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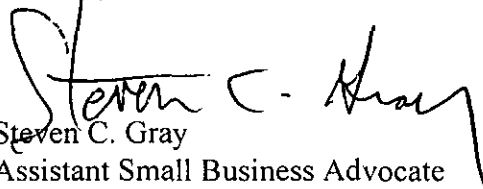
**Re: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation
Docket No. R-2010-2161694**

Dear Secretary Chiavetta:

Enclosed for filing are the original and nine (9) copies of the Reply Brief on Remand, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate
Attorney ID #77538

Enclosures

cc: Parties of Record

Robert D. Knecht

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Cases

Lloyd v. Pennsylvania Public Utility Commission,
904 A.2d 1010, 1020 (Pa. Cmwlth. 2006), *appeals denied*,
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I. Introduction

On March 31, 2010, PPL Electric Utilities Corporation (“PPL” or the “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) a request for additional annual distribution revenues of \$114.675 million.

On April 29, 2010, the Office of Small Business Advocate (“OSBA”) filed a complaint against the proposed rate increase.

On May 20, 2010, the Commission suspended the proposed effective date of PPL’s requested rate increase and instituted an investigation into the justness and reasonableness of the issues raised in the filing.

On May 26, 2010, a prehearing conference was held before Administrative Law Judge (“ALJ”) Susan D. Colwell.

On June 29, 2010, the OSBA submitted the direct testimony of Robert D. Knecht. On July 27, 2010, the OSBA submitted the rebuttal testimony of Mr. Knecht. On August 5, 2010, the OSBA submitted the surrebuttal testimony of Mr. Knecht.

On August 26, 2010, the parties filed a partial settlement, which established \$77.5 million as the agreed-upon revenue increase. The OSBA did not sign the partial settlement but also did not oppose it. Under the partial settlement, numerous issues, *e.g.*, cost of service and revenue allocation, were reserved for litigation.

Evidentiary hearings were held in Harrisburg on August 11, 2010.

On September 2, 2010, the OSBA submitted a Main Brief.

On September 13, 2010, the OSBA submitted a Reply Brief.

On October 15, 2010, ALJ Colwell’s Recommended Decision (“RD”) was issued.

On November 4, 2010, the OSBA filed Exceptions to the ALJ’s RD.

On November 15, 2010, the OSBA filed Reply Exceptions.

On December 21, 2010, the Commission entered an Order ("*December 21st Order*") approving the partial settlement and adjudicating the issues reserved for litigation.

On January 5, 2011, the PP&L Industrial Customer Alliance ("PPLICA") filed a Petition for Reconsideration ("*Petition*") of the *December 21st Order* with the Commission, advocating the establishment of a special rate for one of PPL's industrial customers, Donsco, Inc. ("Donsco").

On January 13, 2011, the Commission granted PPLICA's *Petition*, pending review of the merits.

On April 27, 2011, the Commission entered an Order ("*April 27th Order*") that granted PPLICA's *Petition* on the merits and remanded the case to the Office of Administrative Law Judge for further proceedings.

On May 16, 2011, a further prehearing conference was held before ALJ Colwell.

On August 5, 2011, the OSBA submitted the remand direct testimony of Mr. Knecht.

On September 2, 2011, the OSBA submitted the remand rebuttal testimony of Mr. Knecht.

On September 12, 2011, the OSBA submitted the remand surrebuttal testimony of Mr. Knecht.

On September 16, 2011, an evidentiary hearing was held before ALJ Colwell.

On October 6, 2011, the OSBA submitted its remand Main Brief. Remand Main Briefs were also submitted by PPL; PPLICA; the Office of Consumer Advocate ("OCA"); and the Bureau of Investigation and Enforcement ("BI&E"), formerly known as the Office of Trial Staff ("OTS").

The OSBA submits this remand Reply Brief in accordance with the procedural schedule established at the May 16, 2011, prehearing conference.

II. Argument

A. **The Scope of the *April 27th Order***

In the *April 27th Order*, the Commission concluded “that a significant aspect of Section 2806(h) of the Code was not considered . . . in the *December 21st Order*.” *April 27th Order*, at 11 (footnote omitted). Furthermore, the Commission decided that Section 2806(h) authorizes a special rate for a qualifying customer even if the EDC is against that special rate. *Id.*, at 12. However, the Commission did not decide that Donsco meets the statutory criteria for receiving such special rates. Instead, the Commission merely observed that Section 2806(h) “is an essential tool for exactly the type of situation presented by Donsco.” *Id.*, at 11.

According to PPLICA, the question before the ALJ on remand is the design of a special rate for Donsco and not the question of whether Donsco should receive a special rate.

Specifically, PPLICA argued, as follows:

PPLICA maintains that the issue of whether Donsco’s particular situation merits a negotiated rate was not remanded by the Commission.

PPLICA Main Brief, at 6.

PPLICA explained its interpretation of the *April 27th Order*, as follows:

The Remand Order [*April 27th 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.

PPLICA Main Brief, at 5-6. PPLICA asserted that the scope of the Commission’s remand was limited to four specific topics:

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.

Id., at 6. PPLICA concluded, as follows:

[T]he 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 [*April 27th Order*] and must be disregarded entirely.

PPLICA Main Brief, at 10.

PPLICA's narrow and self-serving view of the scope of the *April 27th Order* is incorrect.

The *April 27th Order* presented no finding or conclusion "that Donsco faces special circumstances that warrant a flexible contract rate under Section 2806(h)." PPLICA Main Brief, at 5-6. Instead, the Commission stated:

For the reasons that follow, we exercise our discretion to grant reconsideration and remand this matter to the Office of Administrative Law Judge (OALJ) for the development of a more complete record to allow *consideration* of additional pricing options permitted by Section 2806(h) of the Code.

April 27th Order, at 6 (emphasis added) (footnote omitted). The Commission also stated as follows:

We find that granting reconsideration is necessary because the record is devoid of information that the Commission requires to render a meaningful decision on the Donsco special rate issue.

Id., at 11. Significantly, the Commission also concluded, as follows:

As described above, Donsco is *somewhat unique* in its circumstances. Given the evidence of Donsco's marked distribution rate increases, we find that PPLICA has demonstrated

reasoned arguments for this Commission to *consider* the rate relief requested. Our remand will supply crucial information to make a decision that is well-informed and addresses not only the potential relief for Donsco, but the impact on other PPL customers that must be considered.

Id., at 13 (emphasis added).

Furthermore, after summarizing Donsco's rate relief request, Commissioner James H. Cawley stated:

Given these facts, Donsco has demonstrated reasoned arguments for this Commission to *consider* the rate relief requested.

Motion of Commissioner James H. Cawley, Docket No. R-2010-2161694 (Dated March 31, 2011), at 2 (emphasis added). Commissioner Cawley concluded, as follows:

[I]t is in the public interest that this matter be remanded to the Office of Administrative Law Judge so that a fully developed record be made *to determine the reasonableness of Donsco's request* and the impact on other LP-4 customers, without undue delay and additional expense to the parties and without needlessly duplicating use of the Commission's own resources.

Id., at 4 (emphasis added).

The *April 27th Order* did not reach the findings and conclusions that PPLICA claims it did. The Commission did not conclude that PPLICA is entitled to flexible rates under Section 2806(h), but held that it will "consider the rate relief requested." The Commission did not decide that this remand proceeding is limited to calculating flexible rates for Donsco under Section 2806(h), but ordered the OALJ to develop "a more complete record to allow consideration of additional pricing options permitted by Section 2806(h)."

Therefore, PPLICA's demand that any arguments which dispute Donsco's eligibility for rates under Section 2806(h) should be disregarded must, itself, be disregarded. PPLICA has engaged, at best, in wishful thinking regarding the scope of this remand proceeding. The *April*

27th Order speaks for itself, and the Commission's direction to develop a record so that it can *consider* the request for flexible pricing under Section 2806(h) is set forth unambiguously in the Order itself.

B. PPLICA's Arguments for a Special Rate

After addressing the scope of the remand proceeding, PPLICA devoted the remainder of its Main Brief to its argument for a special rate for Donsco. *See* PPLICA Main Brief, at 10-28. Each of PPLICA's arguments has already been addressed in the OSBA's Main Brief, and will not be repeated here. *See* OSBA Main Brief, at 3-32.

However, a response to one of PPLICA's assertions is in order. Specifically, PPLICA stated:

The primary reason for Donsco's request remains the impossibility of taking service under Rate Schedule LP-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.

PPLICA Main Brief, at 14. Therefore, according to PPLICA's logic, Donsco should be provided a special rate under Section 2806(h).

Actually, it does not appear that it would be "impossible" for Donsco to receive service at transmission voltage. In that regard, PPL stated, as follows:

Donsco can receive service at transmission voltage levels at its Wrightsville Foundry without having the transmission facilities cross the Susquehanna River. An option was investigated under which Donsco could receive service from a transmission facility of Metropolitan Edison on the west side of the Susquehanna River, the same side as Donsco's Wrightsville Foundry. Donsco

concluded, however, that this option was too expensive. PPLICA Cross-Examination Exhibit No. 6.

PPL Main Brief, at 21.

The “impossibility of taking service” under a more favorable rate schedule, and the “geographical inability” to take service under a more favorable rate schedule, are both very broad criteria which the Commission is being asked by PPLICA to adopt as the standards for qualifying for special rates under Section 2806(h) in future cases. According to PPL, 1,130 customers are currently served by Rate Schedule LP-4. PPL Main Brief, at 20. On the stand, PPLICA witness Richard A. Baudino was cross-examined on the extent to which he had reviewed the circumstances of those LP-4 customers:

Q. And you have not examined the proximity of these other customers to 69-kV facilities?

A. I have not.

Q. Or limitations that might prevent them from connecting and operating, taking service at 69 kV?

A. No, I have not.

Transcript, at 570.

Consequently, PPLICA has not presented any evidence as to whether any, some, or all of the LP-4 customers (other than Donsco) may be faced with the “impossibility” of taking service under LP-5, either for geographical or economic reasons. In fact, PPL observed that roughly 854, or 76 percent, of the current LP-4 customers would benefit from taking service under the LP-5 rate schedule. PPL Main Brief, at 20-21. Regarding those 854 customers, PPL witness Mr. Oliver G. Kasper testified, as follows:

All of these customers would convert to service under Rate Schedule LP-5 if there were no physical or economic obstacle to the conversion.

PPL Statement No. 8-RSR, at 6. PPL concluded, as follows:

[T]he fact remains that the presence of the Susquehanna River is nothing more than one of many factors that affect the cost of receiving service at transmission voltage. It is this cost that prevents 854 other customer [sic] served under Rate Schedule LP-4 from receiving service at 69 kV under Rate Schedule LP-5. There is nothing unique about Donsco's situation.

PPL Main Brief, at 21.

Therefore, in order for Donsco to qualify under Section 2806(h), PPLICA should have presented evidence that demonstrated that the other LP-4 customers were not geographically or economically restricted from taking LP-5 service. PPLICA presented no such evidence.

As stated in the OSBA's Main Brief, the record in this remand proceeding demonstrates that Donsco is not in a unique situation, and that Donsco should not be afforded any special rates under Section 2806(h). *See* OSBA Main Brief, at 13-15. Although Donsco may not be able to take service under Rate Schedule LP-5, there is no record evidence that shows that Donsco is unique in that limitation as compared to the other 1,129 current LP-4 customers.

C. Recovering the Revenue Shortfall

As stated throughout the OSBA's Main Brief, the OSBA opposes the implementation of special rates for Donsco, or for any other PPL customer, based upon the record evidence in this proceeding. However, to the extent that the Commission determines that some form of additional rate relief should be granted to Donsco (or any other customer), the revenue shortfall that results from any special rates must be allocated among the various rate classes, and recovered in rates from customers who are not eligible for this special treatment.

PPLICA recommended that the revenue shortfall be recovered from the LP-4 customer class. PPLICA Main Brief, at 26. BI&E agreed, as follows:

The very nature of PPLICA's proposal will result in a revenue shortfall being received from Donsco, Inc. As a result, this lost revenue must be collected from other ratepayers. I&E Expert Witness Gruber opines that '[a]ny lost revenues from a discounted rate should stay in the appropriate rate class....' To do otherwise would result in an inappropriate inter-class subsidy. The Commission has steadfastly ruled against inter-class subsidies and there is insufficient evidence presented to stray from this principle. As I&E Witness Gruber observed '...allowing Donsco to pay a rate less than its cost of service would result in a subsidization of Donsco; any shifting of costs out of LP-4 class would have other rate classes subsidizing the LP-4 customers.'

BI&E Main Brief, at 7-8 (footnotes omitted).

In contrast to the recommendations of PPLICA and BI&E to recover the revenue shortfall from the remaining customers in the LP-4 class, the OSBA recommends that any shortfall be recovered from the LP-5 and LP-6 classes. The OSBA bases its recommendation on two facts. First, LP-4 customers are already overpaying their cost of service. OSBA Statement No. 5, at 9. Second, LP-5 and LP-6 customers are significantly underpaying their cost of service. *Id.*, at 8.

Therefore, the OSBA respectfully submits that the OSBA proposal would not create any new, inter-class subsidies. Placing the revenue shortfall resulting from a special rate for Donsco upon LP-5 and LP-6 would be just and reasonable, and would not cause revenues from those two customer classes to exceed allocated costs. OSBA witness Robert D. Knecht explained the OSBA's reasoning, as follows:

This remand proceeding is a fully scheduled proceeding, including direct, rebuttal, surrebuttal and rejoinder testimony. There is sufficient opportunity to fully evaluate the cost basis for recovery of the shortfall from Donsco. Moreover, evaluating this issue within this proceeding has the benefit of being able to rely on a Commission decision regarding the COSS [cost of service study] methodology. At page 36 of its Order entered December 21, 2010,

the Commission indicated that ‘ . . . we shall adopt the ALJ’s recommendation that PPL’s COSS JMK-2A is reasonable.’ Thus, all parties can offer alternative proposals for the treatment of a Donsco shortfall knowing exactly what the Commission decided with respect to cost allocation methodology in this proceeding.

In addition, from a practical perspective, I note that the issues involving the recovery of costs from all of the rate classes were not fully vetted in the main portion of this particular proceeding. Specifically, the rate increases for LP-5 and LP-6 got little attention, because these (transmission service) rate classes contribute only a very small amount of PPL Electric’s distribution revenues. Neither the Recommended Decision of Administrative Law Judge Susan D. Colwell nor the Commission’s decision directly addressed the issue of a rate increase for the Rate LP-5 and LP-6 rate classes, despite the fact that these classes exhibit substantially negative class rates of return under the approved cost allocation methodology. Moreover, the large under-recovery of costs (in percentage terms) from the LP-5 and LP-6 rate classes was not fully identified in the Company’s original filing, but only became apparent with the submission of Exhibit JMK-2A in Mr. Kleha’s rebuttal testimony. *Under the originally filed COSS (i.e., Exhibit JMK-2), the class rates of return for the LP-5 and LP-6 classes were -8.7 percent and -5.3 percent, respectively; in the corrected Exhibit JMK-2A, the LP-5 and LP-6 class rates of return at present rates fell to -23.4 percent and -66.95 percent, respectively. Thus, parties were not able to reflect the implications of this large cost under-recovery in the revenue allocation until the surrebuttal phase of the proceeding.*

OSBA Statement No. 5, at 7-8 (emphasis added).

Recovering the revenue shortfall from LP-5 and LP-6 would prevent an already overpaying customer class, LP-4, from paying even more just to benefit one customer. The Commonwealth Court has held that cost of service is the polestar of ratemaking. *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006), *appeals denied*, 916 A.2d 1104 (Pa. 2007). Even though Section 2806(h) does permit the Commission to adopt special rates, it does not provide any direction as to how the resulting revenue shortfall is to be recovered.

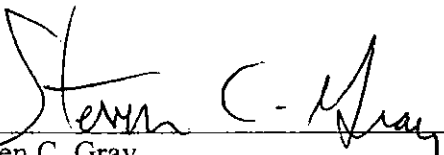
Furthermore, Mr. Knecht submitted un rebutted testimony that the impact on the LP-5 and LP-6 classes would be minimal. OSBA Statement No. 4, at 13. *See also*, OSBA Statement No. 5, at 8-9.

Consequently, placing the revenue shortfall resulting from a special rate for Donsco upon LP-5 and LP-6 would be just and reasonable.

IV. Conclusion

For the reasons set forth in the OSBA's Main Brief, as well as the reasons set forth above, the OSBA requests that the ALJ and the Commission deny PPLICA's *Petition* in its entirety. In short, there is no basis for providing any special rate treatment for Donsco.

Respectfully submitted,



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Dated: October 18, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
v. : **DOCKET NO. R-2010-2161694**
PPL Electric Utilities Corporation :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Brief on Remand, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

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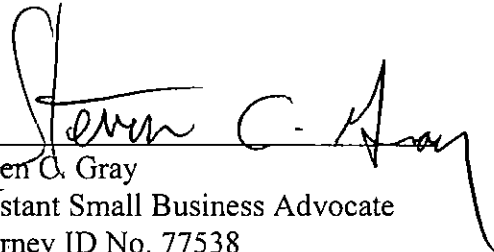
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