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January 18, 2010

BY E-FILE

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed is the Answer of PPL Electric Utilities Corporation to the Petition for Reconsideration of The PP&L Industrial Customer Alliance in the above-referenced proceeding.

Copies have been provided to the persons in the manner indicated on the Certificate of Service.

Respectfully Submitted,

David B. MacGregor

DBM/jl

Enclosures

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been provided to the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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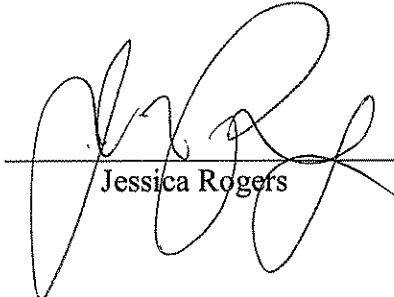
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Date: January 18, 2010



Jessica Rogers

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION
TO THE PETITION FOR RECONSIDERATION OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

PPL Electric Utilities Corporation (“PPL Electric”), pursuant to 52 Pa. Code § 5.572(e), hereby answers the “Petition for Reconsideration of the PP&L Industrial Customer Alliance” (“Petition”). Below, PPL Electric will respond to each of the separately numbered paragraphs of the PP&L Industrial Customer Alliance’s (“PPLICA”) Petition. Before responding specifically to PPLICA’s Petition, however, PPL Electric will provide a summary of the reasons why PPLICA’s Petition lacks merit and should be dismissed.

I. SUMMARY

In its Petition, PPLICA asks the Pennsylvania Public Utility Commission (“Commission”) to reconsider its decision to reject PPLICA’s proposal that the Commission approve a special, negotiated, discounted rate for Donsco, Inc. (“Donsco”). Specifically, PPLICA seeks distribution rate reductions for Donsco that would reinstitute legacy bundled rate discounts that expired with PPL Electric’s rate caps at the end of 2009.

Although PPLICA cites the principles governing the grant of reconsideration, its Petition does not meet that standard. The Petition, with one exception addressed below, simply restates and rehashes the same arguments previously made by PPLICA in its evidence, briefs and exceptions. PPLICA’s contentions regarding Donsco were rejected in thoughtful and thorough

analyses by Administrative Law Judge Colwell at pages 95-103 of the Recommended Decision, which was issued on October 15, 2010 and by the Commission at pages 98-114 of the Commission's Opinion and Order, which was entered on December 21, 2010 ("Order"). PPLICA's basic contention on rehearing is that the Commission somehow "overlooked" PPLICA's entire case, even though the Commission devoted 17 pages of the Order to PPLICA's issue. PPLICA's contentions are clearly meritless on their face.

Despite PPLICA's protestations, its Petition provides no basis for reconsidering the Commission's rejection of PPLICA's proposed special, negotiable, discounted rate for Donsco. Both the ALJ and the Commission concluded that PPLICA, in many respects, failed to meet its burden of proving that Donsco is entitled to a special rate. More specifically, the Commission concluded that PPLICA failed to demonstrate that the existing distribution rates paid by Donsco are unjust or unreasonable or that its proposed negotiated rate is just and reasonable. Order, p. 112. Indeed, PPLICA proposed no specific rate at all. Instead, it proposed a general concept around which a special discounted rate should be negotiated.

The Commission concluded further that PPLICA failed to demonstrate that service provided by PPL Electric to Donsco was inadequate in any respect. Indeed, PPLICA did not even raise any such claim in its pleadings. Order, p. 113-14.

Moreover, as explained by PPL Electric, Donsco's circumstances are not unique. Indeed, the Commission itself observed that establishing a special, discounted rate for Donsco could subject PPL Electric to claims of undue discrimination by other customers who may contend that they are equally qualified for special treatment. Order, p. 113.

Significantly, Donsco is not complaining about any rate proposed by PPL Electric in this proceeding. In fact, under PPL Electric's proposed allocation of the rate increase, which the Commission approved, Rate Schedule LP-4 customers, including Donsco, received no rate

increase. Order, pp. 46-47; PPL Electric Main Brief, p. 36. Instead, Donsco seeks relief from the expiration of certain generation-related discounts that had been included in PPL Electric's bundled rates when it was a vertically integrated electric public utility company. Because PPLICA is not challenging any rate proposed by PPL Electric in this proceeding and is instead attempting to support its own rate proposal, it bears the burden of proof. 66 Pa.C.S. § 315(a). For the reasons summarized above and explained more fully below, PPLICA failed to meet that burden.

PPL Electric has explained many additional reasons why PPLICA's proposed, special, discounted rate for Donsco should be rejected. First, PPLICA's claim that Donsco is unique and deserves a special rate is not an issue of first impression. The Commission and the Pennsylvania appellate courts have routinely rejected such claims for good reason. As the Commonwealth Court stated:

"In support of its argument for a separate mass transportation rate, SEPTA points to its unique service characteristics. The Commission, in adopting the ALJ's decision, rejected SEPTA's claim for a separate rate. The ALJ noted that SEPTA attempted to show its uniqueness without examining other High Tension (HT) customers. The ALJ further noted that the mere fact SEPTA may contribute a rate of return greater than the system average does not mean it deserves a special rate. We agree. We rejected a similar argument in *United States Steel Corp. v. Pennsylvania Public Utility Commission*, 37 Pa. Cmwlth. Ct. 195, 390 A.2d 849 (Pa. Cmwlth. 1978). There, U.S. Steel requested a separate rate, presenting two substantial factors demonstrating its uniqueness: (1) its average gas usage was more than eighty-seven times higher and thirty times higher than the average usage of the two rate classes with which it was to be combined, and (2) it received gas service directly from the gas transmission pipeline. What we stated in *U.S. Steel* is equally applicable to the case before us. A large volume of use does not entitle a customer to a preferred rate. Questions concerning the reasonableness of rates and the differences between rates are factual questions for the Commission whose findings must be upheld if supported by competent evidence. *U.S. Steel* at 211, 390 A.2d at 859. Moreover, the mere fact that SEPTA may contribute a rate of return greater than the

class average does not mean that it deserves a special rate. *See, e.g., Park Towne v. Pennsylvania Public Utility Commission*, 433 A.2d 610, 614 (Pa. Cmwlth. 1981).” *Southeastern Pennsylvania Transportation Auth. v. Pa. P.U.C.*, 470 A.2d 1092, 1094-95 (Pa. Cmwlth. 1984).

Donsco is a customer of PPL Electric under Rate Schedule LP-4, which applies to large customers receiving service at 12 kV. Donsco’s principal plant is located in Wrightsville, Pennsylvania. Donsco claims that it requires distribution rate reductions to reduce hardship and remain competitive. *See, e.g., PPLICA St. 1-S*, p. 6. Donsco’s claims are meritless. Donsco seeks distribution rates that are similar to rates charged to Rate Schedule LP-5 customers served at 69 kV. Distribution rates under Rate Schedule LP-5 are significantly lower than Rate Schedule LP-4 because Rate LP-5 customers are served at 69 kV and do not use, and are not assigned any part of the cost of, the 12 kV system that is used to serve Rate Schedule LP-4 and other rate classes. This fundamental difference in service, *i.e.*, 12 kV vs. 69 kV, fully justifies the rate differential between these rate schedules. Donsco, a customer served at 12 kV, wants PPL Electric and this Commission to “pretend” that Donsco receives service at 69 kV so it can obtain the benefits of lower Rate Schedule LP-5 rates. The problem and basic unfairness of this approach, however, is that Donsco has not paid the cost of facilities required to be served at 69 kV. Other Rate Schedule LP-5 customers have paid those costs, which can be substantial, to bypass the 12 kV system and receive service directly at 69 kV. Such customers receive the resulting benefit of the lower Rate Schedule LP-5 rate. Donsco wants the benefit but is not willing to pay the associated cost. This is obviously not appropriate and was properly rejected by the ALJ and the Commission.

Equally troubling is the fact that, under Donsco’s proposal, the cost of providing it a discounted rate it does not deserve and for which it has not paid would be borne by other Rate

Schedule LP-4 customers, including competitors of Donsco.¹ Donsco's proposal may provide some comfort for other rate classes but it provides none for remaining Rate Schedule LP-4 customers.

Importantly, Donsco is not experiencing any significant hardship as a result of distribution rate increases effective January 1, 2010, that could justify special rate treatment. Even after the substantial increases in distribution rates that are the subject of Donsco's concerns, distribution rates comprise only about 20 percent of Donsco's total cost of electricity. PPL Electric St. 8-RJ, p. 7. Moreover, the restructuring of the electric industry that led to an increase in distribution rates for Donsco has also provided offsetting benefits in the price for generation service which Donsco has taken advantage of as a shopping customer.

Although Donsco has resisted disclosing the benefits it has received from electric restructuring (PPLICA St. 1-S, p. 8), it is clear that such benefits are substantial. Although the Time of Use option utilized by Donsco prior to January 1, 2010, has expired, PPL Electric currently offers a "Real Time Price" option for generation supply charges for large commercial and industrial customers such as Donsco. PPL Electric Ex. OGK-1A, p. 19Z.3C.-19Z.3D. Under this option, customers pay the actual cost of electric generation when they purchase default generation supplies. Therefore, a customer such as Donsco, which can shift its operations to off peak periods, when cost of generation supplies are lower, would substantially benefit through lower charges for default generation supplies from PPL Electric. Despite the availability of such services from PPL Electric, Donsco chose instead to purchase its electric generation supplies from an Electric Generation Supplier. PPL Electric St. 8-R, p. 7. Presumably, the benefits to Donsco from shopping are even more favorable than PPL Electric's

¹ Donsco's witness stated: "I recommend that any lost revenues from Donsco's Wrightsville facility be kept within the LP-4 rate class if a rate is negotiated prior to the effectiveness of the new rates so as to minimize the impact on other customers." Donsco St. 2-S, p. 4.

Real Time Price option, which provides benefits similar to the Time of Use option that expired at the end of 2009.

Donsco should not be allowed to have it “both ways.” In essence, Donsco wants the benefits of restructuring and competition in prices for generation service and at the same time wants to restore the generation-related benefits that were available under fully regulated and fully bundled rates before the generation rate caps expired. Limiting Donsco to generation price discounts will cause no hardship. It merely prevents Donsco from “double dipping” for generation discounts in both regulated distribution services and competitive generation services.

Donsco complains at length that it is at a competitive disadvantage *viz.* other forges receiving service under Rate Schedule LP-5. PPLICA Exc., pp. 11-12. The rate differential, however, is fair and appropriate because Donsco actually takes service at 12 kV, not 69 kV, and customers served under Rate Schedule LP-5 actually take service at 69 kV. Differences in conditions of service justify differences in rates. *Lloyd*, 1016; R.D., p. 47. Moreover, those customers served under Rate Schedule LP-5 actually paid for the cost of facilities necessary to receive service at 69 kV, in some instances, millions of dollars. PPL Electric St. 8-R, p. 6. As noted above, Donsco simply wants the benefit of a 69 kV rate without paying for the associated cost.

Donsco also ignores the fact that, under its proposal, it would receive a substantial and unfair competitive advantage *viz.* other forges receiving service under Rate Schedule LP-4. Under Donsco’s proposal, only customers with peak loads of 4 MW or greater would be allowed to “pretend” that they are receiving service at 69 kV or greater. Other, smaller forges would be left behind even though they are actually served at the same voltage level as Donsco. Donsco’s proposal would not eliminate discrimination; it would create an unjustified distinction benefiting

Donsco and harming smaller forges served at 12 kV under Rate Schedule LP-4. PPL Electric St. 8-R, p. 6; PPL Electric St. 8-RJ, pp. 2-3.

Nor is Donsco in any sense unique. Donsco proposes five criteria for its proposed rate schedule which Donsco claims would limit its availability due to its “unique” circumstances. Donsco is incorrect, because many customers would meet the criteria proposed by Donsco and qualify for the proposed special rate. First, Donsco would limit the availability of its “special” rate schedule to those Rate Schedule LP-4 customers with peak loads of 4 MW or greater. In fact, there are approximately 20 such customers. Tr. 415. Donsco then lists four additional criteria. A customer would qualify for the special rate if its peak load was 4 MW or more and it met any one of the other four factors. Donsco Exc., p. 8. As PPL Electric explained, most, if not all, of these twenty customers would qualify for Donsco’s so-called “special rate.” PPL Electric Initial Brief, pp. 54-56. Most Rate Schedule LP-4 customers would meet more than one of the remaining three alternative criteria proposed by Donsco. The first of four alternative criteria is that the rate discount would encourage “economic development, load retention and employment.” Lower distribution rates for every business customer, however, would make resources available for other purposes including, for example, economic development, load retention and employment. Donsco’s first alternative criteria would not exclude any business customer from the proposed rate schedule. The second alternative criteria proposed by Donsco is that conversion to 69 kV service is not economically or environmentally feasible. Again, this circumstance does not distinguish Donsco from other Rate Schedule LP-4 customers of PPL Electric because all Rate Schedule LP-4 customers would benefit from switching to Rate Schedule LP-5 if there were no economic or environmental impediments. Tr. 415. The third alternative criteria proposed by Donsco is the proximity of 69 kV or higher facilities. Again, this criteria does not distinguish Donsco from any other large LP-4 customer of PPL Electric.

Donsco's Wrightsville plant is approximately two miles from the closest 69 kV facility, but it is not unusual for Rate Schedule LP-4 customers to be close to 69 kV or other transmission facilities. Tr. 415-16. The fourth alternative criteria for qualifying for Donsco's special rate schedule is that a customer made a contribution or a revenue guarantee for the line extension that serves it. Such payments are made under standard tariff provisions and are common. PPL Electric IB, pp. 54-56.

It also must be emphasized that Donsco has not even proposed a specific special rate. Instead, it has proposed a vague concept and a rate schedule that would allow it to negotiate for a rate reduction. There is no known rate design and no known revenue effect on other customers because the rate ultimately would be negotiated. Petition, ¶ 28. The Commission cannot be expected to determine whether a rate proposal is in the public interest without knowing what it is or its effect on other Rate Schedule LP-4 customers.

PPLICA also ignores the fact that approving Donsco's proposed negotiated rate schedule would accomplish nothing. As a practical matter, PPL Electric perceives no reason to agree to a rate reduction for Donsco and thereby impose greater costs and higher rates on other customers. Therefore, even approving a rate schedule with a negotiable rate for which Donsco could qualify would not result in any negotiated rate reduction for Donsco.

PPL Electric's reluctance to grant a discounted, negotiated rate to Donsco is particularly important because PPL Electric, an electric distribution company, cannot be compelled to enter into such an arrangement. Under Section 2807(e)(5)(i), an electric distribution company may enter into such a contract, but the decision whether to do so is within "its sole discretion." Further, under Section 2807(e)(5)(i), the Commission may not "require" an electric distribution company to enter into such a contract. PPLICA's Petition for Reconsideration, in essence,

requests the Commission to compel PPL Electric to enter into a negotiated contract at discounted rates. The Commission is without authority to grant this request.

PPLICA alleges that the increase in distribution rates has caused it to lay off employees. In fact, it seems clear that the increase in distribution rates has had little, if anything, to do with layoffs by Donsco. Donsco recently reduced its workforce by 151 employees. Petition, ¶ 20. Assuming for illustration that the average annual cost (wages and benefits) of a skilled forge worker is \$50,000, then Donsco's recent layoffs reduced its annual payroll cost by \$7,550,000 (151 employees x \$50,000). In contrast, the increase in Donsco's annual cost of distribution service from PPL Electric effective January 1, 2010, was approximately \$400,000. Further, the Commission approved PPL Electric's proposed allocation of the rate increase in this proceeding, under which no increase was allocated to Rate Schedule LP-4 customers

PPLICA does raise one new contention in support of its alternative request for rehearing. PPLICA avers that it recently discovered that the Pennsylvania Department of Transportation ("PennDOT") may "entertain" an application for Donsco to own the existing 12 kV conductors that serve Donsco's Wrightsville facility. Portions of conductors occupy state highways and portions are attached to a bridge that crosses the Susquehanna River. PPLICA's "discovery" was PennDOT regulations codified at 67 Pa. Code §§ 459.10(a) and 459.3(b)(2), which govern construction in state highways and occupancy of state bridges.

PPLICA's "new" evidence does not meet the standard for rehearing and, in any event, is irrelevant to this proceeding. In order to meet the standard for rehearing, a petitioner must demonstrate not only that its contention is new but also that it was not reasonably available to be produced at hearings. The regulations cited by PPLICA's as "newly" discovered evidence were adopted long ago. Section 459.10a was adopted on January 20, 1989. 19 Pa. Bulletin 241. Section 459.3(b)(2) was originally adopted on July 13, 1979. 9 Pa. Bulletin 2338. It was later

amended on January 20, 1989. 19 Pa. Bulletin 241. These regulations have been in effect and available in their present form for review by PPLICA and Donsco for more than twenty years.

Further, although PPLICA does not explain its proposal in any detail, it appears to believe that Donsco may be able to take service at 69 kV and achieve lower distribution rates, by purchasing the above-referenced 12 kV facilities and associated 69/12 kV transformer. If so, PPLICA's "newly" discovered evidence is irrelevant to and would effectively moot its proposed negotiated rate for service at 12 kV. If Donsco can qualify for service at 69 kV under Rate Schedule LP-5, it will achieve the distribution rate reduction it seeks at tariff rates, and there would be no need for PPLICA's proposed special, negotiated, discounted rate for 12 kV service. For these reasons, PPLICA's averment of "newly" discovered circumstances provides no basis for reconsideration or rehearing.

II. ANSWER

1. The averments of Paragraph No. 1 of the Petition are conclusions of law to which no response is required. By way of further response, it is admitted that PPLICA has correctly quoted a portion of the Commission's decision in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. PUC 553 (1982) ("*Duick*").

2. The averments in Paragraph No. 2 of the Petition are denied. To the contrary, the arguments and consideration set forth in PPLICA's Petition in support of reconsideration do not meet the applicable legal standard for either reconsideration or rehearing. PPLICA's arguments on reconsideration were not overlooked as demonstrated by the fact that the Commission fully addressed all of PPLICA's relevant arguments its Order. Further, the one allegedly "new" matter (PennDOT regulations) was clearly available to PPLICA and should have been presented at hearings. And, in any event, this new matter is irrelevant to this proceeding and in fact would

moot PPLICA's request for a discounted 12 kV rate. Therefore, the standards for reconsideration set forth in *Duick, supra*, and the standards for rehearing have not been met.

3. Paragraph No. 3 of the Petition provides background to PPLICA's proposal for a special negotiable rate for Donsco. Such background substantially duplicates the background provided by the Commission at pages 98-100 of the Order. It is noted further that Paragraph No. 3 of the Petition demonstrates that PPL Electric has been responsive to Donsco's needs and concerns over the years, as confirmed by the Commission at pages 113-114. PPL Electric has worked with Donsco over many years to assist it in obtaining service at 69 kV and thereby qualify for lower distribution rates under Rate Schedule LP-5. PPL Electric has identified potential means of qualifying for Rate Schedule LP-5 service and has undertaken economic, environmental and engineering analyses of each. The fact that none of these options ultimately proved attractive to Donsco does not alter the fact that PPL Electric has worked with Donsco over the years to address its concerns.

4. Paragraph No. 4 of the Petition provides further background for PPLICA's proposed special, negotiable, discounted rate for Donsco. As explained above, this background substantially duplicates the Commission's summary of the situation as set forth at pages 98-101 of the Order. By way of further response, it is specifically denied that Donsco has paid for a substantial portion of the facilities dedicated to its service. PPLICA's contentions are based upon the erroneous assumption that all distribution rates paid by Donsco are used exclusively for the purpose of reimbursing PPL Electric for the cost of facilities dedicated to Donsco's use. In fact, PPL Electric incurs numerous other costs in providing service to Donsco – return, taxes, billing systems, customer service, *etc.* PPLICA's analysis simply ignores all of these other costs. Further, PPLICA completely omits from its analysis the cost of the 69-12 kV transformer, which is located at the North Columbia Substation and which is dedicated to serving Donsco. This

transformer was dedicated to Donsco without any payment by Donsco. PPLICA Cross Examination Ex. 5.

Further, in contending that Donsco has paid for a substantial portion of the cost of facilities used to serve it, PPLICA avers that Donsco has paid distribution rates to PPL Electric after Donsco negotiated the termination of the revenue guarantee agreement. PPLICA, however, neglects to mention that the monthly payments to PPL Electric under Rate Schedule LP-4 prior to 2010, as a result of the legacy generation-related discounts, were only about \$2,500 per month. Order, p. 100; PPLICA St. No. 1, p. 7.

5. The averments of Paragraph No. 5 of the Petition are admitted in part and denied in part. Specifically, contrary to PPLICA's averments, PPL Electric has not proposed in this proceeding any increase in distribution rates for customers such as Donsco who are served under Rate Schedule LP-4. Further, PPL Electric is, and has been throughout this period, willing to discuss with Donsco reasonable and appropriate means of addressing its concerns in a manner that is fair to Donsco, PPL Electric and its other customers.

6. The averments of Paragraph No. 6 are admitted in part and denied in part. In particular, it is important to note that the ALJ specifically rejected PPLICA's proposal for a special, negotiated rate for Donsco. R.D., pp. 95-103. There, following full consideration of all of PPLICA's contentions, the ALJ concluded that PPLICA had not met its burden of proving that Donsco was entitled to a special, negotiated, discounted rate. The Commission reached the same conclusion, following a thorough discussion of PPLICA's issues. Order, pp. 98-114. It is specifically denied that either the ALJ or the Commission overlooked or failed to address any significant PPLICA arguments.

It is denied further that the rate increase to Donsco is "exorbitant." To the contrary, rates approved for Donsco are based upon PPL Electric's cost of serving Rate Schedule LP-4 as a

whole. Indeed, in this proceeding, the Commission approved PPL Electric's proposal that no increase in distribution rates be allocated to customers served under Rate Schedule LP-4, including Donsco. The increase in distribution rates about which Donsco complains, which was effective January 1, 2010, resulted from the expiration of legacy, generation-related discounts that expired with generation rate caps. PPL Electric St. 8-R, p. 7. Prospectively, Donsco should obtain such generation-related discounts from electric generation suppliers, not distribution companies like PPL Electric, who no longer own any generation facilities. In fact, it appears that Donsco has done just that by purchasing its generation supplies from an EGS.

7. The averments of Paragraph No. 7 of the Petition are denied. There, PPLICA contends erroneously that the Commission's decision to deny its proposed special, negotiable rate for Donsco was based upon an erroneous interpretation of Section 2806(h) of the Public Utility Code, 66 Pa.C.S. § 2806(h). PPLICA is incorrect. To the contrary, the Commission reached no decision regarding the meaning of Section 2806(h). As indicated at page 111 of the Order, the Commission concluded that Section 2806 "does not provide clear statutory authority" for PPLICA's proposed special, negotiated rate. The Commission concluded that the meaning of Section 2806(h) is not clear. Instead, the Commission rejected PPLICA's proposed rate for Donsco on other grounds. Specifically, the Commission determined that PPLICA failed to carry its burden of proof that Donsco is entitled to a special, negotiated rate. Order, pp. 112-14.

In further answer, PPLICA improperly seeks to interpret Section 2806(h) in isolation. In order to properly construe Section 2806(h), it must be read together with Section 2807(e)(5)(i), which also deals with contractual discounting of rates to meet competition. Statutes or parts of statutes dealing with the same subjects are to be construed together. 1 Pa.C.S. § 1932. Section 2807(e)(5)(i) clearly establishes that an electric distribution company cannot be compelled to

enter into a contract to discount distribution rates. Section 2807(e)(5)(i) provides, in pertinent part, as follows:

Notwithstanding paragraph (3.1), the electric distribution company or Commission-approved alternative supplier may, **in its sole discretion**, offer large customers with a peak demand of 15 megawatts or greater at one meter at one location in its service territory any negotiated rate for service at all of the customers' locations within the service territory for any duration agreed upon by the electric distribution company or Commission-approved alternative supplier as large customer. The Commission **shall permit, but shall not require**, an electric distribution company or commission-approved alternative supplier to provide service to large customers under this paragraph. Contract rates entered into under this paragraph shall be subject to review by the commission in order to ensure that all costs related to the rates are borne by the parties to the contract and that no costs related to the rates are borne by other customers or customer classes. . . ." (Emphasis added.)

8. The averments of Paragraph No. 8 of the Petition are irrelevant because they challenge a conclusion which the Commission did not reach. Contrary to the underlying assumption of Paragraph No. 8 of the Petition, the Commission only concluded that the meaning of Section 2806(h) of the Public Utility Code is not clear. Further, Paragraph 8 of the Petition fails to address the actual basis for the denial of PPLICA's proposed special, negotiable, discounted rate for Donsco, *i.e.*, that PPLICA failed to carry its burden of proof. Nor does PPLICA address the controlling provisions of Section 2807(e)(5)(i), quoted above.

9. Paragraph No. 8 of this Answer is incorporated herein by reference.

10. Paragraph No. 8 of this Answer is incorporated herein by reference.

11. The averments of Paragraph No. 11 of the Petition are denied. Contrary to PPLICA's contentions, Donsco has obtained favorable prices for its generation supplies in the competitive market. Therefore, any impact of the increases in distribution rates on Donsco's total cost of electricity and on Donsco's competitiveness is much smaller than \$400,000.

It should be observed further that PPLICA presented no evidence that the increase in cost of distribution services from PPL Electric are substantial in terms of Donsco's total operations or operations at its Wrightsville plant. PPLICA presented no financial information regarding either its Wrightsville plant or its operations as a whole. PPLICA merely produced conclusory statements that the effect was substantial.

There is substantial reason to question PPLICA's assertions that the effects of the expiration of the generation-related discounts in distribution rates on Donsco was substantial. Distribution services are only about 20 percent of Donsco's total cost of electricity. PPL Electric St. 8-RJ, p. 7. Further, as explained above, annual savings from reductions in Donsco's workforce are approximately twenty times greater than the annual increase in the cost of distribution services.

Further reducing the effect of the distribution rate increase on Donsco is the favorable prices it is paying for electric generation supplies from an electric generation supplier. The restructuring of the electric industry, which led to an increase in distribution rates for Donsco, has also provided offsetting benefits in the price for generation service. Although the primary source of rate discounts for Donsco prior to 2010, the Time of Day option, has expired, PPL Electric currently offers a "Real Time Price" option for generation supply charges for large commercial and industrial customers such as Donsco. PPL Electric Exh. OGK-1A, p. 19C.3C.-19Z.3D. Under this option, customers pay the actual cost of electric generation when they purchase default generation supplies. A customer such as Donsco, which can shift its operations to off peak periods when the cost of generation supplies is generally lower, would substantially benefit through lower charges for generation supplies from PPL Electric. Despite the availability of such services from PPL Electric, Donsco chose instead to purchase its electric supplies from an electric generation supplier. PPL Electric St. 8-R, p. 7. Presumably, the benefits to Donsco

from shopping are even more favorable to it than PPL Electric's Real Time Price option, which provides benefits similar to the Time of Day option that expired at the end of 2009.

Since PPLICA and Donsco control all of the evidence regarding the effects of the distribution rate increase on Donsco's finances and they failed to produce any evidence regarding Donsco's finances, it should not be presumed that the effect of the distribution rate increase on Donsco was substantial.

Donsco should not be allowed to have it "both ways." In essence, Donsco wants the benefits of restructuring and competition in prices for generation services and at the same time wants to restore the now expired generation-related benefits that were available under fully regulated and fully bundled rates before the rate caps expired. Limiting Donsco to generation price discounts will cause no hardship. It merely prevents Donsco from "double dipping" for generation discounts in both regulated distribution services and competitive generation services.

12. The averments of Paragraph No. 12 of the Petition are irrelevant because they challenge a conclusion which the Commission did not reach. Contrary to the underlying assumption of Paragraph No. 12 of the Petition, the Commission reached no conclusion with regard to the meaning of Section 2806(h) of the Public Utility Code except that its meaning is not clear. Further, nothing in Paragraph 12 of the Petition addresses the actual basis for the denial of PPLICA's proposed special, discounted rate schedule for Donsco, *i.e.*, that PPLICA failed to carry its burden of proof. Nor does PPLICA address the controlling provisions of Section 2807(e)(5)(i), that are quoted above.

13. The averments of Paragraph No. 12 of this Answer are incorporated herein by reference.

Moreover, PPLICA completely ignores the further explanation provided by the Commission that Section 2806 refers only to Commission "approval" of negotiated pricing

provisions. PPLICA seeks far more than Commission approval; rather, it seeks an order compelling PPL Electric, over its objection, to grant discounted rates to Donsco. Section 2806(h) provides no such remedy. Indeed, as explained above, the General Assembly has clearly provided, in Act 129, that an electric distribution company cannot be compelled to enter into a contract for negotiated rates. 66 Pa.C.S. § 2807(e)(5)(i).

14. In Paragraph No. 14 of the Petition, PPLICA asserts that the Commission should reconsider its conclusion that Section 2806(h) of the Public Utility Code does not provide it with statutory authority to address Donsco's concern. As explained previously, PPLICA's arguments are irrelevant because the Commission concluded only that Section 2806(h) is not clear. The Commission rejected PPLICA's proposed special, negotiated, discounted rate for Donsco because PPLICA failed to carry its burden of proof.

Moreover, regardless of the Commission's authority to approve discounted distribution rates, Section 2807(e)(5)(i) clearly provides that the Commission does not have authority to require PPL Electric to enter into a contract under which Donsco would receive discounted rates. Such decisions are within the "sole discretion" of the electric distribution company.

Further, PPLICA's argument, that distribution rates charged to Donsco are not just and reasonable, is without merit. PPLICA seeks to support its argument by asserting that Donsco's facilities comprise only 0.2 percent² of Rate Schedule LP-4 customers but pay approximately 2 percent of Rate Schedule LP-4 distribution revenues. PPLICA's assertion proves nothing. Donsco's facilities at Wrightsville and at Mount Joy are two of PPL Electric's largest customers served under Rate Schedule LP-4. It is hardly surprising that larger customers pay more. In making this assertion PPLICA ignores the holding of the Commonwealth Court that large use

² Donsco is a Rate Schedule LP-4 customer of PPL Electric at its Wrightsville plant and at its Mount Joy plant. About 1,100 customers are served under Rate Schedule LP-4. PPL Electric Ex. OGK 2, p. 12.

does not entitle a customer to a special rate. *Southeastern Pennsylvania Transportation Auth. v. Pa. P.U.C.*, 470 A.2d 1092 (Pa. Cmwlth. 1984); *United States Steel Corp. v. Pa. P.U.C.*, 37 Pa. Cmwlth. 195, 390 A.2d 849 (1978). Moreover, the increases in distribution rates applicable to Donsco as a result of the expiration of the Time of Use option, as explained above, have been largely offset by favorable prices charged by electric generation suppliers.

15. The averments of Paragraph No. 15 of the Petition are denied. There, PPLICA suggests that the Commission should not take into consideration the effect of any rate discount granted to Donsco on other customers served under Rate Schedule LP-4. Contrary to PPLICA's contentions, it is completely appropriate for the Commission to consider the impacts of any potential rate discount to Donsco on other customers in determining just and reasonable rates for all customers.

In further answer, PPLICA's averments in Paragraph No. 15 of the Petition seek to avoid the obvious conclusion that the crux of its claim is one of rate discrimination. PPLICA claims that the rates charged to Donsco are too high in comparison to rates charged to Donsco's competitors and to rates charged to LP-5 customers. The Pennsylvania appellate courts have held that a customer claiming rate discrimination must demonstrate the effect of its proposal on other customers. *See, e.g., Building Owners and Managers Assoc. v. Pa. P.U.C.*, 470 A.2d 1092 (Pa. Cmwlth. 1979); *Philadelphia Suburban Transportation Co. v. Pa. P.U.C.*, 281 A.2d 179 (Pa. Cmwlth. 1971). Significantly, quantifying the effect of PPLICA's proposal on other customers was made impossible by PPLICA's failure to present a specific rate proposal in this proceeding. PPLICA has not and cannot meet the standard of proof for its claim of rate discrimination.

16. Before addressing the specific averments in Paragraph No. 16, several observations are appropriate regarding Paragraphs 16 through 29 of the Petition. There, PPLICA

provides a totally one-sided summary of its version of the evidence in this proceeding. PPLICA simply ignores the fact that PPL Electric adduced substantial, and more convincing, evidence to the contrary. PPLICA then repeatedly contends that the Commission apparently completely overlooked all of its evidence. Such contention flies in the face of the thorough and thoughtful summary by the Commission of the parties' positions on the issues and analysis of those issues at pages 98-114 of the Order. The Commission could not devote 17 pages of its Order on PPLICA's proposed special, negotiable, discounted rate for Donsco and still "overlook" all of PPLICA's contentions. Despite PPLICA's protestations, the Commission clearly gave substantial attention and consideration to the issues raised by PPLICA. PPLICA's Petition for Reconsideration is without merit.

Addressing Paragraph No. 16 of the Petition specifically, contrary to the PPLICA's contentions, PPLICA failed to demonstrate that Donsco is entitled to a special, discounted rate.

17. In response to Paragraph No. 17 of the Petition, it is admitted that Donsco's facilities at Wrightsville and Mount Joy are substantial customers of PPL Electric. It is admitted further that they are among the 20 customers served under the Rate Schedule LP-4 with the highest billing demands. Consequently, it is hardly surprising that they pay more for distribution service than smaller customers which use less distribution service from PPL Electric.

PPLICA, however, ignores appellate court holdings that large use does not entitle a customer to special rates. The Commonwealth Court has stated:

"In support of its argument for a separate mass transportation rate, SEPTA points to its unique service characteristics. The Commission, in adopting the ALJ's decision, rejected SEPTA's claim for a separate rate. The ALJ noted that SEPTA attempted to show its uniqueness without examining other High Tension (HT) customers. The ALJ further noted that the mere fact SEPTA may contribute a rate of return greater than the system average does not mean it deserves a special rate. We agree. We rejected a similar argument in *United States Steel Corp. v. Pennsylvania Public Utility Commission*, 37 Pa. Cmwlth. Ct. 195, 390 A.2d 849 (Pa. Cmwlth. 1978). There, U.S. Steel requested a separate rate, presenting two

substantial factors demonstrating its uniqueness: (1) its average gas usage was more than eighty-seven times higher and thirty times higher than the average usage of the two rate classes with which it was to be combined, and (2) it received gas service directly from the gas transmission pipeline. What we stated in *U.S. Steel* is equally applicable to the case before us. A large volume of use does not entitle a customer to a preferred rate. Questions concerning the reasonableness of rates and the differences between rates are factual questions for the Commission whose findings must be upheld if supported by competent evidence. *U.S. Steel* at 211, 390 A.2d at 859. Moreover, the mere fact that SEPTA may contribute a rate of return greater than the class average does not mean that it deserves a special rate. See, e.g., *Park Towne v. Pennsylvania Public Utility Commission*, 433 A.2d 610, 614 (Pa. Cmwlth. 1981).” *Southeastern Pennsylvania Transportation Auth. v. Pa. P.U.C.*, 470 A.2d 1092, 1094-95 (Pa. Cmwlth. 1984).

PPLICA’s contentions regarding the use of electricity by Donsco prove nothing.

18. The averments of Paragraph No. 18 of the Petition are denied. There, PPLICA claims that Donsco is like a 69 kV customer, and therefore, should receive rates for distribution service similar to those charged to customers receiving service at 69 kV under Rate Schedule LP-5. PPLICA’s contentions fail to recognize the fundamental fact that PPL Electric’s Commission-approved rate structure separates customers into different classes based upon the voltage level at which they take service. Rate Schedule LP-5 customers take service at 69 kV or higher and make no use of the 12 kV system. As a result, distribution rates under Rate Schedule LP-5 are significantly lower than rates under Rate Schedule LP-4. These differences in conditions of service fully justify the differential between these rates.

Donsco, a customer served at 12 kV, in essence, wants PPL Electric and the Commission to “pretend” that Donsco receives service at 69 kV so it can obtain the benefits of lower Rate Schedule LP-5 rates. The problem and the basic unfairness of this approach, however, is that Donsco has not paid for the cost of facilities required to be served at 69 kV. Rate Schedule LP-5 customers, in contrast, have paid these costs, which can be substantial, to bypass the 12 kV system and receive service directly at 69 kV and receive the resulting benefit of the lower distribution rates in Rate Schedule LP-5. Donsco wants the benefit of Rate Schedule LP-5 rates

but is not willing to pay the associated cost. Such a result is obviously not appropriate and was properly rejected by the Commission.

Donsco claims that it should not be charged distribution rates similar to those charged under Rate Schedule LP-5 simply because 69 kV service for Donsco is not practical for economic and environmental reasons. Donsco's contentions, however, ignore the fact that every customer served under Rate Schedule LP-4 would benefit from being charged distribution rates similar to those charged under Rate Schedule LP-5 for 69 kV service. Every Rate Schedule LP-4 customer would want service at reduced rates under Rate Schedule LP-5 if it were available. Every Rate Schedule LP-4 customer would convert to service under Rate Schedule LP-5 but for the economic cost or environmental difficulties of doing so. There is no basis for Donsco's contention that it, alone, should receive reduced distribution rates similar to those charged to customers under Rate Schedule LP-5 simply because LP-5 service is not economically or environmentally feasible for it.

19. The averments of Paragraph No. 19 of the Petition are denied. In Paragraph 19, PPLICA seeks to rewrite its proposal and revise its claim for relief. In evidence, PPLICA proposed five criteria for its special, negotiated, discounted rate. One criterion was that a customer must have a minimum demand of 4 MW. PPLICA proposed that customers would be eligible for its rate if they met the minimum demand requirement and at least one of its other four proposed criteria. One of the four criteria was the presence of dedicated facilities. PPLICA Exceptions, p. 8.

In Paragraph No. 19 of the Petition, PPLICA rewrites its proposal to make the presence of dedicated facilities "a mandatory requirement for eligibility." Such an untimely modification of its proposal is completely improper and should be summarily dismissed. Adopting PPLICA's amendment would deny PPL Electric and other parties' due process of law.

20. The averments of Paragraph No. 20 of the Petition are denied. PPLICA claims that electric rate increases have been a substantial cause of Donsco's layoffs under which its workforce has been reduced by 151 employees. Petition, pp. 12-13. Contrary to PPLICA's assertions, however, electric rate increases appear to have been only a small factor, if a factor at all, in Donsco's decisions to reduce its workforce. PPLICA's allegations are not supported by any specific evidence and, in any event, are greatly exaggerated.

As explained previously, increases in distribution rates effective January 1, 2010, as a result of the expiration of the Time of Use Program have been substantially offset by price reductions available from electric generation suppliers commencing January 1, 2010. Further, PPLICA's contentions relate to an annual increase in rates for distribution service of approximately \$400,000. Assuming, for illustration, that Donsco's average annual cost of a skilled foundry worker is approximately \$50,000 per year, then Donsco's workforce reduction of 151 employees saved annually approximately \$7,550,000 (151 employees x \$50,000 per employee per year). A \$400,000 increase in distribution rates (which may well have been substantially offset by lower generation rates) apparently played little, if any, role in Donsco's decisions to reduce its workforce by 151 employees.

21. In response to Paragraph No. 21 of the Petition, it is admitted that PPL Electric worked closely with Donsco to explore possible means of serving Donsco's Wrightsville plant at 69 kV. PPL Electric identified potential means of providing 69 kV service and conducted environmental, economic and engineering analyses of these options. PPL Electric St. RJ-8, pp. 5-6. Despite these cooperative efforts, 69 kV service to Donsco at its Wrightsville plant proved impractical due to economic and environmental concerns. The fact that these options did not turn out to be economic for Donsco does not alter the fact that PPL Electric undertook substantial efforts to address Donsco's concerns.

22. The averments of Paragraph No. 22 of the Petition are denied. There, PPLICA claims that the Commission overlooked environmental considerations cited by PPLICA in support of its proposed special, negotiable, discounted rate for Donsco. To the contrary, environmental concerns are specifically discussed by the Commission at pages 99, 100, and 104 of the Order. PPLICA's environmental reasons in support of its proposed special, negotiated, discounted rate for Donsco were not overlooked, but they do not justify a special, discounted rate for Donsco.

23. In response to Paragraph No. 23 of the Petition, it is admitted that neither PPL Electric nor Donsco have identified a cost-effective way to provide 69 kV service to Donsco, despite substantial studies and efforts by both.

24. In response to Paragraph No. 24 of the Petition, it is admitted that neither PPL Electric nor Donsco has identified any cost-effective method of providing service at 69 kV to Donsco's Wrightsville plant, despite substantial efforts and studies. By way of further response, it is denied that there will be future adverse employee impacts if Donsco continues to receive service at 12 kV. The Commission approved PPL Electric's proposed allocation of the increase in annual distribution operating revenues in this proceeding under which no increase was allocated to Rate Schedule LP-4 customers, including Donsco.

Further, as explained above, the distribution rate increase that became effective on January 1, 2010 for Donsco is being substantially offset by favorable prices for electricity available from electric generation suppliers. Moreover, also as explained above, reductions in Donsco's payroll expenses as a result of recent layoffs have far exceeded any increases in costs of electric distribution service.

25. The averments to Paragraph No. 25 of the Petition are denied. There, PPLICA claims that 172 customers on Rate Schedules LP-5, LP-6 and IS-T "obtained 69 kV service lines

for free.” This conclusion is incorrect. To the contrary, prior to the Electricity Generation Customer Choice and Competition Act, PPL Electric required customers to pay for the extension of 69 kV lines to their premises through revenue guarantee contracts. PPLICA Cross-Examination Exh. No. 3. Therefore, such extensions were not “for free.”

Further, at this time, connections to the transmission systems, such as the one sought by Donsco, are governed by the Open Access Transmission Tariff (“OATT”) of the PJM Interconnection, Inc. Under the OATT, the entity seeking the connection, Donsco, must bear the cost of all required facilities. PPL Electric St. 8-R, pp. 4-5; PPL Electric St. 8-RJ, pp. 4-5. Donsco again seeks to “turn back the clock” and take advantage of tariff provisions that no longer apply.

26. The averments of Paragraph No. 26 of the Petition are denied. Contrary to PPLICA’s averments, all customers receiving service at 69 kV have paid PPL Electric, either through contributions or revenue guarantee contracts, for the cost of the extensions of facilities needed to provide the service. Lower distribution rates for customers served at 69 kV reflect the fact that they do not use the 12 kV secondary distribution system and, therefore, none of the costs of the 12 kV secondary distribution system are allocated to them.

Customers served at 12 kV are properly charged rates set forth in Rate Schedule LP-4. Because Donsco actually receives service at 12 kV, it is properly charged for a portion of the cost of the 12 kV secondary system. It would be improper and discriminatory for Donsco to receive 12 kV service at reduced distribution rates similar to rates charged to customers receiving service of 69 kV because all customers receiving service at 69 kV paid for the cost of facilities needed to serve them.

As noted by the ALJ and the Commission, a special, negotiated, discounted rate for Donsco would be inappropriate.

“No special rate is appropriate for Donsco. Such rate would be unfair to other customers in at least three different respects. First, rates for other customers being served on Rate Schedule LP-4 would have to increase to offset a rate reduction for Donsco and other similarly-situated customers who could qualify for any rate beneficial to Donsco. In fact, under Donsco’s proposal, other LP-4 customers would be required to pay higher rates even though they would not receive any additional benefits. PPL Electric St. 8-R, p. 6. Second, such a rate would not be fair to other former LP-4 customers who paid the costs, often significant,³ of installing 69 kV facilities in order to be eligible for service on Rate Schedule LP-5, which has significantly lower rates because none of the costs of the 12 kV secondary distribution system are allocated to service at 69 kV or greater voltages under Rate Schedule LP-5. PPL Electric St. 8-R, p. 6. Third, even Section 2806(h), which PPLICA cites in favor of its contentions, recognizes the competitive effect of rate reductions. A rate reduction for Donsco would be unfair to its competitors, *i.e.*, other forges, unless similar rate reductions were made available to the other forges, which would have the effect of increasing the burden to be shifted to other customers of PPL Electric under Rate Schedule LP-4, which are not forges.

R.D., pp. 100-01; Order, p. 107; PPL Electric Initial Brief., p. 50.

27. In Paragraph No. 27 of the Petition, PPLICA, in an attempt to criticize the Commission, quotes a portion of the Order out of its proper context. The Commission did state, at page 112 of the Order, that PPLICA “built no record to demonstrate that the potential impact, however minimal, on other LP-4 customers would be justified.” Contrary to PPLICA’s characterizations, the point of the passage was that PPLICA built no record to quantify the impact on other LP-4 customers. Following the passage quoted by PPLICA, the Commission stated the following:

“And there is no basis to conclude on the present record that the impact on other LP-4 customers would in fact be minimal because PPLICA did not provide any analysis of potential dollar impacts or proposed rate(s). Instead, it provided a vague description of characteristics that would qualify an LP-4 customer for Rate Schedule LP-4 SI. PPL’s viewpoint is that, as described, PPLICA’s proposal would be far more general in terms of its application and potential impact.”

³ Such payments have at times exceeded \$10 million. PPL Electric, St. 8-R, p. 5.

Order, pp. 112-13. Clearly, the statements quoted above are correct. PPLICA identified only vague criteria for identification of customers who would qualify for its special, negotiated, discounted rate. There is no way to tell how many customers served under Rate Schedule LP-4 would qualify for the rate, except to say that numerous customers would qualify. Further, the effect of the rate discount on other customers cannot be determined not only because the number of customers to which it would apply is unknown, but also because the rate itself is unknown.

28. The averments of Paragraph No. 28 of the Petition are denied. In making these averments, PPLICA overlooks the fact that, reduced to its essence, its claim for a special, negotiated, discounted rate for Donsco is a claim of unreasonable rate discrimination. PPLICA argues that the rate charged to Donsco is too high relative to rates charged to other customers served under Rate Schedule LP-4 and too high in comparison to rates charged to customers served at 69 kV under Rate Schedule LP-5. In order to establish unreasonable rate discrimination, the effect of a proposed rate on other customers must be calculated and presented. *See, e.g., Building Owners and Managers Assoc. v. Pa. P.U.C.*, 470 A.2d 1092, (Pa. Cmwlth. 1979); *Philadelphia Suburban Transportation Co. v. Pa. P.U.C.*, 281 A.2d 179 (Pa. Cmwlth. 1971). Donsco has simply failed to do so. The fact that Donsco proposed that a rate be negotiated at a later time does not relieve PPLICA of its obligation to establish by a preponderance of evidence those factors necessary to support its case.

29. The averments of Paragraph No. 29 of the Petition are denied. PPLICA here claims that its illustrative calculation of the potential effect of its proposal on other Rate Schedule LP-4 customers meets the legal requirements explained above. It clearly fails to do so. PPLICA has not presented a specific rate. PPLICA has not identified how many customers would qualify for the rate, although given its broad and vague criteria for qualification, many Rate Schedule LP-4 customers would qualify. Consequently, the effect of PPLICA's proposal

on other Rate Schedule LP-4 customers is unknown, but it is clear that the effect would be much greater than the illustration presented by PPLICA which is calculated by comparing distribution rates in effect in 2009 and assumes incorrectly that only Donsco's Wrightsville plant would qualify for the special, negotiated, discounted rate.

30. The averments of Paragraph No. 30 of the Petition are denied. In Paragraph No. 30 of the Petition, PPLICA asks the Commission to reconsider its conclusion that "the record contains substantial evidence that PPL has been very responsive to Donsco's concerns. Order, p. 113 quoting the R.D. at 95, 99-100. PPLICA's averment is incorrect and indeed is contrary to its own evidence. PPLICA's evidence demonstrated that PPL Electric met with representatives of Donsco on numerous occasions to evaluate various means of addressing Donsco's concerns over distribution rates over a period of years. When Donsco's electric load at its Wrightsville plant increased substantially in approximately 1990, PPL Electric arranged for Donsco to be served by two 12 kV lines from the North Columbia substation. In addition, PPL Electric dedicated one of the existing 69-12 kV transformers at that substation to serving Donsco, at no cost to Donsco. PPL Electric required initially that Donsco compensate PPL Electric for the 12 kV lines through a revenue guarantee agreement. Subsequently, at Donsco's request, PPL Electric renegotiated the agreement to eliminate the revenue guarantee in exchange for an agreement whereby PPL Electric could use the 12 kV lines constructed for Donsco to serve other customers during emergencies.

PPL Electric also undertook substantial efforts to identify means by which Donsco could be served at 69 kV. PPL Electric identified three different potential means by which a 69 kV line could be constructed across the Susquehanna River and also identified a potential means of serving Donsco at transmission voltage levels by connecting to a transmission line owned by Metropolitan Edison Company. PPLICA St. 1, pp. 9-11. The fact that none of these alternatives

proved to be economically or environmentally feasible does not change the fact that PPL Electric undertook substantial efforts to identify such options, estimate the cost of each option, determine the engineering feasibility of each option and identify the environmental obstacles for each option. PPL Electric has been very responsive to Donsco's concerns.

31. The averments of Paragraph No. 31 of the Petition are denied. Initially, PPLICA claims that Donsco has not attempted to avoid an increase in distribution rates, yet Donsco objects to the increase in distribution rates that occurred on January 1, 2010, when the generation-related distribution rate discounts expired with the generation rate cap. The sole subject of Donsco's interest in this proceeding is to avoid that distribution rate increase.

Donsco then claims that PPL Electric has not been responsive because it has declined certain of Donsco's suggestions. It is admitted that PPL Electric declined to lease or sell a 69-12 kV transformer at the North Columbia substation to Donsco because doing so would limit future expansion and present possible reliability issues. These were good and valid reasons for declining Donsco's proposal. It is further admitted that PPL Electric declined Donsco's proposal to charge Donsco rates under Rate Schedule LP-5 plus a fee for operation and maintenance expenses. Clearly, PPL Electric does not have the ability to do so under the tariff and to do so would be a violation of the Public Utility Code. In essence, PPLICA alleges that PPL Electric has behaved unreasonably because it refused to break the law. Instead, PPL Electric, in accordance with its Commission-approved tariff, provides service to Donsco under Rate Schedule LP-4 rates, for which it qualifies, and has properly declined to unlawfully serve Donsco under Rate Schedule LP-5, a rate for which it does not qualify. Further, Donsco's proposal would be discriminatory against other LP-4 customers who pay the applicable rates under that rate schedule and against LP-5 customers served at 69 kV who paid the costs of facilities needed to receive service at 69 kV.

Contrary to PPLICA's contentions, PPL Electric, as explained above, has cooperated with Donsco whenever Donsco has attempted to legitimately and properly qualify for service under a different rate schedule. It is true, however, that PPL Electric has not accepted Donsco's claims that it is somehow entitled to a special rate. Such claims are clearly meritless as demonstrated by the fact that numerous customers would qualify for PPLICA's proposed special, negotiated, discounted rate. Further, claims of undue rate discrimination such as Donsco's claim in this proceeding have been rejected routinely for good reason. See, *Southeastern Pennsylvania Transportation Authority v. Pa. P.U.C.*, 470 A.2d 1092, 1094-95 (Pa. Cmwlth. 1984); *United States Steel Corp. v. Pa. P.U.C.*, 37 Pa. Cmwlth. 195, 390 A.2d 849 (1978); *Parktown v. Pa. P.U.C.*, 433 A.2d 610, 614 (Pa. Cmwlth. 1981). The relief sought by PPLICA in this proceeding for Donsco would be discriminatory in favor of Donsco and against other customers served under Rate Schedule LP-4 who would not qualify for the proposed special, negotiated, discounted rate and discriminatory against customers served under Rate Schedule LP-5, who paid the cost of facilities required to receive service at transmission levels. The fact that PPL Electric has declined to discriminate in favor of Donsco and against other customers does not mean that PPL Electric has not cooperated with Donsco or treated Donsco fairly.

32. The averments of Paragraph No. 32 of the Petition are denied. There, PPLICA claims that a new proposal under which Donsco could receive service at 69 kV is viable. Initially, PPL Electric notes that the matters raised in Paragraph No. 32 of the Petition are not based upon the evidence produced at hearings in this proceeding. Therefore, there is no evidentiary support for any statement in Paragraph No. 32 of the Petition.

Under this proposal, Donsco would construct and own a 69-12 kV substation that would be located near PPL Electric's North Columbia substation. Donsco would receive service at 69 kV at its substation and transform the electricity to 12 kV. Donsco would purchase the 12 kV

lines from PPL Electric's North Columbia substation that are currently used to serve Donsco. Donsco would reconfigure the 12 kV lines so that they would be supplied from Donsco's 69-12 kV substation.

Donsco's latest proposal cannot be considered in this proceeding. As explained previously, to support request for rehearing the newly discovered evidence must not have been reasonably available when hearings were held. *Byers v. Pa P.U.C.*, 176 Pa. Super. 620, 624-625; 109 A.2d 232 (1954); *Philadelphia v. Pa. P.U.C.*, 185 Pa. Super. 598, 609, 138 A.2d 698 (1958). There is no reason why this latest proposal could not have been presented in evidence at the hearings in this proceeding. Therefore, PPLICA has not met the standard for rehearing.

Moreover, the proposal is mere speculation. Donsco has not made any demonstration that the proposal would be economically viable. PPL Electric would have to determine whether it is willing to sell the 12 kV cables which Donsco wishes to purchase, or whether it should retain the cables to serve other customers. Further, a price for the cables would have to be agreed upon.

Moreover, it is far from clear that PennDOT would approve Donsco's latest proposal. In this context, PPLICA's description of PennDOT's position is significant. PPLICA describes PennDOT's position as willing to "entertain the possibility" of authorizing Donsco's latest proposal. Apparently, there is no assurance of any approval by PennDOT. Indeed, this Commission "entertains" many complaints, yet not all complaints are sustained.

It must also be noted that the PennDOT regulations which PPLICA cites are far from clear regarding PPLICA's latest proposal. The first PennDOT regulation cited by PPLICA, 67 Pa. Code § 549.10a, relates to occupancy of a state bridge. It is uncertain whether this regulation would permit Donsco's latest proposal. It may only authorize utility facilities. Further, it provides that: "A license shall be issued only to the owner of the utility facility. A license will

not be issued to a contractor nor to persons only being serviced by the facility.” 67 Pa. Code § 459(10a)(c)(2). PPLICA has not explained how Donsco would qualify for a license under this regulation since it would be a person being “serviced by the facility.”

The second regulation cited by PPLICA, 67 Pa. Code § 459.3(b)(2), pertains to permits for performing construction in state highways. Again, its applicability to Donsco latest proposal is not certain. It may pertain only to construction, and no construction on a state highway would be required to implement Donsco’s new proposal other than the construction of a new substation for Donsco and the reconfiguration of the two 12 kV lines near the substation. Donsco, under its latest proposal, would occupy state highways. PPL Electric, a public utility, has a statutory right to occupy state highways. 15 Pa.C.S. § 1511(e). No similar statute applies to Donsco. Further, the regulation may not authorize occupation of state highways for private use. The regulation also may require that the application be submitted in the name of the owner of the facility at the time of construction. In this case, the existing 12 kV circuits across the Susquehanna River were owned by PPL Electric when they were constructed, not Donsco. Again, PPLICA has not explained how this regulation would authorize Donsco’s latest proposal.

33. The averments of Paragraph No. 33 of the Petition are denied. There, PPLICA urges the Commission to grant rehearing based on new information set forth in Paragraph 32 of the Petition. PPLICA has not met the standard for a grant of rehearing. In order to support a request for rehearing, the evidence which would be offered must not have been available at the time of the original proceeding. *Philadelphia v. Pa. P.U.C.*, 185 Pa. Super. 598, 609, 138 A.2d 698 (1958); *Byers v. Pa. P.U.C.*, 176 Pa. Super. 620, 624-25, 109 A.2d 232 (1954). The “new information” offered by PPLICA does not meet the standard. The two “new” items of information include regulations of PennDOT. These regulations, however, were adopted in their current form in 1989 – more than twenty years ago. There is nothing “new” about the cited

regulations. Second, PPLICA cites two recent “inquiries” from Donsco to PennDOT. PPLICA has offered no explanation as to why these “inquiries” could not have been obtained prior to the hearing.

Of equal significance is the fact that Donsco’s latest proposal has nothing to do with its proposed special, negotiated, discounted rate, which is the sole subject of the Petition. Instead, it is a plan, which, if implemented, could permit Donsco to receive service from PPL Electric at 69 kV near the existing North Columbia substation, transform that electricity to 12 kV and use the existing circuits that run from the North Columbia substation across the Susquehanna River to Donsco’s plant in Wrightsville. If Donsco were able to receive service at 69 kV and meet the remaining requirements for service under Rate Schedule LP-5, it would qualify for service under Rate Schedule LP-5 at lower distribution rates. If Donsco were to qualify for 69 kV service under Rate Schedule LP-5, there would be no necessity for PPLICA’s proposed special, negotiated, discounted rate for Donsco and no purpose for rehearing regarding such proposed rate.

34. The averments of Paragraph No. 34 of the Petition are denied. The applicability of Section 2806(h) to PPLICA’s proposed rate for Donsco and the standard to be used in interpreting Section 2806(h) of the Public Utility Code are irrelevant. As explained above, that section only authorizes the Commission to approve certain negotiated rates. It does not provide to the Commission any authority to require any electric distribution company, such as PPL Electric, to enter into a contract for a negotiated rate.


Further, the request by PPLICA on behalf of Donsco is directly contrary to Section 2807(e)(5)(i) of the Public Utility Code. There, it is provided that an electric distribution company may, “in its sole discretion,” offer a discounted rate to a large customer. It provides further that the Commission shall permit, but “shall not require” electric distribution companies

to enter into such contracts. PPL Electric cannot be compelled to enter into a contract for a discounted rate with Donsco. Therefore, PPLICA has provided no basis for reconsideration or reargument of the issues raised in this proceeding.

35. The averments of Paragraph No. 35 of the Petition are denied. For the reasons explained above, PPLICA has not met the standard for a grant of rehearing, and its request should be denied.

WHEREFORE, for all the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the "Petition for Reconsideration of the PP&L Industrial Customer Alliance" be rejected and that its request for reargument be denied.

Respectfully submitted,



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