

administers the scheme is likewise not implicated by the relief sought in the Complaint. This matter involves an isolated private Agreement which has no effect on electrical rates, standards or policy as applied to the public. There are no policy issues or regulatory provisions for the Court or the PUC to consider in determining whether DLC has a right to terminate the Agreement pursuant to paragraph 6. *Cf. DiSanto*, 436 A.2d 197 (complaint seeking injunctive and compensatory relief which questioned the reasonableness of the conditions required by a public utility for the extension of service should be considered by PUC, which had the power to vary and reform the contract in accordance with PUC's rules, policies and regulations). Again, the instant dispute does not concern the relationship between DLC and the public and does not question the reasonableness of the service provided by DLC.

Finally, interpretation of paragraph 6 of the Agreement does not require utilizing the PUC's special experience and expertise, since the issue is not complex and the Court is overwhelmingly familiar with issues and standards governing contract interpretation. The essence of the Complaint is whether paragraph 6 of the Agreement provides DLC with a right to terminate the Agreement. Paragraph 6 does not, by its plain words, refer or relate to the 1969 Tariff. DLC asserts that this matter requires interpretation of the Tariff because without the Tariff being at issue, DLC cannot argue the need for the PUC's special expertise.

The Public Utility Code defines "tariff" as:

All schedules of rates, all rules, regulations, practices, or contracts involving any rate or rates, including contracts for interchange of service, and, in the case of a common carrier, schedules showing the method of distribution of the facilities of such common carrier.

66 Pa. C.S.A. § 102. Section 1302 requires "every public utility to file with the PUC tariffs showing all rates established by it and collected or enforced, or to be collected or enforced, within the jurisdiction of the [PUC]." DLC filed its Tariff in 1969 and apparently based its

decision to enter the Agreement on such Tariff, i.e., “if (a) in the Company’s judgment the cost of so doing is justified by the revenues to be obtained.” (Tariff, page 6, § 9.1). A determination of the rights of the parties under paragraph 6 of the Agreement does not and will not invoke the reasonableness of the 1969 Tariff or require the special expertise of the PUC. The issue in question here does not speak to “schedules of rates, rules, regulations, practices or contracts involving any rates.” It is simply whether under contract law, DLC can terminate the Agreement, an issue for which the court is far better suited than the PUC.

Indeed, DLC mischaracterizes the issue before the Court by asserting that interpreting the Agreement requires an assessment of the adequacy and economic feasibility of continuing to own and maintain secondary facilities under the terms of the DLC Tariff. *See* DLC’s Br. in Supp. at 4. DLC, in its termination notice, misquotes Section 9.1 of the Tariff and asserts that it “will own facilities up to the load side of the meter *as long as* ‘(a) in the Company’s judgment the cost of so doing is justified by the revenues to be gained . . .’” (Ex. 2, p. 1) (emphasis added). Rather, the Tariff provides that it will own facilities up to the load side of the meter “*if* in DLC’s judgment the cost is justified by the revenues to be gained. (Ex. 3) (emphasis added). DLC made this determination, *i.e.*, that the cost of ownership and maintenance of the facilities was justified by the revenues to be gained, *in 1969*, and obtained title to the secondary lines; it may not revisit this decision again now in an effort to terminate the Agreement.

In addition, contrary to DLC’s assertion, the Tariff was not incorporated into the agreement. It was merely referenced in a “WHEREAS” clause in the agreement (Exhibit 1, “WHEREAS” Clause 3). A “Whereas” Clause in a contract “is but an introductory or prefatory statement meaning ‘considering that’ or ‘that being the case’, and is not an essential part of the operating portions of the contract.” Black’s Law Dictionary 1101 (Abridged 6th ed. 1991). As