 times greater than the average customer on LP-4 at Wrightsville, and five times greater at Mount Joy. In fact, Donsco's load profile for both accounts is closer to an average LP-5 customer. Rate Schedule LP-5 is offered to large general service customers taking service at 69 kilovolts ("kV") or higher. According to the billing data contained in Attachment IV-C, Page

14 of 27, the average monthly billing distribution billing demand per customer for the LP-5 class is 3.7 MW. Donsco's average monthly billing demand of 15 MW to 16 MW at Wrightsville is still substantially greater than the average LP-5 customer monthly billing demand, while its Mount Joy facility is slightly larger than the average LP-5 customer's usage characteristics.

PPLICA St. No. 2 at pp. 5-6. Of the 1,100 customers on Rate Schedule LP-4, only 20 have demands of 4 MW or higher. PPLICA M.B. at 21 (citing Tr. at 415). In addition, as Mr. Kleha noted during Hearings, the Company's primary voltage distribution system, which provides the 12,470 volt service to Rate Schedule LP-4, serves mainly residential and small commercial customers. *Id.* (citing Tr. at 380). Specifically, when describing the Company's primary distribution system as 12 kV up to 66 kV, Mr. Kleha stated that "no large commercial/industrial would be assigned to a primary facility because they take service at a higher voltage, except for some schools and things of that nature." Tr. at 380. Regardless of this characterization, because of economic and environmental impediments, along with the Company's resistance to accept suggested alternatives, Donsco remains on Rate Schedule LP-4, despite its desire to be served under Rate Schedule LP-5.

Finally, the R.D. mischaracterizes the creation of Rate Schedule LP-4 SI as an attempt to extend savings and rates specifically tied to generation-related costs. *See* R.D. at 101-102 (citing PPL M.B. at 102). The time-of-day billing provision that expired on January 1, 2010, applied to both generation and distribution charges, and had a substantial impact on Donsco's distribution costs. *See* PPLICA M.B. at 15. Donsco specifically modified its operations to off-peak production as a result of the time-of-day provision. This included very significant workforce changes. *See* PPLICA M.B. at 14-15; *see also* PPLICA St. No. 1 pp. 5-6. Without relief, Donsco will revisit that decision and may shift production to on-peak periods. *See* PPLICA M.B. at 13 (citing PPLICA St. No. 1-S at 7). Although this shift in production would be contrary

to the Commonwealth's current goals to decrease stress on the electricity grid during peak hours, without distribution rate relief, Donsco's economic analyses may indicate that the generation supply savings it gets by operating off-peak do not offset the added costs of doing so.

As made clear throughout this proceeding, PPLICA is not seeking extension of any generation-related rate that expired as of January 1, 2010. Conversely, PPLICA, through its recommendation, is seeking a solution that is permissible under the Public Utility Code, would have little impact to other Rate Schedule LP-4 customers, and would address the specific needs of Donsco. The only issues before the Commission in this proceeding are related to PPL's distribution service and rates.

As the Commission itself has noted, "[i]n adopting the [Competition] Act, the General Assembly recognized the need for a fair transition from regulation to competition." *In re Pennsylvania Power & Light Co.*, 89 Pa PUC 587, 1998 WL 417435, at *1 (Pa. P.U.C. June 4, 1998). In addition to giving the Commission freedom to approve a rate structure based on the Commission's "flexible latitude of judgment," (*see Park Towne* at 614) the General Assembly, through the Competition Act, has also given the Commission the power "to approve negotiated contract-based tariffs designed to meet the specific needs of a utility customer and to address competitive alternatives." 66 Pa. C.S. § 2806(h). This is exactly what PPLICA, on behalf of Donsco, is seeking in this proceeding. As demonstrated above, PPLICA has satisfied its burden to prove that Rate Schedule LP-4 SI is an appropriate mechanism to address Donsco's specific needs, and as such, the Commission should order the implementation of Rate Schedule LP-4 SI as part of this proceeding, with a rate for Donsco that is consistent with the parameters outlined in Mr. Baudino's testimony. *See* PPLICA St. No. 2.

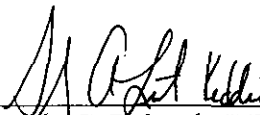
III. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission:

- (a) Reject the Recommended Decision with respect to Rate LP-4 SI, and order the creation of Rate Schedule LP-4 SI with a negotiated rate for Donsco as explained in Mr. Baudino's testimony; and
- (b) Adopt the other aspects of the Administrative Law Judge's Recommended Decision in all other respects without modification.

Respectfully submitted,

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Dated: November 4, 2010

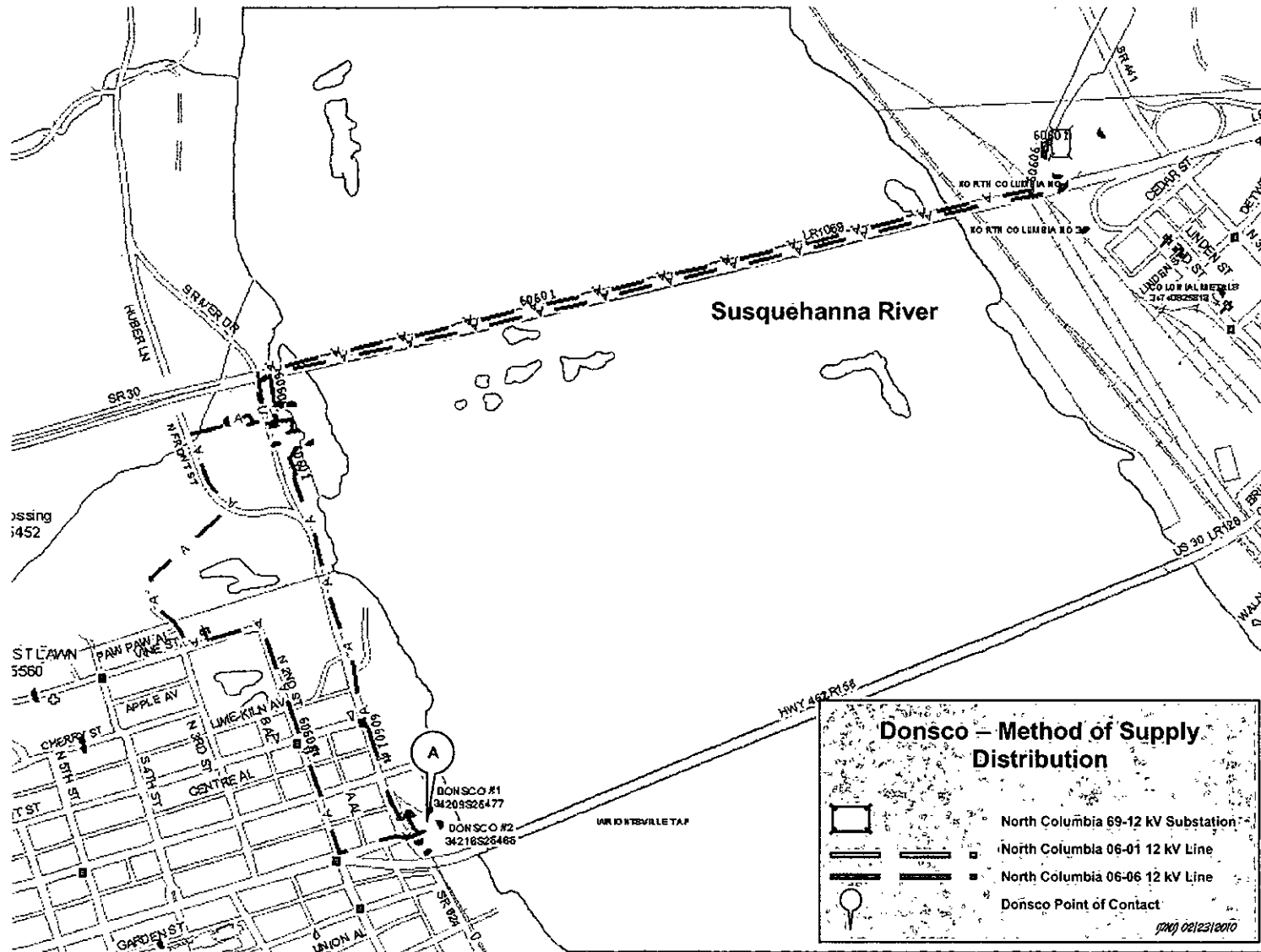
ATTACHMENT A

Figure 1, Nearby PPL EU Transmission



- **PPL EU 230kV:** Brunner Island – West Hempfield 230kV, West Hempfield – Manor 230kV, Line Designation Change at West Hempfield 230/138/69kV Substation
- **PPL EU 69kV:** West Hempfield – Hummelstown and West Hempfield – Armstrong Marietta 69kV Double Circuit, North Columbia #1 & #2 69kV Taps, North Columbia 69/12kV Substation

Figure 2. Existing PPL EU Distribution from North Columbia 69/12kV Sub to Customer Facility



CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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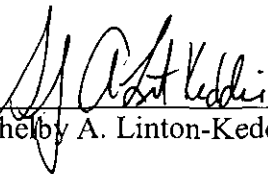
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Dated this 4th day of November, 2010, at Harrisburg, Pennsylvania.