



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

February 27, 2012

HAND DELIVERED

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

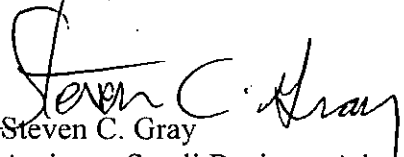
**Re: Pennsylvania Public Utility Commission v. PPL Electric Utilities
Corporation
Docket No. R-2010-2161694**

Dear Secretary Chiavetta:

Enclosed for filing are the original and nine (9) copies of the Reply Exceptions, 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 do not hesitate to contact me.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Cheryl Walker Davis
Office of Special Assistants

Robert D. Knecht

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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").

On October 18, 2001, the OSBA submitted its remand Reply Brief.

On January 27, 2012, the Commission issued ALJ Colwell's Recommended Decision on Remand ("Remand RD").

On February 16, 2012, PPLICA filed Exceptions to the Remand RD.

The OSBA files these Reply Exceptions in response to the Exceptions filed by PPLICA.

II. REPLY EXCEPTIONS

A. Reply to PPLICA Exception No. 1: The ALJ properly defined the scope of this remand proceeding. (PPLICA Exceptions, at 3-7)

In its Exceptions, PPLICA argued that the ALJ improperly expanded the scope of the remand proceeding. PPLICA correctly characterized the ALJ's conclusion that the remand proceeding was to address whether Donsco was entitled to relief, and, if Donsco was so entitled, what the relief would be. PPLICA claimed that "the totality of the Commission's directives set forth" in the *April 27th Order* "relate solely to the nature of relief available to Donsco." PPLICA Exceptions, at 3.

PPLICA asserted that the *April 27th Order* "set forth four principal directives, none of which bore any relation to Donsco's eligibility for relief." PPLICA stated:

The Commission directed the parties to develop a record addressing 1) information regarding the annual operations and maintenance ('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.

PPLICA Exceptions, at 4.

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) of the Public Utility Code, 66 Pa. Code § 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.

PPLICA’s narrow interpretation of the “totality” of the *April 27th Order* is incorrect. The *April 27th Order* presented no finding or conclusion that Donsco is entitled to relief under Section 2806(h). 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:

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:

[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, the OSBA respectfully requests that the Commission deny PPLICA Exception No. 1 and uphold the ALJ in denying PPLICA's narrow scope of this remand proceeding. The *April 27th Order* speaks for itself, and it unambiguously sets forth the Commission's direction to develop a record so that it can *consider* the request for flexible pricing under Section 2806(h).

B. Reply to PPLICA Exception No. 2: The ALJ properly interpreted Section 2806(h). (PPLICA Exceptions, at 7-10)

In its Exceptions, PPLICA argued that the ALJ improperly interpreted the legal interplay between Section 1304 and Section 2806(h), thereby rendering Section 2806(h) “superfluous.”

PPLICA Exceptions, at 7. PPLICA argued, as follows:

Section 2806(h) must be applied as an independent cause of action, separate and apart from the generalized provisions of Section 1304.

Id.

The OSBA agrees with PPLICA that Section 2806(h) must not be disregarded. The legislature has made it clear that “every statute shall be construed, if possible, to give effect to all its provisions.” 1 Pa. C.S. § 1921(a). Section 2806(h) states:

Flexible pricing. – In addition to the implicit authority of the commission under section 501 (relating to general powers), the commission has the authority to approve flexible pricing and flexible rates, including negotiated, contract-based tariffs designed to meet the specific needs of a utility customer and to address competitive alternatives.

66 Pa. C.S. § 2806(h).

However, the OSBA disagrees with PPLICA’s assertion that Section 2806(h) stands alone and separate from Section 1304. In granting the power to approve flexible rates, the legislature did not eliminate the requirement for those rates to comply with Section 1304 of the Public Utility Code, 66 Pa. C.S. § 1304. Section 1304 states, in part:

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.

66 Pa. C.S. § 1304.

Section 1304 does not require that no preference or advantage can be given to any corporation, just that the preference or advantage cannot be unreasonable. Consequently, Section 1304 does not make Section 2806(h) “superfluous,” but rather harmonizes with Section 2806(h) to allow the Commission to create flexible rates where it is just and reasonable to do so. Significantly, in its *April 27th Order*, the Commission stated:

[W]e 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 (footnote omitted) (emphasis added).

The OSBA observes that the use of the word “additional” is significant. The Commission recognized that Section 2806(h) provided additional authority to allow flexible pricing beyond that normally permitted by Section 1304. However, that additional authority does not obviate the need for any flexible rates awarded to Donsco to meet the requirements of Section 1304.

Therefore, the OSBA respectfully requests that the Commission deny PPLICA Exception No. 2 and uphold the ALJ. Section 2806(h) and Section 1304 must be read together in order that any flexible pricing shall be just, reasonable, and non-discriminatory.

C. Reply to PPLICA Exception No. 3: The ALJ properly held that Donsco did not qualify for relief under Section 2806(h). (PPLICA Exceptions, at 10-14)

In its Exceptions, PPLICA argued that it “provided evidence establishing Donsco’s special circumstances” such that relief should be granted under Section 2806(h). PPLICA Exceptions, at 11. PPLICA presented a laundry list of factors which it claimed demonstrated that Donsco faces “special circumstances.” *See Id.*, at 11-12.

PPLICA concluded by claiming:

PPLICA contends that the information provided regarding Donsco’s usage relative to other customers and the circumstances underlying its historic [sic] increase in usage meet its burden of proving special circumstances.

Id., at 14.

Significantly, PPLICA took exception to the reasoning employed by the ALJ when analyzing whether Donsco met the requirement of Section 2806(h). PPLICA Exceptions, at 13.

Section 2806(h) requires that an entity demonstrate “specific needs” in order to qualify for flexible rates. Section 1304 requires that any award of preferential rates must be just, reasonable, and non-discriminatory. In her Remand RD, the ALJ synthesized these two sections by stating, as follows:

Clearly, if a company is to qualify for special treatment because of unique circumstances, there must be some comparisons offered which would establish that its circumstances are, in fact, unique, and not duplicated by every other member of the rate class.

Remand RD, at 25.

PPLICA complained that the ALJ created an “insurmountable burden for relief under Section 2806(h).” PPLICA Exceptions, at 13. The OSBA respectfully submits that the ALJ was right to require that Donsco demonstrate its uniqueness. However, uniqueness, by itself, is not sufficient to be granted relief under Section 2806(h). Every company across the Commonwealth is going to have a back-story of how that company came into existence, what difficulties with utility service that company has faced along the way, and how that company would benefit from lower utility rates. Therefore, it is not only necessary for an applicant such as Donsco to demonstrate that its circumstances are unique, but it must also demonstrate that those circumstances justify a preferential rate under Section 2806(h). By its nature, a negotiated rate agreement will necessarily mean that one customer gets a preferential rate and other customers will pay the shortfall. OSBA Statement No. 4, at 8. In light of such rate discrimination, the Commission must conclude that there is some overriding public interest that justifies the discrimination. The Commission must, therefore, establish a standard whereby Section 2806(h) is given full effect while simultaneously preventing a flood of requests for flexible rates by companies that would benefit from lower utility bills.

One threshold question for the Commission to decide is how the language of Section 2806(h) is to be interpreted. Specifically, the language of Section 2806(h) can be read conjunctively, *i.e.*, as authorizing flexible rates “to meet the specific needs of a utility customer *and* to address competitive alternatives.” If the Commission interprets Section 2806(h) as requiring Donsco to have both “specific needs” and “competitive alternatives,” then, as discussed in detail in the OSBA’s Main Brief, the Commission should dismiss PPLICA’s *Petition* because PPLICA has failed to demonstrate that Donsco has any competitive alternatives to service by PPL. *See* OSBA Main Brief, at 7-12.

On the other hand, if the Commission interprets the language of Section 2806(h) (“to meet the specific needs of a utility customer and to address competitive alternatives”) as disjunctive, then the fact that Donsco has no available competitive alternatives to service by PPL is not fatal to Donsco’s request for flexible rates. Under that interpretation of Section 2806(h), the question then becomes whether Donsco has the requisite “specific needs.”

As summarized above, PPLICA has asserted that it has met this burden in regard to Donsco. The OSBA respectfully disagrees, and, as set forth in its Main Brief, has argued that Donsco has not demonstrated that it has met the burden of demonstrating “specific needs.” *See* OSBA Main Brief, at 13-15. In summary, the OSBA agrees with the ALJ when she concluded:

PPLICA has not offered any evidence to support a finding that its situation is substantially different from the other members of LP-4.

* * *

PPLICA has not produced any such comparison, and therefore, has failed again to sustain its burden of proving its entitlement to special treatment.

Remand RD, at 25.

Further, even if Donsco were able to establish uniqueness, that by itself would not be sufficient to justify preferential or “flex” rates. Mr. Knecht testified:

The most common eligibility criterion for flex rates, in my experience, is a provision that the flex rates are needed either to prevent the loss of load or to attract new load.

OSBA Statement No. 4, at 8. Mr. Knecht continued:

In these cases, the economic argument is that, even at discounted flex rates, the incremental revenues earned from the flex rate customers exceed the incremental cost of providing service to those customers. Under those explicit conditions, all other ratepayers are economically better off if the load is retained (or attracted) than if it is lost (or not attracted).

OSBA Statement No. 5, at 8-9.

Donsco fails to meet this condition. It has not demonstrated that it has competitive alternatives; it has abandoned its assertion that it might bypass PPL’s distribution system; and it has not demonstrated that paying tariff-based rates will cause it to reduce its load or close its plant. OSBA Statement No. 4, at 8-10. Thus, PPLICA has not demonstrated that Donsco’s uniqueness is any more deserving of preferential rates than the uniqueness of a host of other customers.

Therefore, the OSBA respectfully requests that the Commission deny PPLICA Exception No. 3 and uphold the ALJ’s analysis that PPLICA has failed to demonstrate the “unique circumstances” required by Section 2806(h) and Section 1304.

D. Reply to PPLICA Exception No. 4: The ALJ properly rejected the flexible rates proposed by PPLICA. (PPLICA Exceptions, at 15-17)

In its Exceptions, PPLICA claimed that the ALJ used the wrong basis for analyzing, and ultimately rejecting, PPLICA’s proposed flexible rates for Donsco. PPLICA argued, as follows:

The Remand RD fails to analyze PPLICA's proposed rate design within the appropriate context as a tailored solution to Donsco's special circumstances pursuant to Section 2806(h) of the Public Utility Code.

PPLICA Witness Richard Baudino developed a rate design based on cost of service principles, but appropriately modified to reflect the special circumstances at issue in this proceeding.

PPLICA Exceptions, at 15.

The ALJ's rejection of PPLICA's rate proposal is correct. The OSBA set forth its arguments against the PPLICA proposal in its Main Brief. *See* OSBA Main Brief, at 21-23.

However, one passage bears repeating. OSBA witness Robert D. Knecht stated his disagreements with the PPLICA rate design proposal, as follows:

First, Mr. Baudino does not rely on a cost basis for setting Donsco's rates. He estimates a cost basis for the Donsco rate at \$157,000 per year, but proposes a rate well below that level (at \$132,000 per year).

Second, Mr. Baudino proposes to set the cost basis for the Donsco rate using an after-tax cost of capital of 7.78 percent. However, Mr. Baudino does not recognize that the LP-4 rate class, like all of PPL Electric's non-residential rate classes that take service at distribution voltage, provides a class rate of return in excess of system average. That is, non-residential distribution voltage rate classes all pay rates in excess of allocated cost. If the cost basis for Donsco's rates is to be its actual book costs, simple fairness requires that its rates should also reflect a reasonable share of the cost over-recovery imposed on other LP-4 customers.

OSBA Statement No. 4, at 11.

Therefore, the OSBA respectfully requests that the Commission deny PPLICA Exception No. 4 and uphold the ALJ's rejection of the rate design proposal offered by PPLICA.

E. Reply to PPLICA Exception No. 5: The ALJ properly rejected PPLICA's proposed rate schedule LP-4 SI. (PPLICA Exceptions, at 18-20)

In its Exceptions, PPLICA argued that the ALJ incorrectly rejected PPLICA's proposal to create a new rate schedule, LP-4 SI because it provided "no meaningful restrictions on eligibility for the requested relief." PPLICA Exceptions, at 18. PPLICA continued, as follows:

PPLICA proposed that the Commission establish a Rate LP-4 SI with appropriate criteria to limit applicability to customers similarly situated to Donsco.

Id.

The OSBA respectfully submits that the ALJ correctly rejected PPLICA's proposal for the creation of an LP-4 SI customer class. *See* OSBA Main Brief, at 15-19. PPLICA's proposed customer class eligibility criteria may meet the needs of Donsco, but they are not narrowly tailored to minimize the impact upon PPL's other customers.

Specifically, PPLICA's LP-4 SI eligibility criteria include: limiting the class to customers with maximum billing demands of 4 MW or greater, which opens this class up to the 20 large customers served under Rate Schedule LP-4; limiting the class to customers that are within a certain distance of PPL's 69 kV facilities, although the distance is not specified; limiting the class to customers that are served by certain dedicated lines or identifiable facilities to convert the 69 kV power to 12.47 kV, which includes every PPL customers; and certain generalized conditions, any one of which could easily be satisfied. *See* OSBA Main Brief, at 16-18.

Mr. Knecht summarized the OSBA's analysis, as follows:

Because PPLICA has not offered any additional detail regarding its LP-4 SI proposal in this phase of the proceeding, I reiterate the conclusions from my rebuttal testimony:

'There is not sufficient information on the record to evaluate this proposal. Mr. Baudino has, unfortunately, made no effort to determine how many customers may be eligible for such a rate, nor

what implementing this rate would cost PPL Electric and/or its other ratepayers. Moreover, as explained above, Mr. Baudino's proposals for eligibility criteria and rate determination are too vague to be incorporated into a utility tariff. Thus, while I am sympathetic to the concerns raised by Mr. Buck with respect to the Wrightsville facility in particular, I do not recommend that the Commission adopt Mr. Baudino's proposal.'

OSBA Statement No. 4, at 7.

Therefore, the OSBA respectfully requests that the Commission deny PPLICA Exception No. 5 and uphold the ALJ's rejection of PPLICA's proposed LP-4 SI customer class.

F. Reply to PPLICA Exception No. 6: The ALJ properly rejected PPLICA's proposed tariff language. (PPLICA Exceptions, at 20-22)

In its Exceptions, PPLICA explained its preferred choice of flexible rate proposals:

PPLICA's preferred method for implementing reduced rates for any business would be inserting the additional tariff language reflecting the Section 2806(h) requirements rather than specifically adopting the above-referenced LP-4 SI standards. PPLICA proposed this alternative in its Remand Direct testimony based on the Commission's discussion of Section 2806(h) in the Remand Order.

PPLICA Exceptions, at 20. PPLICA concluded:

However, the Remand RD gave no consideration to PPLICA's alternative proposal.

Id.

The OSBA opposes the adoption of PPLICA's proposed tariff language. *See* OSBA Main Brief, at 19-21. Mr. Knecht explained the OSBA's opposition to PPLICA's tariff language, as follows:

Mr. Baudino offers an alternative proposal that a negotiated distribution rate option be added to the PPL Electric distribution tariff, under which discounted rates could be offered to customers at the discretion of the Company or upon approval by the

Commission. As written, *all customers* would be eligible for this discounted rate option.

OSBA Statement No. 4, at 4 (emphasis added). Mr. Knecht continued:

PPLICA's proposed tariff language indicates only that flexible pricing may be imposed at the discretion of the Company or upon approval by the Commission of a customer's request.

* * *

First, I strongly disagree with PPLICA's proposed criterion that flex rates may apply at the discretion of the Company, apparently without Commission approval. Such an approach would involve an abdication by the Commission of its responsibility to establish just and reasonable rates, and would provide the Company with the unfettered ability to discriminate among its customers in any manner that it chose. If the option for flex rates is incorporated into the Company's tariff, all flex rate agreements should be subject to Commission approval in each base rates proceeding.

Second, PPLICA's language regarding when flex rates may be imposed is quite vague. As written, any customer with 'specific needs' could apply for a flex rate. As all customers have specific needs, this vague language could inundate both PPL Electric and the Commission with special flex rate requests. Furthermore, such a precedent established for PPL Electric in this proceeding would likely spread to other EDCs.

OSBA Statement No. 4, at 7-8 (footnote omitted).

PPLICA's proposed tariff language is much too broad to be adopted. Furthermore, there is no basis for evaluating the impact of the proposed tariff language on PPL's other customers. Therefore, the OSBA respectfully requests that the Commission deny PPLICA Exception No. 6 and reject PPLICA's proposed tariff language.

G. Reply to PPLICA Exception No. 7: The ALJ properly disregarded PPL's alternative rate proposal. (PPLICA Exceptions, at 22-24)

In its Exceptions, PPLICA observed that “the Remand RD declined to consider PPL’s Alternative Rate Design based on PPL’s withdrawal of support for its proposal.” PPLICA Exceptions, at 22. PPLICA concluded that it “would not oppose implementation of PPL’s alternative proposal, with a more appropriate demand threshold [5 or 6 MW].” *Id.*, at 23-24.

The OSBA addressed PPL’s rate design proposal in detail in its Main Brief. *See* OSBA Main Brief, at 24-27. Mr. Knecht summarized PPL’s proposal, as follows:

PPL Electric proposes to modify the LP-4 tariff to cap the LP-4 billing demand at 10,000 kW. All kW in excess of 10,000 would be priced at zero. At present, Donsco is the only LP-4 customer with billing demand in excess of 10,000 kW. The Company proposes to recover the entire revenue reduction related to the preferential treatment of Donsco from other Rate LP-4 customers. According to the Company’s calculations, the Donsco revenue reduction would be offset by an increase in the Rate LP-4 customer charge, from \$160.98 per month to \$176.87 per month. The Company would make no changes to the Rate LP-4 distribution demand charge.

OSBA Statement No. 5, at 3 (footnote omitted).

Mr. Knecht observed that PPL’s rate proposal is, in some ways, superior to the proposals offered by PPLICA. *See Id.*, at 4. However, the Company made significant errors in the analysis underlying its rate proposal.

First, PPL believed that customers with demands in excess of 10,000 kW are providing a rate of return which is in excess of the returns provided by other LP-4 customers. In fact, further analysis by the OSBA and PPL, based on the Commission’s approved cost allocation methodology, demonstrated that LP-4 customers with demands in excess of 10,000 kW are providing a lower rate of return than LP-4 customers with demands below 10,000 kW.

Therefore, the alternative rate design proposed and withdrawn by PPL was not justified by the Commission-approved cost allocation methodology.

Second, if Donsco's load were to increase, PPL's other customers would have to bear even more of Donsco's costs. Mr. Knecht explained that problem, as follows:

The Company's proposal would set the marginal demand charge for Donsco at zero. This approach has unfavorable implications under either an allocated cost (OSBA-III-1 COSS) or direct assignment (Exhibit JMK-10) cost philosophy.

Under the Commission's allocated cost method, the demand-related costs allocated to Rate LP-4 will increase as demand increases. Therefore, the amount paid by Donsco should increase as demand increases. In contrast, the Company's alternative would impose a zero rate increase on Donsco were its load to increase. Thus, load growth by Donsco would result in more costs being allocated to the LP-4 rate class, which would then need to be absorbed by other LP-4 customers.

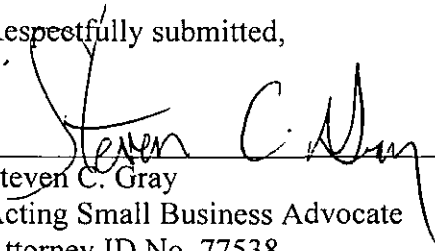
OSBA Statement No. 5, at 6

Therefore, the OSBA respectfully requests that the Commission deny PPLICA Exception No. 7 and uphold the ALJ's dismissal of PPL's abandoned rate design proposal.

III. CONCLUSION

For the reasons set forth herein, the OSBA respectfully requests that the Commission deny PPLICA Exceptions Nos. 1 through 7.

Respectfully submitted,



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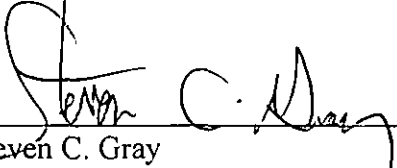
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