

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PR BEAVER VALLEY LIMITED	)	No. C-2010-2192141
PARTNERSHIP,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
DUQUESNE LIGHT COMPANY,	)	
	)	
Respondent.	)	

**COMPLAINANT’S RESPONSE TO RESPONDENT’S MOTION FOR LEAVE  
TO FILE AMENDED RESPONSE TO COMPLAINT**

Complainant, PR Beaver Valley Limited Partnership (“PR Beaver Valley”), by and through its undersigned counsel, files this Response to Respondent’s Motion for Leave to File Amended Response to Complaint. For the reasons set forth herein and in the accompanying Brief in Opposition, PR Beaver Valley respectfully requests that the Motion be denied.

1. It is admitted that PR Beaver Valley filed a very narrow Complaint on August 5, 2010, seeking a declaratory judgment that the 1969 Tariff does not apply to this dispute (and that the Tribunal could not consider this document until produced in full). PR Beaver Valley’s Complaint is consistent with the Pennsylvania Superior Court’s Order and the Order of the Court of Common Pleas of Beaver County on remand, both of which directed the “issue concerning the applicability of the tariff” to be decided by the PUC.

2. Admitted.

3. Denied. Duquesne Light Company (“DLC”) relies on *Bell Tel. Co. of Pa. v. Pennsylvania Pub. Util. Comm’n*, 417 A.2d 827 (Pa. Commw. Ct. 1980), to support its argument that the current tariff applies. *Bell Telephone*, however, is inapposite because the Court held that the telephone tariff in effect when the telephone customer received new service governed the

*charges (i.e. rates)* for establishment of that service. The Court reasoned that there can be no lawful rate except the last tariff published as provided by law and contracts fixing rates are superseded by the rate in effect at the time the service is delivered. *Bell Telephone*, at 828-29. The instant dispute does not involve new service or the rates which govern the service provided to the Beaver Valley Mall. As such, DLC's reliance on *Bell Telephone* (or similar rate cases) is misplaced and *Bell Telephone* does not mandate that the current tariff applies to this dispute. Further, DLC obviously had the opportunity to and should have performed legal research in support of its position regarding which tariff applies to this dispute prior to sending its termination letter on September 26, 2007 (over three years ago).

4. Denied. PR Beaver Valley incorporates its response to paragraph 3 as though fully set forth herein.

5. Denied. DLC seeks to amend its Response to allege several defenses for the first time, despite the fact that neither the Court of Common Pleas nor the Superior Court considered these defenses and whether they required the PUC's expertise and a bifurcated proceeding. DLC has waived and should be judicially estopped from asserting new defenses after three (3) years of litigation, particularly where PR Beaver Valley was unable to argue before either the Court of Common Pleas or the Superior Court that these defenses do not require adjudication before this Tribunal. Pursuant to 52 Pa. Code § 5.92, PR Beaver Valley is prejudiced by DLC raising new defenses for the first time before this Tribunal. On these bases and as set forth in the accompanying Brief in Opposition, the Motion for Leave must be denied.

Dated: December 6, 2010

Respectfully submitted,



Stephen S. Zubrow

PA ID No. 43523

Moira Cain-Mannix

PA ID No. 81131

Dana L. Munhall

PA ID No. 82583

Marcus & Shapira LLP

35th Floor, One Oxford Centre

301 Grant Street

Pittsburgh, PA 15219

(412) 471-3490

Counsel for Complainant,

PR Beaver Valley Limited Partnership