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October 6, 2011

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

**VIA HAND DELIVERY**

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

Dear Secretary Chiavetta:

Enclosed please find for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") an original and nine (9) copies of the Remand Main Brief of the PP&L Industrial Customer Alliance ("PPLICA") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Please date stamp the extra copy of this transmittal letter and Remand Main Brief, and kindly return them for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 

Adeolu A. Bakare

Counsel to PP&L Industrial Customer Alliance

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c: Administrative Law Judge Susan D. Colwell (via E-mail and Hand Delivery)  
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## 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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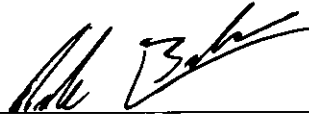
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Dated this 6<sup>th</sup> day of October, 2011, at Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

PPL Electric Utilities Corporation

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Docket No. R-2010-2161694

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**REMAND MAIN BRIEF OF THE  
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

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Dated: October 6, 2011

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## I. INTRODUCTION

### A. Original Rate Case

On March 31, 2010, PPL Electric Utilities Corporation ("PPL" or "Company") 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.

On May 13, 2010, the PP&L Industrial Customer Alliance ("PPLICA") filed a Complaint in this proceeding. PPLICA is an ad hoc association of energy-intensive commercial and industrial customers receiving electric service in PPL's service territory. PPLICA members purchase service from PPL primarily under Rate Schedules LP-4, LP-5, LP-6, IS-P and IS-T, as well as available riders.<sup>1</sup> These Rate Schedules make up the Large Commercial and Industrial ("Large C&I") Class for purposes of PPL's distribution base rate filing.

In addition to PPLICA, the following parties filed Complaints in this proceeding: Office of Consumer Advocate ("OCA"); Office of Small Business Advocate ("OSBA"); Eric Epstein; and numerous individual PPL ratepayers. The Commission's Office of Trial Staff ("OTS")<sup>2</sup> filed a Notice of Appearance. Parties that filed Petitions to Intervene included: Richards Energy Group, Inc. ("Richards"), the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF"), Dominion Retail, Inc. ("Dominion"), the Commission on Economic Opportunity ("CEO"), Retail Energy Supply Association ("RESA"), Washington Gas Energy Services, Inc., Citizens of Pennsylvania's Future ("PennFuture") and International Brotherhood of Electric Workers, Local 1600 ("IBEW").

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<sup>1</sup> Some PPLICA members also have accounts on Rate Schedules GS-1 and GS-3.

<sup>2</sup> In August 2011, the Commission implemented a reorganization plan that resulted in the prosecutorial functions of OTS falling under the newly formed Bureau of Investigation and Enforcement ("I&E").

By Order entered May 20, 2010, the Commission suspended Supplement No. 83 for investigation and assigned the matter to the Office of Administrative Law Judge ("OALJ") for hearing. In the Order, the Commission also noted issues of concern and asked that the parties address those concerns. Shortly thereafter, this proceeding was assigned to Administrative Law Judge ("ALJ") Susan D. Colwell.

Pursuant to the procedural schedule established in ALJ Colwell's Second Prehearing Order, issued May 27, 2010, PPLICA forwarded the prepared Direct Testimony and Exhibits of Christopher A. Buck and Richard A. Baudino ("PPLICA Statement Nos. 1 and 2, respectively") on June 29, 2010. On June 29, 2010, PPLICA received Direct Testimony from OCA, OTS, OSBA, Richards, CEO, SEF and RESA. In addition, PPL served limited supplemental Direct Testimony to address the issues in which the Commission expressed concern in its May 20, 2010, Order.

On July 27, 2010, PPLICA served the prepared Rebuttal Testimony and Exhibit of Mr. Baudino ("PPLICA Statement No. 2-R")<sup>3</sup> and received Rebuttal Testimony from the Company, OTS, OCA and OSBA.

On August 5, 2010, PPLICA forwarded the prepared Surrebuttal Testimony and Exhibits of Mr. Buck and Mr. Baudino ("PPLICA Statement Nos. 1-S and 2-S, respectively") and received Surrebuttal Testimony from OTS, OCA, OSBA, SEF and RESA. Although not included as part of the procedural schedule, the Company served the other parties with Rejoinder Testimony and Exhibits on August 9, 2010.

An evidentiary hearing, in which PPLICA actively participated, was held on August 11, 2010. During that hearing, PPLICA entered its prepared testimony and exhibits into the record,

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<sup>3</sup> In addition, upon review on previously distributed PPLICA Statement No. 1, PPLICA determined that original Page 8 contained a mathematical error on line 21. As a result, concurrent with serving PPLICA Statement No. 2-R, PPLICA also distributed a revised Page 8 of PPLICA Statement No. 1.

as well as four cross-examination exhibits. In addition, on August 23, 2010, PPLICA provided copies of PPL's Responses to PPLICA's two On-the-Record Data Requests, preliminarily marked as PPLICA Cross-Examination Exhibits Nos. 5 and 6 and moved that PPLICA Cross-Examination Exhibits Nos. 5 and 6 be admitted into the record.

On August 26, 2010, the Company, along with OTS, OCA and Richards, submitted a Joint Petition for Partial Settlement of Rate Investigation ("Joint Petition").<sup>4</sup> ALJ Colwell issued a Recommended Decision recommending approval of the Joint Petition without modification and disposing of the litigated issues. On December 21, 2010, the Commission entered an Opinion and Order adopting the Recommended Decision with modifications and disposing of the litigated issues addressed in exceptions and reply exceptions.

#### **B. Remand Proceeding**

On January 5, 2011, PPLICA filed a Petition for Reconsideration of the December 21 Order addressing solely the Commission's denial of its request to establish an LP-4 Special Industrial tariff ("LP-4 SI") for Donsco, Inc., a member of PPLICA. In the December Order, the Commission concluded that Section 2806 of the Public Utility Code did not provide authority for adjusting distribution rates and that Donsco would be eligible for a negotiated rate only if PPL charged unjust and unreasonable rates or provided inadequate service. Based on its review of the record, the Commission ruled that Donsco had failed to show unjust and unreasonable rates or inadequate service.

In the Petition for Reconsideration, PPLICA argued that Section 2806(h) explicitly authorizes the Commission to adjust distribution rates and that Donsco's special circumstances merit such relief. PPLICA cited the unambiguous statutory language contained in Section

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<sup>4</sup> As indicated in Footnote 1 of the Joint Petition, the other active parties in this proceeding (PPLICA, Dominion, CEO, OSBA, SEF, Eric Epstein and RESA) did not oppose the Joint Petition. Similarly, PennFuture, in its August 26, 2010, letter submitted to the Commission, also indicated its non-opposition to the Settlement.

2806(h) and pointed to record evidence demonstrating that Donsco faces special circumstances and that a negotiated rate would not unduly burden other ratepayers. PPL filed an Answer opposing the Petition for Reconsideration on January 18, 2011.

The Commission entered an Opinion and Order on April 27, 2011 ("Remand Order"). In the Remand Order, the Commission agreed that Section 2806(h) of the Public Utility Code provides direct authority for flexible pricing of distribution rates and that Donsco presents a special situation. Accordingly, the Commission granted PPLICA's Petition for Reconsideration, urged the parties to find a solution to Donsco's problems that would not unduly burden other customers, and remanded the case to the ALJ for further proceedings and the issuance of a Recommended Decision on Remand.

On April 27, 2011, a Notice of Initial Prehearing Conference on remand was issued which set the prehearing conference on remand for May 16, 2011. Prior to the prehearing conference, PPL, PPLICA, OTS, OCA, OSBA, and Mr. Epstein ("Parties") filed prehearing memos. Additionally, Dominion, CEO, Whitehall Township, SEF, and RESA informed the ALJ that they would not actively participate in the proceeding unless the scope changed from the parameters set forth in the Remand Order. IBEW and PennFuture requested to be removed from the service list entirely.

The prehearing conference was held as scheduled. The ALJ modified the service list pursuant to the above-referenced requests and directed the Parties to develop a plan for compiling a reproduced record. Additionally, the Parties agreed to a litigation schedule establishing dates for testimony, hearings and briefs.

On July 1, 2011, PPLICA served the prepared Remand Direct Testimony and Exhibits of Christopher A. Buck and Richard A. Baudino ("PPLICA Remand Statement Nos. 1 and 2,

respectively"). PPLICA also received remand direct testimony from PPL, OSBA and OCA on August 5, 2011.

On September 2, 2011, PPLICA served the prepared Remand Rebuttal Testimony and Exhibit of Mr. Buck and Mr. Baudino ("PPLICA Remand Statement Nos. 1-R and 2-R, respectively") and received remand rebuttal testimony from OSBA.

On September 12, 2011, PPLICA served the prepared Remand Surrebuttal Testimony and Exhibit of Mr. Baudino ("PPLICA Remand Statement No. 2-S"). PPLICA also received remand surrebuttal testimony from PPL and OSBA.

An evidentiary hearing, in which PPLICA actively participated, was held on September 16, 2011. During the hearing, PPLICA entered its prepared testimony and exhibits into the record, as well as a cross-examination exhibit. Additionally, PPLICA submitted an On-the-Record Data Request to PPL. PPL also submitted an On-the-Record Data Request to PPLICA.

PPLICA received PPL's response to its On-the-Record Data Request on September 19, 2011. On September 21, 2011, PPLICA moved for admission of PPL's response to the On-the-Record Data Request preliminarily marked as PPLICA Cross-Examination Exhibit No. 8.

On September 20, 2011, PPLICA provided a response to the On-the-Record Data Request submitted by PPL.

Pursuant to the schedule set forth in the Second Prehearing Order on Remand, PPLICA submits this Remand Main Brief.

## **II. SUMMARY OF ARGUMENT**

PPLICA asserts that arguments beyond the scope of the Commission's Remand Order must be excluded from consideration. The Remand Order established clear findings of fact and set forth specific directives for further proceedings. The Commission found that Donsco has experienced an extraordinary increase in rates, and that Donsco faces special circumstances that

warrant a flexible contract rate under Section 2806(h). Accordingly, the case was remanded for the development of specific rate options for Donsco and the calculation of corresponding rate impacts on other PPL customers. The Commission further articulated the scope of the remand proceeding in the form of four clear directives, requiring consideration of 1) information regarding the annual O&M costs of the dedicated facilities and the rate impact upon other LP-4 customers, 2) rate impacts on other customers in the event that Donsco curtails or terminates service, 3) the viability of Donsco's plan to obtain PennDOT permits and purchase PPL's 12 kV lines, and 4) whether receipt of the PennDOT permits and Donsco's purchase of the 12 kV lines would render the requested relief moot. However, both PPL and OSBA have attempted to develop a record as to issues outside the scope of the enumerated directives and the overall purpose of the Remand Order. Such arguments should be disregarded entirely from consideration by the Commission.

As recognized by the Commission in the Remand Order, Donsco faces special circumstances. As discussed above, PPLICA maintains that the issue of whether Donsco's particular situation merits a negotiated rate was not remanded by the Commission. However, since certain parties to the remand proceeding continue to assert that Donsco's situation is not unique or does not warrant a negotiated rate, PPLICA reiterates the Commission's findings in the Remand Order pertaining to Donsco's special situation. Donsco faces significant competitive disadvantages as a high demand industrial customer unable to obtain service at the appropriate LP-5 rate due to geographical impediments. The arguments set forth by OSBA and PPL arguing that Donsco has not met the threshold for flexible rate pricing under Section 2806(h) should be rejected as contrary to record evidence.

The Commission should grant PPLICA's requested relief and order PPL to modify its tariff to establish a negotiated rate for Donsco. PPLICA Witness Richard A. Baudino has calculated a monthly customer charge based on the financial information requested in the Remand Order and other considerations. PPLICA suggests that the Commission implement Mr. Baudino's customer charge for Donsco by modifying PPL's tariff to specifically authorize negotiated rates pursuant to the Section 2806(h) of the Public Utility Code. The tariff language would allow PPL to employ flexible pricing for such limited and unique factual circumstances which the Company and the Commission see fit to remedy. With the language recommended by PPLICA, the Commission would have the tools in place to order PPL to adopt Mr. Baudino's customer charge for Donsco. Alternatively, the Commission could implement the \$11,000 customer charge by adding Rate Schedule LP-4 SI as proposed by Mr. Baudino. Finally, if the Commission declines to adopt either of PPLICA's preferred rate designs, it could consider the alternative rate design for Rate Schedule LP-4 that was suggested by PPL, but with a lower eligibility threshold to ensure that Donsco pays charges that are more commensurate with Mr. Baudino's calculations.

Finally, there are no options available to remedy Donsco's situation other than some form of flexible rate pricing. Termination or curtailment of service would impose considerable financial costs upon the remaining customers. These costs do not include the impact of job loss upon the community of Wrightsville. Additionally, the record demonstrates that obtaining right of way and bridge crossing permits from PennDOT would not enable Donsco to take 69 kV service as PPL will not transfer ownership of the 12 kV lines. Moreover, this option is not practical, especially since the Commission has other means to address this situation.

### III. SCOPE OF REMAND ORDER

Several arguments advanced in the remand proceeding exceed the scope of the Commission's Remand Order and must be disregarded. The Commission directed the Parties to develop a complete evidentiary record addressing 1) information regarding the annual O&M costs of the dedicated facilities and the rate impact upon other LP-4 customers, 2) rate impacts on other customers in the event that Donsco curtails or terminates service, 3) the viability of Donsco's plan to obtain PennDOT permits and purchase PPL's 12 kV lines, and 4) whether receipt of the PennDOT permits and Donsco's purchase of the 12 kV lines would render the requested relief moot. Remand Order, pp. 12-13. The Commission has also urged the parties to explore other options to address Donsco's situation. *Id.* at 6. The Commission specifically urged PPL and Donsco to work on a mutually agreeable solution, stating "We urge the Parties, however, to continue the difficult work of finding a solution to Donsco's circumstances that would not work to the significant detriment of other customers." *Id.* at 14.

Taken as a whole, these directives represent inquiries into the feasibility and design of a rate for Donsco, rather than inquiries about the circumstances justifying a negotiated rate. Indeed, the Commission already concluded that Donsco experienced an extraordinary increase in rates and is somewhat unique in its circumstances. *Id.* at 11, 13.

Notwithstanding the Commission's clear directives, PPL and particularly OSBA, continue to argue that Donsco's situation is not deserving of a negotiated rate. OSBA Witness Robert D. Knecht offers several arguments in support of his conclusion that "the magnitude of the rate increase faced by Donsco is not particularly relevant to evaluating the rate options proposed by PPLICA." OSBA Statement No. 4 pp. 5-8. Mr. Knecht then addresses whether the conditions underlying PPLICA's request justify flex rate pricing and opines that flex rates are appropriate

solely to retain customers with bypass or alternative fuel opportunities. Remand Order pp. 8-9, 10.

Similarly, PPL Witness Oliver G. Kasper argues that the circumstances faced by Donsco following the elimination of PPL's Time-of-Day billing option and the expiration of the Remand Riders do not merit a negotiated rate. Mr. Kasper contends that Donsco's experience is commensurate with other PPL customers and that the company has not experienced financial hardship as a result of PPL's recent rate increases. PPL Statement No. 8-RM p. 7.

The arguments disputing Donsco's qualification for rate relief under Section 2806(h) of the Public Utility Code must be disregarded. The Commission's Remand Order limited the scope of issues to be addressed by the Parties. While the Commission required the Parties to compile a complete evidentiary record, such evidence must remain within the confines of the issues identified in the Remand Order.<sup>5</sup> The Commission concluded that Donsco faces unique circumstances and remanded the case for further record development regarding "specific rate options for Donsco and calculated potential rate impacts of same on other PPL customers." Remand Order, p. 11.

Notably, the Commission did not ask the Parties for further deliberation on the subject of Donsco's eligibility for flexible rate pricing. To the contrary, the Commission found that "Section 2806(h) of the Public Utility Code provides the Commission with authority to 'approve flexible pricing' and is an essential tool for *exactly the type of situation* presented by Donsco." Remand Order p. 11 (emphasis added). By continuing to argue about the appropriateness of PPLICA's request for flexible rate pricing, rather than the feasibility of a negotiated rate that will not unduly burden other ratepayers, PPL and OSBA are exceeding the scope of issues identified

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<sup>5</sup> See Opinion and Order (On-Remand), Application of West Penn Power Company, Docket Nos. A-2009-2086954, and A-2009-2086963 (Pa. PUC Nov. 4, 2010) (Commission finding that Exceptions that do not fall within the scope of the remand proceeding shall not be considered).

for remand. Out of an abundance of caution, PPLICA will address the specific arguments purporting to show that Donsco's circumstances do not warrant a negotiated rate in a subsequent section of this Main Brief. PPLICA's responses notwithstanding, the arguments disputing Donsco's eligibility for flexible rate pricing under Section 2806(h) of the Public Utility Code fall outside the scope of issues identified in the Remand Order and must be disregarded entirely.

#### **IV. THE COLLECTIVE CIRCUMSTANCES UNDERLYING DONSCO'S REQUEST FOR RELIEF ARE SPECIAL AND UNIQUE**

As amply demonstrated in the original rate proceeding and further established in this remand proceeding, Donsco faces a special situation that imposes hardship upon the company under the current rate structure. The background surrounding Donsco's situation was detailed in the Main Brief submitted by PPLICA on September 2, 2010. For ease of reference, the salient points are summarized below.

Donsco is a family-owned business and integrated supplier of cast parts. PPLICA M.B. p. 13. The company has been operating the Wrightsville facility for over 100 years. *Id.* Originally, the facility used a cupola furnace to melt iron.<sup>6</sup> In 2000, at the behest of the Pennsylvania Department of Environmental Protection ("DEP"), Donsco removed the cupola and converted the facility to electric melting operations. *Id.* As part of the conversion process, Donsco requested that PPL provide electric service on Rate Schedule LP-5. PPLICA M.B. p. 14, PPLICA Statement No. 1 p. 9 (R.R. Tab 3). This proposal met resistance as it would require PPL to construct a 69 kV line over the Susquehanna River, which separates the North Columbia substation and Donsco's Wrightsville facility. Due to environmental restrictions and cost

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<sup>6</sup> PPLICA Witness Christopher A. Buck describes the cupola melting process as follows, "The cupola melting process uses coke fuel and limestone flux. This type of melting resulted in high melt rates and relatively low operating costs; however, there were emissions that resulted from the coke and limestone." PPLICA M.B pp. 13-14 *citing* PPLICA Statement No. 1 p. 4 (R.R. Tab 3).

concerns, PPL rejected the requests for Rate Schedule LP-5 service and proposed the following alternative:

PPL proposed to run two 12,470 volt lines across the river from the North Columbia 69/12 kV substation to our [Wrightsville] facility. Those lines are dedicated to Donsco along with the transformation equipment in the substation. As part of our contract, Donsco guaranteed a total payment of \$914,000 for electric distribution service during the five year initial term of our new contract. This equated to an annual guarantee of \$182,800. In 2003, Donsco and PPL renegotiated the contract to remove the final two years of the annual guarantee, but in exchange we agreed that PPL could use one of the lines when necessary for reliability purposes.

PPLICA M.B. p. 14, PPLICA Statement No. 1 pp. 9-10 (R.R. Tab 3). Following the conversion, Donsco rearranged its manufacturing operations in order to efficiently take advantage of PPL's Time-of-Day rate option. Donsco was able to mitigate the cost of impact of the denial of LP-5 service by limiting its production ramp-up to off peak times. Donsco's diligent adherence to off-peak production schedules allowed the company to operate at a maximum demand of 16 MW, but maintain a billed demand of approximately 2.5 MW. PPLICA M.B. p. 15.

On January 1, 2010, PPL eliminated the Time-of-Day billing option from its tariff. This tariff modification significantly affected Donsco's electricity rates. Donsco derives very little benefit from PPL's broader distribution network as the two 12 kV lines serving the Wrightsville foundry are dedicated feeder lines. PPL Statement No. 8-R p. 3 (R.R. Tab 1).<sup>7</sup> However, with the elimination of the Time-of-Day rate, Donsco's monthly distribution rates increased from \$2,500 in 2009 to \$35,000 in 2010, an increase of 1,300%. PPLICA M.B. p. 15. Removing the impact of the concurrent expiration of the Remand Riders and the EDI credit results in an

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<sup>7</sup> In the remand proceeding, PPL modified its position regarding the "dedicated" nature of the lines serving the Wrightsville facility. PPL Statement No. 16-RM p. 5. This is based on the occasional use of Donsco's lines to serve other customers in Wrightsville when the other four lines feeding the town are unavailable due to outages, and the ability to switch Donsco's load between the two transformers in the North Columbia substation. PPL Statement No. 16-RM pp. 5-6. As Mr. Baudino explains, this doesn't modify the conclusion that the equipment is dedicated to Donsco. PPLICA Remand Statement No. 2 pp. 6-7.

increase from \$5,000 or \$6000 to \$35,000, or 484%. *Id.* at 16. By way of comparison, Donsco's two direct competitors in PPL's service territory, Benton Foundry and Anvil International, each pay \$709 per month for distribution service under Rate Schedule LP-5. PPLICA Remand Statement No. 1-R p. 5.

Donsco's situation is exacerbated by the Susquehanna River serving as a geological and environmental impediment to obtaining 69 kV service under Rate Schedule LP-5. The need to traverse the river resulted in PPL concluding that the facility could not be served at 69 kV when Donsco originally requested service on Rate Schedule LP-5 in 1999. PPLICA Statement No. 1 p. 9 (R.R. Tab 3). The same impediment exists today and will likely continue in the future. Meanwhile, its load is substantially larger than the average PPL Rate Schedule LP-4 customer, with billing demand ranging from 15 MW to 16 MW monthly at the Wrightsville facility versus the LP-4 class average demand of 1 MW/month. *Id.* at 12. Donsco operates with the largest monthly demand of any LP-4 customer, with the second highest registering a full 4 MW below Donsco's 16 MW demand rate. PPL Statement No. 8-RM p. 19. In fact, despite PPL's prior statements to the contrary, Donsco's average demand exceeds that of the average LP-5 customer.<sup>8</sup> The company is unjustly and unreasonably forced to operate a high demand industrial facility at a low voltage tariff rate typically reserved for lower demand users.

In the Remand Order, the Commission recognized the hardship faced by Donsco and found that the situation warrants a negotiated rate under Section 2806(h) of the Public Utility Code. Parties to the remand proceeding were directed to explore potential rate solutions for Donsco that do not unduly burden other ratepayers. However, despite the Commission's

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<sup>8</sup> Although PPL Witness Oliver G. Kasper initially testified that the average demand for a Rate Schedule LP-5 customer was 37.9 MW, a subsequent response to the On-the-Record Data Request confirmed the actual average demand for a Rate Schedule LP-5 customer to be 4.9 MW, or approximately 1/3 of Donsco's average demand. *See* Tr. at 562, *contra* PPLICA Cross-Examination Exhibit No. 8. PPL's calculations of the average LP-5 customer demand in its Remand Surrebuttal testimony were wrong.

recognition of Donsco's special circumstances, PPL and OSBA take the position that Donsco's situation merits no flexible pricing. As discussed above, these arguments should be disregarded by the Commission. However, in the event that the Commission decides to consider such arguments, PPLICA continues to assert that Donsco faces a combination of geographical and historical circumstances requiring a negotiated rate and addresses the arguments to the contrary below.

OSBA Witness Robert D. Knecht offers a multitude of unpersuasive arguments against the approval of a negotiated rate for Donsco. Mr. Knecht argues that the magnitude of the increase faced by Donsco is not relevant to PPLICA's request for a negotiated rate. This conclusion is predicated on three faulty findings.

First, Mr. Knecht states that the increase to Donsco's distribution rates was not related to the \$77.5 million increase awarded in this proceeding because none of the increase was assigned to the LP-4 rate class. OSBA Statement No. 4 p. 5. To the extent that Mr. Knecht suggests that PPLICA's request should be denied on such grounds, PPLICA responds that all rates, present and proposed, are properly before the Commission during a base rate proceeding.

Secondly, Mr. Knecht describes the Time-of-Day rates as an anachronism from the bundled rate electric service offered before PPL's restructuring. OSBA Statement No. 4 p. 6. This argument misses the point underscoring PPLICA's request. PPLICA does not contest the overall rationale behind eliminating Time-of-Day rates. The impetus behind Donsco's need for relief comes from the intricate factual situation facing the company. The 1,300% rate increase resulting from the January 1, 2010 tariff modifications certainly creates a financial hardship for Donsco and may have served as the immediate catalyst for the requested relief. PPLICA

Statement No. 1 p. 15 (R.R. Tab 3). However, as emphasized by PPLICA Witness Christopher A. Buck, the rate impact of the elimination of Time-of-Day rates is a secondary concern.

The primary reason for Donsco's request remains the impossibility of taking service under Rate Schedule LP-5. PPLICA Remand Statement No. 1-R p. 4. Despite originally requesting to be served as an LP-5 customer, Donsco agreed to take LP-4 service to avoid environmental impacts and because PPL concluded in 1999 that extending 69 kV facilities across the Susquehanna River was not feasible or practical. PPLICA Statement No. 1 p. 14. When Donsco initially agreed to take LP-4 service, Time-of-Day rates allowed it to mitigate the financial impact of operating a high demand facility on the LP-4 Rate Schedule. See id. at 14, 15. Donsco cannot reasonably take 69 kV service due to the enormous cost and environmental impacts of building a 69 kV line across the Susquehanna River. PPLICA Remand Statement No. 1-R, p. 4. Donsco's billing demand levels exceed even that of the average LP-5 customer yet the company must take LP-4 service at approximately *\$35,000 per month* while its direct competitors in the territory are served under Rate Schedule LP-5 at *\$709 per month*. See supra note 8, PPLICA Statement No. 1-R p. 5. The totality of the situation, rooted in Donsco's geographical inability to take 69 kV service, creates an unjust and unreasonable result under present rates.

Third, Mr. Knecht notes that PPLICA failed to propose a solution applying the principle of gradualism. While gradualism is a ratemaking tool employed by the Commission, it is hardly the exclusive remedy for mitigating large rate increases. Mr. Knecht's reliance on the preceding three arguments to exclude the magnitude of Donsco's distribution rate increase from consideration of its request for a negotiated LP-4 SI tariff rate is inappropriate on the merits and contrary to the Commission's findings and directives in the Remand Order

Mr. Knecht's arguments regarding Donsco's qualifications for a flex rate also ignore the unique nature of Donsco's circumstances and the Commission's stated authority to address such a situation. Mr. Knecht frames the Commission's power to grant flex rates as a limited remedy, available only to meet a bypass threat, meet the cost of a competing fuel or prevent load reductions or plant closure. OSBA Statement 4, p. 9. However, as argued in PPLICA's Petition for Reconsideration and recognized in the Remand Order, Section 2806(h) empowers the Commission with broad authority to address the "*specific needs of a customer and competitive alternatives.*" Remand Order p. 11. Nothing in the statute supports the limited standard applied by Mr. Knecht. Rather, as recognized by the Commission in the Remand Order, "Section 2806(h) of the Code provides the Commission with authority to "approve flexible pricing" and is an essential tool for *exactly the type of situation presented by Donsco.*" Id. at 11 (emphasis added). Moreover, as Mr. Baudino explained, the limitations on the availability of flexible pricing that apply in the natural gas industry and which Mr. Knecht seeks to impose upon Donsco (i.e., limiting flex rates to situations involving competing fuels and bypass opportunities) are inappropriate in the electric industry context. PPLICA Remand Statement No. 2-R p. 9.

Like Mr. Knecht, PPL Witness Oliver G. Kasper posits similar arguments attempting to show that the consideration of a negotiated rate for Donsco is inappropriate. Mr. Kasper first lists other customers that experienced large distribution rate increases following the elimination of Time-of-Day rates. Statement No. 8-RM pp. 2-3. Even accepting Mr. Kasper's argument at face value, Donsco is one of eight customers, out of a total of 1,100 LP-4 customers, that experienced a distribution rate increase of 1000% or more. See id. With the highest billing demand of the current LP-4 customer class, Donsco is easily distinguished from the seven other customers experiencing a distribution increase of 1000% of more. Tr. at 563, PPL Statement No.

8-RSR p. 5. There is only one smaller foundry that is included in this subset of LP-4 customers with a much smaller demand and less difference in billing demand pre and post Time-of-Day billing. PPLICA Cross-Examination Exh. No. 7. The other customers are categorized by PPL as "Hotels and Motels," "Professional Sports Clubs and Promoters," "Water Supply," and "Packing and Crating."<sup>9</sup> Id. Mr. Buck explained how the product produced by Donsco in Wrightsville is specifically sensitive to competitive impacts of energy pricing, even in comparison to other foundries such as Donsco's Mount Joy operation. PPLICA Remand Statement No. 1-R pp. 4-5. Clearly, comparing the impacts upon Donsco to those of a hotel or sports complex is comparing apples to oranges. Additionally, neither PPLICA nor Donsco is aware of any similarly large LP-4 customer facing commensurate geographical and environmental impediments to obtaining LP-5 service. See PPLICA Remand Statement No. 1 p. 4, see also Tr. at 564. As observed by the Commission in the Remand Order, Donsco is clearly operating under special circumstances meriting relief under Section 2806(h).

Mr. Kasper also claims that a negotiated rate for Donsco should be denied because Donsco's efforts to mitigate the financial harm resulting from the 2010 elimination of Time-of-Day rates indicate that the company has not suffered financial harm. Mr. Kasper cites Donsco's implementation of an energy surcharge following the elimination of Time-of-Day rates, the company's increase in production for 2010, and the reduced payroll expense from workforce reductions as indicators that Donsco has not suffered financial harm. PPL Statement No. 8-RM pp. 4-6.

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<sup>9</sup> PPLICA notes that PPL did not provide the business type for Customer Account number 6965094022 because that customer terminated service at the end of 2009. PPLICA Cross-Examination Exh. No. 7 Accordingly, the business type is only known for, including Donsco and the other foundry, six of the seven customers experiencing distribution rate increases of 1000% or more. See id.

Again, Mr. Kasper's arguments miss the larger issue facing Donsco. As articulated by Donsco Witness Christopher Buck, the company is "still at a competitive disadvantage in bidding on potential orders due to the distribution rates that we are paying, and our inability to reduce those costs by pursuing an environmentally and economically feasible upgrade to 69 kV service." PPLICA Remand Statement No. 1-R p. 3. Mr. Buck explained in his testimony that, unlike PPL's surcharges, Donsco is not entitled to automatically recover its energy surcharge and that some customers contested (i.e., did not pay) the surcharge. Unlike monopoly distribution service, where the threat of termination is an effective collection tool, in a competitive environment with multiple suppliers of the same product, a business must balance the probability of obtaining future business from the customer in handling billing disputes. Even accounting for the company's remedial efforts, Mr. Buck observes that Donsco produced low pre-tax earnings for 2010. *Id.* at 1-2. The fact that Donsco has undertaken internal measures to combat the financial impact of its competitive disadvantage should not deter the Commission from taking steps to remedy the competitive disadvantage.

**V. THE COMMISSION SHOULD APPROVE A NEGOTIATED RATE FOR DONSCO PURSUANT TO ITS AUTHORITY UNDER SECTION 2806(H) OF THE PUBLIC UTILITY CODE**

The Commission's Remand Order directed the Parties to explore rate options for Donsco that would alleviate its special circumstances without significantly burdening other customers. Specifically, the Commission identified four evidentiary inquiries to be addressed on remand. The Parties have collectively examined the issues set forth by the Commission. Considering all evidence provided in the original and remand proceedings, Donsco concludes that the Commission should order PPL to implement a negotiated rate for Donsco through a tariff modification explicitly acknowledging PPL's authority to propose flex rates to the Commission under Section 2806(h). As a secondary alternative, the Commission could adopt an LP-4 SI Rate

Schedule. If the Commission declines to grant either of the PPLICA's preferred tariff modifications, the revision to Rate Schedule LP-4 proposed by PPL could be considered provided that the eligibility threshold is lowered from 10 MW to at least 6 MW.

**A. Impact of Negotiated Rate upon Donsco and the Other LP-4 Customers**

**1. Donsco's Proposal Meets the Objectives Set Forth in the Commission's Remand Order**

In the Remand Order, the Commission recognized both its authority to impose flex rates and the unique circumstances justifying such relief for Donsco. However, the Commission expressed concern regarding a lack of information as to the specific costs to be factored into such new rates or the associated impact on other LP-4 customers. Accordingly, the Commission issued the following directive:

PPL should provide information on the annual O&M costs of the dedicated facilities, including the 69-12 kV dedicated transformer, and on any outstanding capital to date not paid by Donsco for these facilities. The Commission can then render a more informed decision on the rate impact upon Donsco and the other LP-4 customers.

PPLICA requested this information in discovery. In response, PPL complied with the Commission's request and stated that the annual O&M costs for the facilities used to serve Donsco are approximately \$18,000. PPLICA Remand Statement No. 2 p. 5, PPLICA Remand Exh. No. RAB-2.

Additionally, as part of discovery, PPL calculated the net depreciated original cost of the facilities used to supply Donsco to be \$828,000. PPLICA Remand Statement No. 2 p. 6, PPLICA Remand Exh. No. RAB-2. This figure addresses the Commission's concern regarding outstanding capital not paid for by Donsco for the facilities used to serve the Wrightsville foundry. PPLICA Remand Statement No. 2 p. 11. Donsco did pay \$548,000 of a \$914,000 five-year revenue guarantee as per its contract with PPL. PPLICA Statement. No. 1 p. 8 (R.R. Tab

3). Donsco was not required to pay the remaining \$366,000 pursuant to the renegotiation of the contract in 2003 which enabled PPL to request that Donsco curtail usage at the Wrightsville plant when PPL needed to use Donsco's lines to serve other Wrightsville customers due to outages of other equipment serving the area. PPLICA Statement. No. 1 pp. 8-9 (R.R. Tab 3).<sup>10</sup> However, as Witness Baudino clarifies, due to the accounting employed by PPL, the revenue guarantee was not a contribution in aid of construction or otherwise tied to the specific facilities used to serve the company. PPLICA Remand Statement No. 2 p. 11. Donsco did not, from an accounting standpoint, contribute to the costs of the dedicated facilities and therefore has no such outstanding capital obligations. Id.

Based on the cost information identified above and other factors relevant to Donsco's situation, PPLICA Witness Baudino calculated an alternative rate proposal. Mr. Baudino designed the rate to meet the Commission's stated objective of alleviating the special circumstances faced by Donsco without significantly burdening other customers. He outlined the methodology as follows:

My alternative rate proposal for Donsco was developed utilizing cost information supplied by the Company in responses to PPLICA data requests. First I developed a traditional yearly revenue requirement analysis for Donsco based on applying a weighted cost of capital to the net depreciated rate base cost of facilities that the Company identified as directly serving the Wrightsville facility. I then added yearly O&M costs and depreciation expenses [as provided in] PPL's response to PPLICA's Set IV, question number 2. I then added gross receipts taxes at rate of 5.90%.

The assumed weighted cost of capital was developed utilizing the weighted cost of capital developed by Mr. Steven Hill, witness for

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<sup>10</sup> Although the commitment to curtail usage at Wrightsville was limited to two years, PPL testified that it actually used the Donsco facilities during the summer of 2011 to serve other customers in Wrightsville during an emergency. PPL Statement No. 16-RM p. 6. Donsco's Wrightsville plant was idle at the time so Donsco's "service" was not impacted. Presumably, however, PPL may face future emergency circumstances in the Wrightsville area that would result in Donsco's plant curtailing service to ensure continued service to other customers in the Wrightsville area.

the Office of Consumer Advocate ("OCA"), and includes Mr. Hill's recommended cost of equity of 9.0%.

PPLICA Remand Statement No. 2 pp. 7-8. Mr. Baudino also explained that, based on his experience as a rate of return witness, Mr. Hill's assumptions were "very reasonable, given market conditions." Tr. at 555. Mr. Baudino's methodology resulted in an annual revenue requirement of \$156,741 and a monthly revenue requirement of \$13,062. Id. at 8. In determining a monthly fixed charge for Donsco, Mr. Baudino considered the magnitude of an increase from Donsco's 2009 monthly distribution charges of approximately \$5000 to a monthly revenue requirement of \$13,000. Id. He also accounted for the Company's admission that the O&M expenses were necessarily estimated, because such information is not available by circuit, and the inclusion in the revenue requirement of administrative and general costs that may not be applicable to Donsco's Wrightsville facility. Id. at 9.

Based on the foregoing analysis, Mr. Baudino recommends that the Commission approve a monthly customer charge for Donsco of \$11,000. While this figure still imposes a 120% increase to Donsco's distribution rates, it substantially reflects the cost of serving the Wrightsville facility and would help mitigate the inequitable pricing that Donsco incurs as an extraordinarily high demand customer geographically limited to Rate Schedule LP-4 service. See PPLICA Remand Statement No. 2 p. 9. This also takes into account the fact that Donsco's *direct competitors in the service territory are served on Rate Schedule LP-5 at a rate of \$709 per month and did not have to pay the cost of the service extensions to convert to LP-5 service.* PPLICA Remand Statement No. 1-R p. 5. The negotiated rate should remain effective for a five-year contract terms with each party agreeing to reexamine the circumstances surrounding a 69 kV service extension upon the expiration of the five year term. Id. at 10. If circumstances continue to prohibit 69 kV service to the Wrightsville facility, then another five-year term shall

commence. Id. This pattern should continue until 69 kV service becomes feasible. Id. Additionally, revenues that Donsco has paid in excess of the negotiated rate since the effective date of new rates should be refunded back to Donsco.

Regarding the rate impact on other LP-4 customers, Mr. Baudino concludes that the negotiated rate will impose minimal cost burdens on the remainder of the LP-4 customer base. PPLICA Remand Statement No. 2 p. 12. As described above, the negotiated rate is designed to produce \$132,000 in annual revenue. Id. Subtracting this figure from Donsco's current rate revenues results in a \$212,000 shortfall. Id. Collecting this shortfall from the remainder of the LP-4 rate class would require a modest 0.64% increase from the \$32,889,900 in annual revenues currently collected from the class. Id. Alternatively, the Commission could allow the Company to defer the lost revenue and amortize the balance in PPL's next base rate proceeding. Id. at 13. If the Commission elects this alternative, Mr. Baudino recommends applying his recommended weighted cost of capital to the yearly deferral balance and addressing the issue of whether the lost revenues should be collected from all customers or just the LP-4 customers at the time of the next base rate proceeding. Id.

Presently, Mr. Baudino does not recommend that the shortfall be recovered from any customers outside of the LP-4 rate class in this proceeding. PPLICA Remand Statement No. 2 p. 12. In future cases, the treatment of the shortfall should be examined to determine whether the special contract customers benefit all other customers by making position contributions to fixed costs. If it can be demonstrated that all customers do benefit from the retention of special contract customers, then, as suggested by Mr. Baudino, "the lost contribution to the utility's cost of service would have to be fully picked up by all other customers." PPLICA Remand Statement No. 2-R p. 8. However, for purposes of this proceeding, PPLICA's proposal to collect the

shortfall from the remaining LP-4 customer base, which would include Donsco's Mount Joy facility, imposes a minimal cost burden and should be adopted by the Commission.

Having designed a rate based on the cost inputs received from PPL and levying a minimal cost burden on other LP-4 ratepayers, Mr. Baudino next provides the Commission with a series of options for implementing the negotiated rate.

The preferred method would be modifying PPL's tariff to include explicit recognition of the Company's authority to allow flexible rate pricing pursuant to Section 2806(h) of the Public Utility Code. Mr. Baudino proposes adoption of the following tariff language ("Suggested Tariff Provision"):

The Company at its discretion or upon approval by the Commission of a customer request pursuant to Section 2806(h) of the Public Utility Code may enter into contracts containing flexible pricing for electric service to address the specific needs of a customer and to address competitive alternatives. If requested by the Company, the customer shall provide to the Company, on a confidential basis, all information, records and financial analyses necessary to evaluate the customer's request for flexible pricing. Terms and conditions of service will be included in the signed contract, which will be filed with the Public Utility Commission. The Company at its sole discretion may request Public Utility Commission approval. The terms of the agreement will be confidential upon filing with the Commission.

Appendix A *attaching* PPLICA Remand Statement No. 1, Remand Exh. No. RAB-3. With such language in the tariff, the Commission could order PPL to limit Donsco's charges for distribution service to the aforementioned \$11,000 monthly customer charge. PPLICA Remand Statement No. 2 pp. 11-12. This solution carries the advantage of allowing the Commission to approve Donsco's request for the negotiated rate under the specific circumstances adduced in this proceeding. See supra p. 13. Other customers seeking a negotiated rate would be required to show similarly unique or specific circumstances. If PPL agreed with the customer that a

negotiated rate was appropriate, the Company would have the discretion to request approval of the contract by the Commission.

As a secondary alternative, the Commission could create the LP-4 SI Rate Schedule proposed in the original rate proceeding. As detailed in Mr. Baudino's direct testimony, LP-4 customers with demand exceeding 4 MW would be eligible for the LP-4 SI rate if one of four additional criteria were met. PPLICA Statement No. 2 p. 7 (R.R. Tab 7). The four additional criteria would be 1) economic development, load retention and employment; 2) economic and/or environmental feasibility of converting the account to transmission voltage in Rate Schedule LP-5; 3) the proximity to 69 kV (or higher) facilities and/or the ability to specifically identify the lines and equipment used to serve the facility; and 4) payment of a contribution in aid of construction or a line extension guarantee. Id.

PPLICA has provided all known costs of implementing the LP-4 SI rate. However, it is possible that other LP-4 customers might qualify for a negotiated rate. PPL Witness Oliver G. Kasper testified that 20 customers could qualify for the LP-4 SI rate based on the criteria outlined by Mr. Baudino. PPL Statement No. 8-RM p. 9. While noting that even 20 customers represents only less than 2% of the 1,100 current LP-4 customers, PPLICA submits that the Commission could increase the threshold eligibility requirement from 4 MW to 6 MW in order to further reduce the potential number of customers qualifying for the LP-4 SI rate. See PPLICA Remand Statement No. 2-R p. 2.

In the event that the Commission declines to adopt either of the preferred methods for implementing PPLICA's customer charge, the Commission could consider a modified version of the revised Rate Schedule LP-4 proposed by PPL Witness Oliver G. Kasper. Mr. Kasper proposed a rate design separating Rate Schedule LP-4 customers into two groups, those with

billing demands equal or greater than 10 MW and those with billing demands below 10 MW. PPL Statement 8-RM p. 17. The Rate Schedule LP-4 customer charge would increase from \$176.87 from the present rate of \$160.19. Id. The demand charge would remain at \$2.136 per kW but there would be no demand charge for all incremental kW above 9,999 kW. Id. This proposal recognizes that customers paying LP-4 rates at demand levels in excess of 10 MW pay more than their cost of service. Id. at 18. This cost imbalance is especially acute in Donsco's situation where the customer is only served from dedicated distribution assets but required to contribute to the cost of the broader distribution network. PPLICA Remand Statement No. 2-S p. 4.

PPLICA appreciates PPL's efforts to craft a solution addressing the directives of the Remand Order but the revised Rate Schedule LP-4 should not be considered in its present form. As demonstrated by Mr. Baudino, the revised Rate Schedule LP-4 would need to incorporate a significantly lower MW cutoff to reduce Donsco's distribution service expenses to a level commensurate with LP-5 customers and create a reasonably appropriate rate for Donsco. PPLICA Remand Statement No. 2-R pp. 6-7. If the preferred methods proposed by PPLICA are denied, PPLICA recommends that the Commission consider the revised Schedule LP-4 only after lowering the MW cutoff to at least 6 MW, which would cap Donsco's annual distribution expenses at \$156,472. Id. at 7. This would still be \$24,472 in excess of the appropriate rate for Donsco; and, because this proposal is based solely on the customers' demand and does not include additional criteria, the known impact on other customers in the LP-4 class is larger than either of PPLICA's proposed options. As a result, if this option is used by the Commission to address Donsco's special circumstances, the Commission will not be able to provide the most appropriate relief to Donsco.

## **2. The Arguments Opposing PPLICA's Proposed Rate Design Should Be Rejected**

The arguments offered in opposition to PPLICA's rate design proposals generally contradict the very purpose underlying the request for a negotiated rate and should be rejected by the Commission. PPL Witness Joseph M. Kleha and OSBA Witness Robert D. Knecht criticize Mr. Baudino's calculation of the costs to be factored into the flexible rate customer charge. According to PPL and OSBA, Mr. Baudino erroneously used a rate of return of 7.78% which reflects a 9.00% return on equity proposed by Mr. Calvin Hill of the OCA in the original proceeding. PPL Statement 7-R p. 3, OSBA Statement No. 4 p. 11. Mr. Kleha states that Mr. Baudino should have used the 13.19% rate of return currently recovered from the LP-4 rate class. PPL Statement 7-R p. 3.

However, both witnesses overlook the fact that Mr. Baudino proposed his rate design to alleviate Donsco's inability to take LP-5 service and the resulting inequity under current rates. The Commission recognized a need to adopt flexible rates to remedy Donsco's circumstances in the Remand Order. There is no reason to calculate Donsco's cost of service using the clearly inflated 13.19% rate of return. As Mr. Kleha confirms, incorporating the class 13.19% rate of return into Mr. Baudino's LP-4 SI rate design would result in Donsco paying \$255,000 annually for distribution service. PPL Statement No. 7-R p. 4. This rate would not provide the full benefit intended from Section 2806(h) or the LP-4 SI. If the Commission is attempting to address the specific needs of a customer, why would it artificially increase the return over the system average just because the otherwise applicable rate schedule has not been moved to the system average return despite the Commonwealth Court's directive in *Lloyd v. Pa PUC*?<sup>11</sup>

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<sup>11</sup> In *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Cmwlth. 2006), the Commonwealth Court directed PPL to move its rate classes to the system average rate of return.

Considering the purpose of the requested rate relief, Mr. Baudino's use of the overall customer base rate of return is reasonable and should be accepted by the Commission.

Similarly, Mr. Knecht criticizes Mr. Baudino's proposal for recovery of the revenue shortfall created by the his proposed \$11,000 monthly customer charge. Mr. Knecht correctly notes that there are credible ratemaking justifications for allocating any lost revenues from Donsco outside of LP-4 customer class. OSBA Statement No. 4 p. 12. However, for purposes of this case, PPLICA asserts that the impact on the LP-4 customer class will be minimal. Approving Mr. Baudino's customer charge will result in a 0.64% increase to LP-4 revenues. PPLICA Remand Statement No. 2 p. 12. Considering the minimal impact of the rate design, PPLICA believes that recovering lost revenues exclusively from the LP-4 customer class, which would include Donsco's Mount Joy facility, is appropriate in this case. However, as explained above by Mr. Baudino, the benefits accruing to all customers from special contract customer fixed cost contributions should be examined in a future case to determine whether such lost revenues should be recovered from all customers. PPLICA Remand Statement No. 2-R p. 8.

**B. The Commission Should Consider the Rate Impacts on Other Customers' Current Rates and Future Rates Should Donsco Curtail or Terminate Current Service**

In the Remand Order, the Commission requested information regarding the impact to other customers if Donsco curtailed or terminated service. Remand Order p. 12. If a negotiated rate is not approved and Donsco is forced to terminate its Wrightsville operations, then PPL would allocate the \$344,000 current revenues received from Donsco among other customer classes. PPLICA Remand Statement No. 2 p. 13. This modification would account for the costs, depreciation and return associated with Donsco's facilities. Id. However, this would not account for the reverberating effects on the local economy and communities, including the loss of 90 jobs currently occupied at the Wrightsville facility. See PPLICA Remand Statement No. 2 p. 13, see

also PPLICA Statement No. 1 p. 3 (R.R. Tab 3). Conversely, granting flexible rate pricing and placing Donsco on a level playing field with its local competitors would help the Company restore its 2006 operating complement of 135 employees. PPLICA Statement No. 1, p. 3 (R.R. Tab 3). As Mr. Buck explained, although Donsco has no current plans to discontinue operations, Donsco is very concerned about the long-term viability of the plant. PPLICA Remand Statement No. 1-R, p. 2. Donsco believes that the negotiated pricing proposed by Mr. Baudino will help bolster the sustainability and viability of the operations at Wrightsville. Donsco appreciates the Commission's willingness to use its powers under Section 2806(h) to implement flexible pricing to meet the special needs of the Wrightsville facility.

**C. Donsco Can Legally Utilize PennDOT Right of Way and Bridge Occupancy Permits to Take 69 kV Service Under Rate Schedule LP-5, but This Solution Is Not Practical**

Donsco has comprehensively explored the possibility of obtaining PennDOT approval to purchase the 12 kV lines and associated equipment from PPL and concluded that the proposal must be abandoned. *At the outset of this remand proceeding, Donsco vigorously investigated the requirements to obtain rights of way and bridge crossings from PennDOT and the costs of maintaining the two 12 kV lines and associated equipment.* PPLICA Remand Statement No. 1 pp. 2-5. Donsco had hoped that successfully obtaining right of way and bridge crossing permits from PennDOT would position it to purchase the 12 kV lines and associated equipment from PPL and take 69 KV service as the operator of the 12 kV facilities. *Id.* at 1-2. As indicated by PPLICA Witness Christopher Buck, Donsco was willing to assume financial and operational responsibility for the 12 kV lines. *Id.* at 4.

Despite the initial promise of the PennDOT proposal, Donsco has abandoned the effort because PPL will not sell the lines. PPL Witness David T. Bobb cites reliability concerns, extensive survey requirements regarding existing rights of way, and code requirements imposing

higher minimum pole clearance requirements for non-utility facilities as impediments to a sale of the facilities to Donsco. PPL Statement No. 16-RM p. 7. Mr. Bobb categorizes the proposal for Donsco to construct its own lines as "not a practical option." *Id.* Given the Commission's recognition that Section 2806(h) provides a tool to address exactly the type of situation faced by Donsco, PPLICA agrees.


Despite the failed attempt to resolve the issues on remand through the PennDOT proposal, PPLICA respectfully requests that the Commission approve the negotiated rate outlined by Mr. Baudino in response to the principal objective of the Remand Order. The Commission remanded this proceeding "for the development of a more complete record to allow consideration of additional pricing options permitted by Section 2806(h) of the Code." Remand Order p. 6. The impossibility of pursuing the PennDOT proposal should not detract from the clear evidence supporting rate relief for Donsco under Section 2806(h).

**VI. CONCLUSION**

**WHEREFORE**, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission accept the PP&L Industrial Customer Alliance's Recommendation to grant flexible rate pricing for Donsco, Inc. by adopting the Suggested Tariff Provision, Rate Schedule LP-4 SI, or otherwise revising PPL's tariff to implement a monthly charge of \$11,000 for distribution service.

Respectfully submitted,

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Counsel to the PP&L Industrial Customer Alliance

Dated: October 6, 2011

Remand Exhibit \_\_\_\_\_ (RAB-3)

SUGGESTED TARIFF PROVISION

The Company at its discretion or upon approval by the Commission of a customer request pursuant to Section 2806(h) of the Public Utility Code may enter into contracts containing flexible pricing for electric service to address the specific needs of a customer and to address competitive alternatives. If requested by the Company, the customer shall provide to the Company, on a confidential basis, all information, records and financial analysis necessary to evaluate the customer's request for flexible pricing. Terms and conditions of service will be included in a signed contract, which will be filed with the Public Utility Commission. The Company at its sole discretion may request Public Utility Commission approval. The terms of the agreement will be confidential upon filing with the Commission.

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